STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Medical Provider Networks

TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 9767.1 – 9767.19

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to amend and adopt the proposed regulations described below to implement the amended provisions of Labor Code section 4616, as amended by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). The regulations are mandated by Labor Code section 4616, and these proposed amendments do the following: define as a new MPN applicant type an entity that provides physician network services; provide a four-year approval period for MPN applications; require geocoding with reapproval applications; set forth the MPN Medical Access Assistant requirements; require written physician acknowledgments of MPN participation; clarify MPN access standards, establish a formal MPN complaint and a suspension/revocation petition process, create a random review process and a schedule of administrative penalties for violations of statutory and regulatory requirements.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to amend Article 3.5 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, Sections 9767. through 9767.16, and adopt Article 3.5 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, Section 9767.5.1 and Sections 9767.16.5 through 9767.19.

Amend Section 9767.1	Medical Provider Networks - Definitions
Amend Section 9767.2	Review of Medical Provider Network Application or Application for Reapproval
Amend Section 9767.3	Application for a Medical Provider Network Plan
Amend Section 9767.4	Cover Page for Medical Provider Network Application or Application for Reapproval
Amend Section 9767.5	Access Standards
Adopt Section 9767.5.1	Physician Acknowledgments
Amend Section 9767.6	Treatment and Change of Physicians Within MPN
Amend Section 9767.7	Second and Third Opinions
Amend Section 9767.8	Modification of Medical Provider Network Plan

Amend Section 9767.9	Transfer of Ongoing Care into the MPN
Amend Section 9767.10	Continuity of Care Policy
Amend Section 9767.11	Economic Profiling Policy
Amend Section 9767.12	Employee Notification
Amend Section 9767.13	Denial of Approval of Application or Reapproval; Re-Evaluation
Amend Section 9767.14	Probation, Suspension or Revocation of Medical Provider Network Plan; Hearing
Amend Section 9767.15	Compliance with Current MPN Regulations; Reapproval
Amend Section 9767.16	Medical Provider Network Complaints
Adopt Section 9767.16.5	DWC Medical Provider Network Complaint Form 9767.16.5
Adopt Section 9767.17	Petition for Suspension or Revocation of a Medical Provider Network
Adopt Section 9767.17.5	DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5
Adopt Section 9767.18	Random Reviews
Adopt Section 9767.19	Administrative Penalty Schedule; Hearing

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, on the follow date:

Date: September 30, 2013
Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business
Place: Elihu Harris State office Building – Auditorium
1515 Clay Street
Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or 5:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 P.M., on September 30, 2013. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 P.M., on September 30, 2013.

AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616.

Reference is to Labor Code sections 4604.5, 4616, 4616.1, 4616.2, 4616.3, 4616.4, 4616.5, 4616.7, 5300, 5307.27, 5401; Government Code sections 11445.10 through 11445.60.

INFORMATIVE DIGEST/POLICY OVERVIEW

The regulations are required by legislative enactment – Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013), which made substantial changes to the Medical Provider Network (MPN) statutory provisions. These legislative changes include, but are not limited to, a new category of MPN applicants, physician acknowledgments and medical access assistants, a reapproval process, a complaint process and third-party petition process for MPN suspension or revocation, administrative penalties, as well as random reviews of MPN. These changes are mandated to take effect on January 1, 2014 for all dates of injury.

Specifically, Labor Code section 4616(a)(1) was amended to allow an entity that provides physician network services to also establish or modify a medical provider network for the provision of medical treatment to injured employees. The revised section also eliminated the

requirement that at least 25 percent of MPN physicians be engaged in the treatment of non-occupational injuries.

Labor Code section 4616(a)(2) was revised so that medical treatment for injuries shall be available and accessible in all areas, including where there is a health care shortage.

Labor Code section 4616(a)(3) was revised to require that all MPN treating physicians have a written acknowledgement to be a member of each MPN to which the physician belongs.

Labor Code section 4616(a)(4) is a new section that requires every MPN to post on its website a roster of all treating physicians within the network and to update this information quarterly.

Labor Code section 4616(a)(5) was added to require every MPN to have medical access assistants to help an injured employee find MPN physicians and schedule appointments with them.

Labor Code section 4616(b)(1) was amended to approve MPNs for a period of four years only. Commencing January 1, 2014, existing approved plans are deemed approved for four years from the most recent application or modification approval date. MPNs must submit plans for reapproval at least six months before the expiration of their four-year approval period.

Labor Code sections 4616(b)(2)and 4616(b)(3) were added to require that every MPN establish and follow procedures continuously to review the quality of care, performance of medical personnel, utilization of services and facilities and costs. Every MPN must also submit geocoding of its network for re-approval to establish that the number and geographic location of physicians in the MPN meet the required standards.

Labor Code section 4616(b)(4) gives the administrative director the authority to formally investigate complaints and to conduct random reviews of approved MPNs.

Labor Code section 4616(b)(5) provides that a third party can petition to suspend or revoke approval of an MPN and gives the Administrative Director the additional authority to place MPNs on probation and to assess penalties for regulatory and statutory violations. Appeals of decisions by the Administrative Director are to be reviewed by the Workers' Compensation Appeals Board.

Labor Code section 4616(g) was added to place provider notification requirements on MPN contracting agents. This subdivision provides that as of January 1, 2013, every contracting agent that "sells, leases, assigns, transfers or conveys" an MPN to another entity must disclose to providers whether that MPN can be sold, leased, transferred or conveyed.

The proposed amendments to the regulations are intended to implement, interpret or make specific the applicable Labor Code sections as follows:

Proposed Amendments to Section 9767.1 Medical Provider Networks – Definitions

- This section defines key terms used in the MPN regulations.

- This section is re-lettered to accommodate the addition or deletion of definitions.

- This section adds definitions for "entity that provides physician network services", "geocoding", "health care shortage", "medical provider network approval number", "medical provider network medical access assistant", "medical provider network geographic service area", "probation", "revocation", "suspension", and "withdrawal."

- This section clarifies the definition for "ancillary services" to specify interpreter services, physical therapy and pharmaceutical services may be included as non-physician services to an MPN. This section also amends the definition for "covered employee", "medical provider network plan", and "MPN Applicant", to conform to the amendment to Labor Code section 4616 that includes as an MPN applicant an entity that provides physician network services. This section further amends the definition of "MPN Contact" to state the responsibility of responding to MPN complaints and adds "MPN" before "independent medical review" to distinguish which review process applies. The definition of "provider" is amended by using the word "practitioner" instead of using the word "provider" in the definition. The definition of "termination" is amended to include as clarification the word "permanent" before "discontinued use."

- This section strikes the definitions of "non-occupational medicine", and "physician primarily engaged in treatment of non-occupational injuries" to reflect the deletion of this requirement in Labor Code section 4616. Finally, this section strikes the definition of "cessation of use," which is no longer used.

Proposed Amendments to Section 9767.2 – Review of Medical Provider Network Application

- Section 9767.2 sets forth the Administrative Director's responsibilities and procedures when reviewing a MPN Application or Application for Reapproval.

- The title of the section is amended to include "or Application for Reapproval."

- Subdivision (a) is amended to clarify that MPN applications with correct information will be approved for a period of four years to conform to the new statutory mandate. If the Administrative Director fails to act on a plan within 60 days, the amendment clarifies that the application shall be deemed approved on the 61st day for a period of four years.

- Subdivision (b) is amended to clarify that the Administrative Director will additionally provide notification to an MPN applicant not eligible to have an MPN.

- Subdivision (e) is amended to correctly state that an MPN, not the MPN applicant, will be assigned an approval number, and to require that a unique MPN approval number shall be used in all correspondence with the DWC regarding the MPN.

- Subdivision (f) sets forth the method an MPN applicant may choose to withdraw an approved MPN that has never been implemented. The MPN applicant is to send a letter signed by the MPN's authorized individual to the Administrative Director verifying that the MPN has never been used and that the MPN applicant does not wish to use the MPN in the future.

Proposed Amendments to Section 9767.3 - Application for a Medical Provider Network Plan

- Section 9767.3 specifies the information required in an application for a MPN.

- This section is re-lettered and renumbered to accommodate the addition or deletion of subdivisions. Subdivision (a) is amended to add "an entity that provides physician network services" as an eligible MPN applicant.

- Subdivision (b) strikes the phrase "insurer and an insured employer" and replaces it with the phrase "MPN applicant" to succinctly refer to all the entities eligible to establish an MPN.

- Subdivision (c) instructs MPN applicants to complete the Cover Page for Medical Provider Network Application or Application for Reapproval in section 9767.4 with an original signature and an MPN plan application, with a choice to use an optional application form. Applicants must submit the completed MPN application documents and a copy in a word-searchable electronic format. Valid electronic signatures are permissible and a hard copy of the original signed cover page shall be made available by the MPN applicant to the Administrative Director upon request.

- Subdivision (c)(1) provides instructions to submit MPN provider information and is amended to add specific instructions to MPN applicants using a valid and currently certified Health Care Organization ("HCO"). The use of an HCO must be noted in the application's Cover Page for Medical Provider Network Application and only a listing of any additional service providers is required to be submitted.

- Subdivision (c)(2) is revised to provide instructions for electronic submission of the MPN physician provider listings to include, in the specified order, six instead of three columns of information. This subdivision is also amended to include an affirmation that all of the providers in the MPN network understand that the Medical Treatment Utilization Schedule is presumptively correct on the issue of extent and scope of medical treatment and diagnostic services.

- Subdivision (c)(3) is revised to provide instructions for electronic submission of any MPN ancillary service provider listings to include, in the specified order, six instead of three columns of information. This subdivision is also amended to include specific instructions for listing ancillary services or service providers who are mobile.

- Subdivision (c)(4) is added to clarify that if an MPN lists a medical group in its provider listing, then all physicians in that medical group are considered to be approved providers. This subdivision further clarifies MPN's 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.

- Subdivision (c)(5) is added to clarify only locations listed in the Medical Provider Network listings are considered to be approved locations for providing treatment under the MPN, but an MPN has the discretion to approve treatment at non-listed locations.

- Subdivision (c)(6) is added to clarify that any MPN applicant has the exclusive right to determine the members of its network.

- Subdivision (d) deletes the exception for "Health Care Organization, Health Care Service Plan, Group Disability Insurance Policy, or Taft-Hartley Health and Welfare fund," making the subdivision's requirements applicable to all MPN applications.

- Subdivision (d)(1) is amended to include as an MPN applicant an entity providing physician network services and to require as part of the application, documentation to establish that the applicant entity is currently eligible to have an MPN.

- Subdivision (d)(2) and (d)(3) revises the capital letter "A" in MPN Applicant to lower case "a".

- Subdivision (d)(4) instructs the MPN applicant to use a name that is not used by an existing approved MPN.

- Subdivision (d)(5) clarifies that the reference to the Division liaison is the MPN liaison to DWC.

- Subdivision (d)(7) strikes the phrase "insurer or employer" and replaces it with "eligible MPN applicant" to include all entities eligible to establish an MPN.

- Subdivision (8)(A) adds "…and the method used to calculate the number" of employees expected to be covered by the MPN.

- Subdivision (8)(B) adds "MPN" to clarify the geographic service area to be described.

- Subdivision (8)(C) adds the application requirements to include a toll-free number, e-mail address, fax number and days and times of availability for medical access assistants.

- Subdivision (8)(D) adds the application requirement to include the MPN website address.

- Subdivision (8)(E) adds the application requirement to include the web address or URL to the MPN provider listing.

- Subdivision (8)(F) adds an affirmation requirement that each MPN physician in the network has acknowledged in writing to treat workers under the MPN, with the signed acknowledgment available for the Administrative Director's review. Subdivision (8)(G) clarifies that the listing of only MPN physicians is required and excludes non-physicians providers by deleting the Labor Code reference to other providers..

- Subdivision (8)(H) adds the application requirements and parameters for electronic geocoding of the MPN provider listing.

- Subdivision (8)(I) clarifies the ancillary service provider listing is voluntary, deletes the unnecessary phrase "or provider," and amends the citation to reference the updated regulatory provision(d)(8)(G) instead of (d)(8)(C).

- Subdivision (8)(E) has been deleted and moved for organizational purposes to (8)(K). Subdivision (8)(F) deletes the former requirement of at least 25% of the physicians in a network be primarily engaged in the treatment of non-occupational injuries.

- Subdivision (8)(L) has been re-lettered from (8)(H) and adds the requirement to state the five most commonly used specialties based on the common injuries for workers covered under the MPN.

- Subdivision (8)(M) is re-lettered from (8)(I) and is amended to clarify that a copy of required employee notification materials be provided in English and Spanish for review.

- Subdivision (8)(S) adds the requirement to describe the MPN's procedures used to ensure ongoing quality of care, and how performance of medical personnel, utilization of services and facilities, and costs are sufficient to provide adequate and necessary medical treatment for covered employees.

- Subdivision (8)(T) requires an affirmation that as of January 1, 2013, every contracting agent that sells, leases, assigns, transfers, or conveys its medical provider networks and their contracted reimbursement rates to an insurer, employer, or entity that provides physician network services, or another contracting agent shall, upon entering or renewing a provider contract, disclose to the provider whether the medical provider network may be sold, leased, transferred, or conveyed to other insurers, employers, entities providing physician network services, or another contracting agent, and specify whether those insurers, employers, entities

providing physician network services, or contracting agents include workers' compensation insurers.

- Subdivision (e) is replaced in its entirety by the original language in the former subdivision (f), which is amended to update section references.

Proposed Amendments to Section 9767.4 – Cover Page for Medical Provider Network Application

- This section is a mandatory form to be submitted with an MPN application. The title of the form is amended to read, "Cover Page for Medical Provider Network Application or Application for Reapproval."
- No. 1: The word "Legal" was added in front of "Name of MPN Applicant."
- No. 2: The acronym "MPN Applicant" is added to "Address."
- No. 4: "Type of" is deleted and replaced with "Eligibility Status of".
  - The box for "Insurer" is clarified to include (CIGA and SISF).
  - The box for "Self-Insurer Security Fund" is stricken, as it is defined as an insurer.
  - The box for "Insurer" is stricken and moved.
  - A box for "Entity that provides physician network services" is added.
- No. 5: "(s), if applicable" is stricken as unnecessary.
- No. 6: The word "using" is added for accuracy
- No. 7: Is stricken as unnecessary and replaced with "Is this an application for reapproval? □ Yes □ No If Yes, include date of last MPN approval:"
- No. 8: "MPN Website Address:" is added.
- No. 9: "MPN Provider Listing Web Address" is added.
- No. 10: Is re-numbered from the existing No. #8 and the word "ability" is stricken and replaced with the word "belief" for regulatory consistency. "Phone" and "Email" is moved to a separate line.
- No. 11: Is re-numbered from the existing No. #9 and a separate line is provided for "Phone" and "Email". In addition, the instructions are updated to reflect electronic submission is added.

- The form revision date is updated.

Proposed Amendments to Section 9767.5 – Access Standards

- Section 9767.5 sets forth the requirements to meet access standards.

- Subdivision (a) replaces the word "expected" with "available" to clarify that an MPN must have at least three available physicians of each specialty to treat common injuries. This subdivision also adds a requirement that MPNs meet the access standards for the five commonly used specialties listed in its application at all times.

- Subdivision (d) adds that an alternative access standard for areas in which there is a health care shortage can be proposed for approval with an explanation of how the proposed alternative mileage standard was determined to be necessary for the specialtiy(ies) in which there is a health care shortage.

- Subdivision (e)(2) strikes the existing text, "the choice of" and replaces it with "a list of" to clarify the requirements for MPN assistance to injured workers treating outside of the MPN geographic service area.

- Subdivision (e)(4) is amended deleting excess verbiage from the old text to clarify a covered employee outside the MPN geographic service area may choose his or her own provider for non-emergency medical care.

- Subdivision (h) is added to set forth the requirements for MPN access assistants and to clarify the type of assistance they can provide.

- Subdivision (h)(1) is added to clarify the number of access assistants required and the time frame within which they need to respond. Subdivision (h)(2) is added to require MPN access assistants to 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.

- Subdivisions (i) and (j) are re-lettered from the original subdivisions (h) and (i).

Proposed Section 9767.5.1 – Physician Acknowledgments

- Proposed section 9767.5.1 sets forth the requirements for physician acknowledgments.

- Subdivision (a) states the requirement that each MPN physician shall have a written acknowledgment to participate in that MPN unless the physician is a shareholder, partner or employee of a medical group that elects to be part of an MPN.

- Subdivision (b) sets forth the acknowledgment requirements if a physician has a contract that automatically renews and that valid electronic signatures are acceptable.

- Subdivision (c) clarifies that a physician may acknowledge participation in multiple MPNs in a single signed acknowledgment.

- Subdivision (d) sets forth the requirements for a medical group acknowledgment, including when a physician is added or leaves a medical group in the MPN.

- Subdivision (e) is added to ensure that all physician acknowledgments are available for review by the Administrative Director.

Proposed Amendments to Section 9767.6 - Treatment and Change of Physician Within MPN

- Section 9767.6 sets forth the requirements for treatment and change of physician within an MPN.

- Subdivisions (a) and (d) add the text "…or entity that provides physician network services…" to include the new MPN applicant entity.

- Subdivision (e) adds the new statutory limits to a chiropractor acting as a treating physician and clarifies what a worker must do when those limits are reached.

Proposed Amendments to Section 9767.7 – Second and Third Opinions

- Section 9767.7 sets forth the requirements for a second and third opinion from physicians within the MPN.

- Subdivisions (b) and (d) adds the clarification that "at least" a regional area listing of MPN providers is made available to an employee going through the second or third opinion process.

- Subdivision (g) adds the text "or outside" to clarify that an employee can obtain recommended treatment within "or outside" the MPN.

- Subdivision (h) adds "MPN" before the text "Independent Medical Review" and adds the relevant statutory and regulatory section to clarify the process referenced in this section is the MPN Independent Medical Review and not a different review process.

Proposed Amendments to Section 9767.8 – Modification of Medical Provider Network Plan

- Section 9767.8 sets forth the requirements and procedures to file a modification to an approved MPN plan and the administrative parameters for review of a plan modification.

- This section is re-numbered and re-lettered to accommodate the amendments.

- Subdivision (a) adds clarifying text "…within the stated time frames or if no time frame is stated…" to highlight that some modifications have filing deadlines.

- Subdivision (a)(1) text is replaced by the text to the original subdivision (a)(6) and amended to require a modification filing within (15) business days of a change in the name of the MPN or the name of the MPN applicant.

- Subdivision (a)(2) text is replaced and amended to require a modification filing within (5) business days of knowledge of a change in MPN applicant eligibility status.

- Subdivision (a)(3) text is replaced and amended to require a modification filing within (15) business days of a change in the division liaison or authorized individual.

- Subdivision (a)(4) is replaced by the text of the original subdivision (a)(7) to require a modification filing when there is a change in MPN geographic service area.

- Subdivisions (a)(5) through (9) have been re-numbered from the original subdivisions (a)(1) through (5).

- Subdivision (a)(10) is renumbered from the original (a)(8). Subdivision (a)(11) is renumbered from the original (a)(9) and is amended to include a reference to medical access assistants.

- Subdivision (a)(12) is renumbered from the original (a)(10).

- Subdivision (a)(13) is renumbered from the original (a)(11) and amended to update the section referenced in the original text.

- Subdivision (a)(14) is renumbered from the original (a)(12).

- Subdivision (a)(15) is renumbered from the original (a)(13) and amended to replace the reference to "permanent" with "current" regulations.

- Subdivision (b) is amended to reflect the new filing deadlines for name and status changes to (15) business days and within (5) business days of a change in eligibility status. Failure to meet these requisite notice requirements may result in appropriate sanctions pursuant to sections 9767.14 or 9767.19.

- Subdivision (c) replaces the word "notice" with "modification" for clarification.

- Subdivision (d) is amended to cite updated regulatory provisions.

- Subdivision (g)(2) replaces the word "revoking" with "rescinding."

- Subdivision (h) is amended to correct the reference to subdivisions (h) to (g).

- Subdivision (i) amends "A" to "An" before "MPN" and amends the procedure for appealing the Administrative Director's decision to require a petition to be filed with the Workers' Compensation Appeals Board.

- Subdivision (j) Notice of Medical Provider Network Plan Modification is amended as follows:

- No. 1: The word "Legal" is added in front of the "Name of MPN Applicant" for clarification.

- No. 2: The original text has been moved to No. 3 and replaced by "Name of MPN," which is moved from the original No. 5 and amended to include "MPN Approval Number".

- No. 3: Renumbered from the original No. 2 and amended to add "MPN Applicant" before "Address".

- No. 4: Renumbered from No. 3.

- No. 5: Renumbered from No. 4 and amended to delete the box for "Self-Insured Security Fund," move the box for "Insurer" and add a box for "Entity that provides physician network services."

- No. 6: The original text to No. 6 is deleted and replaced by the text of the original No. 7 which is amended to require only the date of the last plan modification approval. The original Nos. 8 and 9 are no longer necessary and deleted.

- No. 7: Renumbered from the original No.10 and amended to replace the word "ability" with "belief" for consistency. The word "application" is replaced with "modification" for clarity. A separate line is provided for the Authorized Individual's phone number and email address.

- No. 8: Renumbered from the original No. 11 and amended to include a separate line for the Liaison's phone number and email address.

- No. 9: The text to the original No. 9 is replaced by the second half of the original No. 11 with the last sentence deleted as unnecessary.

    - The box and text of "Change in Service Area…" has been moved from the first box to the fourth box to be consistent with the text of the section.

    - The first box is replaced by the text in the original second box, which is amended to add as clarification the word "name" after "MPN" and a 15-day filing deadline. The text in the second box is replaced with the new requirement to file a modification for a change in MPN applicant eligibility status with a required filing within five (5) business days.

    - The text in the third box is amended to add a deadline to file within fifteen (15) business days of a change of division liaison or authorized individual.

    - The fourth box contains the text from the original first box requiring a filing when there has been a change in MPN service area.

    - The eleventh box is the original tenth box with the amended text to include "Medical Access Assistants" and to add "MPN" before "website."

- The fifteenth box is amended to replace the word "permanent" with "current" before "regulations."
- The instructions have been amended to reflect proposed submission requirements for the modification to be submitted in word-searchable PDF format on a computer disk, CD ROM, or flash drive. The revision date for this form is updated.

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

- Section 9767.9 sets forth the requirements for transferring medical care for an injured worker treating with a non-MPN doctor into the MPN.
- Subdivision (a) is amended to add the text, "unless otherwise authorized by the employer or insurer."
- Subdivisions (d), (e)(2), and (f) are amended to add an "entity that provides physician network services" as an eligible entity to perform the referenced actions in each subdivision.

Proposed Amendments to Section 9767.10 – Continuity of Care Policy

- Section 9767.10 sets forth the requirements for continuing care when a worker's treating provider has been terminated from the MPN.
- Subdivisions (a) and (d)(1) are amended to add an "entity that provides physician network services" is also eligible to perform the referenced actions in each subdivision.

Proposed Amendments to Section 9767.11- Economic Profiling Policy

- Section 9767.11 sets forth the requirements for filing an economic profiling policy.
- Subdivision (a) replaces the text, "insurer's or employer's" with "MPN applicant" to succinctly include all MPN applicants.

Proposed Amendments to Section 9767.12 Employee Notification

- Section 9767.12 sets forth the requirements for giving notice to employees of MPN policies and procedures.
- Subdivision (a) is deleted in its entirety and replaced by the text in the original subdivision (d) which is re-lettered with the following amendments: the addition of "at the time of injury or when an employee with an existing injury is required to transfer treatment to an MPN" to clarify when the employee notification is to be provided to employees; the replacement of "subdivision (f)" with an updated reference to paragraph (2); the addition of "the" before "covered employees" and "by the employer, insurer or entity that provides physician network services" to clarify who is responsible for providing employee notification; the deletion of the

text “at the time of injury or when an employee with an existing injury begins treatment under the MPN” and the revision of the language requiring the MPN notification to be provided in English and also in Spanish when the employee primarily speaks Spanish with the remaining text of the subdivision deleted.

- Subdivision (a)(1) is the original text in subdivision (e) re-lettered with amendments clarifying that a complete MPN notification with the information specified in paragraph (2) of this subdivision may be sent electronically in lieu of by mail.

- Subdivision (a)(2) is the original subdivision (f) re-lettered and sets forth the information required to be included in the employee notification.

- Subdivision (a)(2)(A) is the original subdivision (f)(1) re-lettered with the following amendments: the text “the employer or insurer” is replaced by “MPN applicant”; the text “the use of” before “MPNs” is added and the word “problems” is replaced by “complaints” to clarify the role of the MPN Contact; the word “geographical” is replaced by “geographic”; and a new sentence is added to require the listing of a toll-free number for MPN Medical Access Assistants, with a description of the access assistance they can provide and the times they are available to assist workers with obtaining access to medical treatment under the MPN.

- Subdivision (a)(2)(B) is the original subdivision (f)(2) re-lettered with the amendment to require the MPN’s approval number” to be added to the employee notification

- Subdivision (a)(2)(C) is the original subdivision (f)(3) re-lettered with the following amendments: The addition of “an entity that provides physician network services” as another responsible entity for providing access to the MPN provider directory; the addition of the requirement of accessing the MPN provider listing on the MPN’s website with the web address clearly listed; the addition of the requirement to include the provider listing URL address and any necessary instructions and passcodes to access the directory online; the addition of the requirement that “MPN applicants are responsible for updating and for confirming the accuracy of an MPN’s provider listings”; the deletion of the text “to ensure the listing is kept accurate”; the reduction from 60 to 30 days as the time frame an MPN shall have to correct provider listing inaccuracies through the contact method stated on the provider listing to report inaccuracies; and the reference to “network administrator” is deleted as no longer necessary.

- Subdivision (a)(2)(D) is the original subdivision (f)(4) re-lettered with an amendment to add how to contact the medical access assistants if an employee needs help in finding a physician or scheduling an appointment.

- Subdivision (a)(2)(E) is the original subdivision (f)(5) re-lettered.

- Subdivision (a)(2)(F) is the original subdivision (f)(6) re-lettered with amendments to refer to "geographic" service area instead of "geographical" service area for consistency and to use a defined term.

- Subdivision (a)(2)(G) is the original subdivision (f)(7) re-lettered.

- Subdivision (a)(2)(H) is the original subdivision (f)(8) with the amendment to add how to use the medical access assistants for help.

- Subdivision (a)(2)(I) is the original subdivision (f)(9) re-lettered.

- Subdivision (a)(2)(J) is the original subdivision (f)(10) re-lettered.

- Subdivision (a)(2)(K) is the original subdivision (f)(11) re-lettered.

- Subdivision (a)(2)(L) is the original subdivision (f)(12) with the clarifying addition of "MPN" before "independent medical review."

- Subdivision (a)(2)(M) is the original subdivision (f)(13) with the amendment to require that the transfer of care policy be provided in in English or in Spanish if the employee speaks Spanish.

- Subdivision (a)(2)(N) is the original subdivision (f)(14) with the amendment to require that the continuity of care policy be provided in English or in Spanish if the employee speaks Spanish.

- Subdivision (b) is deleted in its entirety and replaced by new text requiring the MPN applicant to provide written notice to injured covered employees using its MPN when MPN coverage will end. The notice is required to include the date the employee will no longer be able to use its MPN and the notice shall be provided in English and also in Spanish if the employee speaks Spanish.

- Proposed subdivisions (b)(1)(A) – (D) requires the MPN applicant to provide written notice to every affected injured covered employee prior to the date its MPN coverage ends and include the following information the effective date the employee can no longer use the MPN; the specific MPN name and MPN approval number; whether the MPN will still be used for injuries arising before the date MPN coverage ends; the address(es), telephone number(s), and email address(es) of the MPN Contact and MPN Medical Access Assistants who can address MPN questions; an MPN website; and notice that for periods when an employee is not covered by a MPN, an employee may choose a physician 30 days after the date the employee notified the employer of his or her injury.

- Proposed subdivision (b)(2) provides model notice language that may be provided to injured covered employees to comply with the notice requirement.

- Proposed subdivision (b)(3) specifies the parameters for an MPN applicant to send the required notice electronically, by mail, with a paystub or by other means in writing to affected injured covered employees prior to the date its MPN coverage ends.

- Proposed subdivision (b)(4) clarifies that any pending MPN Independent Medical Review will end with the employee's coverage under the MPN.

- Subdivision (c) is deleted in its entirety and replaced with the original subdivision (g), which is re-lettered and amended to clarify that the Independent Medical Review ("IMR") process referenced in the subdivision is the MPN IMR process as set forth in section 9768.9(a). The requirement to give the notification in English and also in Spanish to Spanish speaking employee is deleted as unnecessary.

Proposed Amendments to Section 9767.13 – Denial of Approval of Application; Re-Evaluation

- Section 9767.13 sets forth the requirements for the procedures for denial of approval, re-evaluation, and appeal of the Administrative Director's denial. The title of the section is amended to replace "and" with "or reapprovals", which are subject to the same procedures.

- Subdivision (a) adds the text "or reapproval".

- Subdivision (b)(1) replaces the word "new" with the more accurate word, "corrected."

- Subdivision (d)(2) replaces "revoking" with "rescinding" for accuracy.

- Subdivision (f) replaces "A" with "An" before "MPN applicant" and strikes the former procedure for appeal with the new process to file a "Petition Appealing the Administrative Director's Medical Provider Network Determination" with the Workers' Compensation Appeals Board, pursuant to WCAB Rule 10959 with service of a copy of the petition on the Administrative Director.

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

- Section 9767.14 specifies the parameters for suspending or revoking an MPN and the procedures for re-evaluation and appeal.

- The title of the section is amended to include "Probation" as a new administrative action that can be taken by the Administrative Director.

- Subdivision (a) adds the authority of the Administrative Director to place an MPN on probation among other actions and strikes the text "approval of a MPN Plan."

- Subdivision (a)(3) is replaced by text setting forth a new situation under which that the Administrative Director may take action if an MPN fails to meet the requirements for reapproval.

- Subdivisions (a) (4) and (5) are renumbered from the original subdivisions (a)(3) and (4), respectively to accommodate amendments to this section.

- Proposed subdivision (a)(6) clarifies when an MPN applicant no longer meets the eligibility requirements to have an MPN.

- Proposed subdivision (a)(6)(A) specifies the consequences once an MPN no longer meets the eligibility requirements to have an MPN, including the automatic suspension of the MPN by operation of law and that MPN coverage will not be deemed valid for new claims during the period of suspension. This subdivision also sets forth the MPN requirement to inform any injured worker with a new claim during the effective dates of an MPN's suspension of the right to choose a physician within a reasonable geographic area 30 days after reporting the injury. After a suspension has ended, any transfer of the employee's care back into the MPN shall be subject to the MPN transfer of care requirements.

- Proposed subdivision (a)(7) adds that the Administrative Director may take administrative action if the MPN fails to respond to at least two or more repeated requests or inquiries by the Administrative Director to comply with MPN requirements.

- Subdivision (b) replaces references to "deficiencies" with "violations" for accuracy and adds the new authority to place an MPN on "probation."

- Subdivision (c) replaces "A" with "An" before "MPN applicant" and adds the word "probation" as another action the Administrative Director can take and have reevaluated.

- Subdivision (d)(2) replaces the word "revoking" with "rescinding" when referring to the Administrative Director's Notice of Action.

- Subdivision (f) replaces "A" with "An" before "MPN applicant" and strikes the former procedure for appeal with the new process to file a "Petition Appealing the Administrative Director's Medical Provider Network Determination" with the Workers' Compensation Appeals Board, pursuant to WCAB Rule 10959 with service of a copy of the petition on the Administrative Director.

Proposed Amendments to Section 9767.15 – Compliance with Permanent MPN Regulations

- Section 9767.15 sets forth the grandfathering requirements for MPNs to comply with the permanent regulations that went into effect on September 15, 2005.

- The title of the section is amended to replace the reference to "permanent" with "current" regulations and to include "Reapproval" at the end of the title.

- Subdivision (a) is replaced in its entirety with proposed language to require that all MPNs approved prior to January 1, 2014 must file modifications to become compliant with the current regulations by January 1, 2015 or sooner through a reapproval filing, if applicable.

- Subdivision (b) is replaced in its entirety with the new requirement that an MPN applicant shall file a complete application for reapproval at least six months prior to the expiration of the MPN's four-year approval.

- Subdivision (b)(1) is replaced with new text that specifies for MPNs approved prior to January 1, 2014, the four-year date of approval begins from the most recent approved filing prior to January 1, 2014.

- Subdivision (b)(2) is replaced with new text that specifies for MPNs approved after January 1, 2014, the first four-year date of approval begins from the date the original application is approved

- Subdivision (b)(3) is replaced with new text that specifies after an MPN has been reapproved, the expiration of reapproval will be four years from the date of the most recent reapproval.

- Subdivision (b)(4) is replaced with new text that specifies each application for reapproval shall meet all requirements for a new MPN original application.

- Subdivision (b)(5) is replaced with new text that specifies each filing for reapproval shall use geocoding software to create a separate map for each specialty for all listed providers within the service area to establish compliance with the access standards for the MPN geographic service area.

- Proposed subdivision (b)(6) specifies the time frames for the review process for an application for reapproval will be the same as for an original application.

- Proposed subdivision (b)(7) specifies the potential actions the Administrative Director may take if an MPN filing for reapproval is not filed within the requisite six months prior to the expiration of approval or if an application for reapproval is filed less than 60 days prior to the approval expiration date.

- Subdivision (c) is deleted in its entirety as unnecessary.

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

- Section 9767.16 sets forth the requirements for notice to employees when an MPN is terminated, ceases to be used or when there is a change of MPN.

- The section title is deleted in its entirety and replaced by the new subject matter of the section, "Medical Provider Network Complaints."

- The existing text for subdivisions (a) through (g) is deleted in its entirety and replaced by the new requirements for the Medical Provider Network Complaint process.

- Subdivision (a) is replaced by new text that specifies any person contending a Medical Provider Network is in violation of the statutory or regulatory MPN requirements shall submit a written complaint directly with the MPN Contact.

- Subdivisions (a)(1)(A) – (F) is replaced by next text that sets forth the requirements for a written complaint, including the specific statutory or regulatory provisions violated; when the alleged violation occurred; if the violation is still occurring; what attempt were made with the MPN to address the violation; what impact, if any, on an injured worker; and what remedy is sought for the alleged violation.

- Proposed new subdivisions (a)(2)(A)-(C) specify that an MPN shall have thirty (30) calendar days from the date the complaint was received to respond in writing to the complainant and how to determine when the complaint is deemed to have been received.

- Proposed new subdivisions (a)(3)(A)-(B) set forth the actions that an MPN can take within thirty (30) calendar days from the date the complaint was received. Specifically, the MPN can take reasonable actions to remedy the violation, state any additional actions it will be taking if more time is needed for a remedy, or deny there is a violation.

- Subdivision (b) is replaced with new text that sets forth the procedure to file a written complaint with the Division of Workers' Compensation against the MPN if the MPN has not responded to the alleged violation within thirty (30) calendar days. In addition, if the complainant can show imminent and serious threat to the health of an injured worker, a written complaint with the Division of Workers' Compensation can be filed concurrently with the written complaint submitted to the MPN.

- Subdivision (b)(1) is replaced and new text requires that the DWC MPN Complaint Form set forth in California Code of Regulations, title 8, section 9767.16.5, be used to file a written complaint with DWC. The complainant shall provide written details of the MPN's violation along with documentary evidence that the MPN has been notified according to subdivision (a) of this section. A copy of the DWC MPN Complaint Form shall be served on the MPN Contact.

- Subdivision (b)(2) is replaced and new text states the Administrative Director may choose to investigate only complaints which provide credible evidence that a violation exists.

- Proposed new subdivision (b)(2)(A) allows the Administrative Director request additional information or documentary evidence to investigate the allegations. The MPN or the complainant shall have thirty (30) calendar days from receipt of the Administrative Director's request to provide the requested information.

- Proposed new subdivision (b)(3) states that the Administrative Director shall notify the MPN Contact in writing if violations are found. This subdivision also specifies the procedures the Administrative Director shall follow if the MPN fails to remedy the violation as required.

Proposed Section 9767.16.5 – DWC Medical Provider Network Complaint Form 9767.16.5

- This section is the complaint form to be filed with DWC by any person contending a Medical Provider Network is in violation of MPN requirements. The form contains identifying information regarding the complainant and identifying information regarding the MPN. The form requires specific information regarding the alleged MPN violation(s) and requests a brief description of the complaint including a citation of the specific statutory or regulatory provisions violated; when the alleged violation occurred; if the violation is still occurring; what attempt were made with the MPN to address the violation; what impact, if any, on an injured worker; and what remedy is sought for the alleged violation. The form includes instructions for proper submission of the complaint.

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

- Proposed new section 9767.17 sets forth the requirements for a third-party Petition for Suspension or Revocation of a Medical Provider Network.

- Proposed new subdivisions (a)(1) and (2) requires the DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5 to be filed with DWC by any person who can show either an MPN applicant failed to maintain its qualifying status to have an MPN, or that an MPN systemically fails to meet MPN access standards for each commonly used specialty in at least two specific locations within the MPN geographic service area.

- Proposed new subdivision (b) clarifies that inclusion or exclusion of a provider in an MPN is not grounds to file a Petition for Suspension or Revocation of a Medical Provider Network.

- Proposed new subdivisions (c)(1) through (3) requires the petitioner to include all supporting documentation, verified under penalty of perjury and with proof of service directly to the Administrative Director. The petitioner shall concurrently serve a copy of the petition and all supporting documentation on the MPN's authorized individual. The petition shall include details that show a violation; and documentation showing all attempts to contact the MPN to address the alleged violation; the results of petitioner's attempts to determine if the MPN has met the MPN requirements at issue; and what impact the violation has had on injured workers.

- Proposed new subdivision (d) sets forth the time frame of thirty (30) calendar days after the date of service of the petition for the MPN to submit a verified response to the allegations in the petition. The response shall be served concurrently on the Administrative Director and on the petitioner.

- Proposed new subdivision (e) specifies that the Administrative Director has thirty (30) calendar days from the last day for the MPN to file a response to make reasonable requests for additional information from the MPN or the petitioner.

- Proposed new subdivision (e)(1) gives the MPN or the petitioner thirty (30) calendar days from receipt of the Administrative Director's request to provide the requested information.

- Proposed new subdivision (f) specifies that the Administrative Director will issue an administrative Decision and Order either granting or denying the petition within sixty (60) calendar days of receipt of all the requested information or additional evidence.

- Subdivision (g) once the Administrative Director issues a Decision and Order, the procedures set forth in section 9767.14 and/or section 9767.19 may apply.

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

- This section is the petition form to be used by any person who can show that an MPN applicant failed to maintain its qualifying status to have an MPN, or that an MPN has a systematic failure to meet access standards for each commonly used specialty in at least two specific locations within the MPN geographic service area. This form is comprised of Part A for the petition itself and Part B for the response to the petition.

- Part A is to be completed by the petitioner. Part A contains identifying information regarding the petitioner and identifying information regarding the MPN. The form requires the petitioner to check the basis for the petition and, if the violation is a failure to meet access standards under 9767.5(a) through (d) then to provide the locations where the access standards are not met. Part A then requires the petitioner to state the reasons for the petition and then provides a verification section under penalty of perjury and instructions to include a proof of service.

- Part B is the MPN response to the Petition for Suspension or Revocation of a Medical Provider Network. Part B contains identifying information regarding the MPN and then asks the MPN to explain why the Petition should not be granted. Part B then provides a verification section under penalty of perjury and instructions to include a proof of service.

Proposed Section 9767.18 – Random Reviews

- Proposed new section 9767.18 sets forth the requirements for random reviews by the Administrative Director of any approved Medical Provider Network.

- Proposed new subdivision (a) states the Administrative Director may conduct random reviews of any approved Medical Provider Network to determine if the requirements of this article and Labor Code section 4616 through 4616.7 are being satisfied.

- Proposed new subdivision (a)(1) limits random reviews to once in a two-year period, but clarifies that an MPN may still be subject to investigation by the Administrative Director for good cause.

- Proposed new subdivisions (a)(2)(A) and(B) set forth the procedure for DWC to initiate a random review. A "Notice of Random Review" shall be issued to an MPN's authorized individual specifying the parameters of the review, including the time frame and scope of review. Reasonable requests for information or documentary evidence by DWC may include, but not be limited to: proof the MPN applicant is eligible to have an MPN; a copy of the MPN's most recent approved plan submission; a copy of the most current network provider listing; the URL address for the provider listing; 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 during the last thirty (30) calendar days preceding the date of the DWC request; and copies of the written MPN physician acknowledgments.

- Proposed new subdivision (a)(3) gives the MPN thirty (30) calendar days from receipt of the Administrative Director's request, to provide DWC with the requested information.

- Proposed new subdivision (a)(4) states that if the random review reveals a violation of MPN requirements the Administrative Director shall notify the MPN applicant in writing of the specific violations(s) found and may follow the procedures set forth in section 9767.14 and/or section 9767.19.

Proposed Section 9767.19 Administrative Penalty Schedule; Hearing

- Proposed new section 9767.19 sets forth the administrative penalties that may be assessed against a Medical Provider Network for a violation of Labor Code sections 4616 through 4616.7 and of Title 8, California Code of Regulations, sections 9767.1 *et seq*.

- Proposed new subdivisions (a)(1)(A)-(G) sets forth the penalties if an MPN violates the filing requirements with DWC.

    - Failure to file an original Notice of MPN Plan Modification within fifteen (15) business days of a change in the name of the MPN or the MPN applicant, $500 initially and for reach seven calendar days thereafter if the failure continues, up to $5,000.

    - Failure to file an original Notice of MPN Plan Modification within five (5) business days of a change in the MPN applicant's eligibility status, $2,500.

    - Failure to file an original Notice of MPN Plan Modification within fifteen (15) business days of a change in DWC liaison or authorized individual, $500 initially and for each seven calendar days thereafter if the failure continues, up to $5,000.

    - Failure to file an original Notice of MPN Plan Modification for a material change in any of the employee notification materials, including but not limited to a change in MPN contact information or a change in provider listing access or website information required by section 9767.12, $2,500.

- Failure to file an original Notice of MPN Plan Modification for all other material changes that require the filing of a Modification of MPN plan as set forth in §9767.8, $1,000.

- Failure to file an original application for MPN reapproval within the time frames set forth in §9767.15, $2,500.

- Failure to include geocoding of its current provider listing with the MPN reapproval application, $1,000 for each 30 days or part thereof that the failure continues after the date of submission of the reapproval application.

- Proposed new subdivisions (a)(2)(A)-(D) sets forth the penalties if an MPN violates the MPN notice requirements.

    - Failure to provide the written MPN employee notification to an injured covered employee pursuant to §9767.12(a), $1,000, per occurrence.

    - Failure to provide a complete or correct MPN notice required under section 9767.12 to an injured covered employee, $250 per occurrence up to $10,000.

    - 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, $1,000.

    - Failure to provide the MPN Independent Medical Review notice, $500 for each employee for whom the notice is not provided when required.

- Proposed new subdivisions (a)(3)(A)-(G) sets forth the penalties if an MPN violates network access requirements.

    - Failure to perform at least quarterly updates to confirm the accuracy of the medical and ancillary provider listings, for each inaccurate entry, $250, up to a total of $10,000 per quarter.

    - Failure to update reported inaccuracies in the network provider listing within thirty (30) days of notice to the MPN through the contact method stated on the provider listings, $500, up to a total of $5,000, per month.

    - Failure to meet the access standards, including approved alternative access standards or approved out-of-network treatment, for a specific location within the MPN geographic service area or areas described in its MPN plan $5,000 for each geographic service area affected, up to a total of $50,000.

    - Failure to respond to calls made to the MPN medical access assistant by the next day, excluding Sunday and holidays, $250 for each occurrence and $50 for each additional day a response is not provided, up to a total of $1,000 per occurrence.

    - Failure to ensure an appointment for non-emergency services for an initial treatment is available within 3 business days of the MPN applicant's receipt of a

request for treatment within the MPN, $500 for each occurrence.

- Failure to ensure an appointment for non-emergency specialist services is available within 20 business days of the MPN applicant's receipt of a referral to a specialist within the MPN, $500 for each occurrence.

- Failure to provide at least a regional area listing of MPN providers or specialists to an injured covered employee upon request, $2,500 for each occurrence.

- Subdivisions (a)(4) sets forth the penalties if an MPN fails to cooperate with DWC's requests for information or documentary evidence.

    - Failure to respond to a request for information or documentary evidence pursuant to an MPN complaint, Petition for Suspension or Revocation of an MPN, random review, or investigation within thirty (30) calendar days of DWC's request, $2,500.

- Proposed new subdivision (b) sets forth the procedures if an MPN violation is found. The MPN applicant will have ten days after notice of the violation to correct the violation and respond within ten days. If the Administrative Director determines that the violation has not been cured, he or she shall issue a Notice of Action to the MPN applicant that specifies the time period in which the administrative penalty will take effect by U.S. Mail.

- Proposed new subdivision (c) allows an MPN applicant to submit a written request to the Administrative Director for mitigation of penalties. Factors to be considered for mitigation include the MPN's attempts to address the violation(s), the responsiveness and good faith of the MPN, the frequency of violations found, the history of violations by the MPN, the medical harm or consequences of the violations(s) on an injured worker(s), and any extraordinary circumstances that may be relevant to mitigation of the penalties, when strict application of this mitigation provision would be clearly inequitable.

- Proposed new subdivision (d) sets forth the procedures for an MPN applicant to request a re-evaluation of the Administrative Director's penalty decision within 20 days of the issuance of the Notice of Action.

- Proposed new subdivisions (e)(1)(2) states that the Administrative Director will respond within 45 days of receipt of the request for re-evaluation by either issuing a Decision and Order affirming the Notice of Action or issuing a Decision and Order rescinding the Notice of Action.

- Proposed new subdivision (f) allows the Administrative Director to extend the 45-day response for an additional 30 days and may order a party to submit additional documents or information.

- Proposed new subdivision (g) sets forth the procedure for the MPN applicant to appeal the Administrative Director's decision and order. Within twenty (20) days of the issuance of the decision and order, an MPN applicant may file a "Petition Appealing Administrative Director's Medical Provider Network Determination" with the Workers'

Compensation Appeals Board pursuant to WCAB Rule 10959 and concurrently serve a copy of the petition on the Administrative Director.

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to make the MPN system more effective by addressing provider and access concerns, by streamlining the notice requirements, and by increasing administrative authority to ensure proper compliance with MPN regulations.

The proposed regulations will be beneficial to the health and welfare of California residents, worker safety, and the state's environment by enabling significant numbers of injured workers in California to have a more effective and streamlined method of obtaining reasonable and necessary medical treatment to help injured workers return to work in a more cost-effective manner for employers and insurers.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern Medical Provider Networks for purposes of Labor Code section 4616.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: state agencies in their capacity as employers will have savings by assuring that their MPNs have the capacity to deliver medical care for injured workers and will have reduced frictional cost (litigation cost) in the provision of medical benefits to injured workers. Net savings will offset increased operational costs.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The Acting Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. These representative private persons or directly affected businesses are insurance companies or self-insured employers. The regulations allow the insurers and self-insured employers to have more control over the providers who will treat the injured workers and should reduce medical costs if they choose to establish and MPN.
- Significant, statewide adverse economic impact directly affecting businesses and

individuals: The proposed regulations change existing procedures and forms to comply with statutory changes. Minor transactional costs will be offset by the streamlining of notice requirements. Therefore, the Acting Administrative Director concludes that the regulations will not have a significant, adverse economic impact directly affecting business, nor affect the ability of California businesses to compete with businesses in other states.

- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) likely the proposal will create some jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) likely that the proposal will create some new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The benefit anticipated from the regulations is to make the Medical Provider Network scheme more effective and efficient. The proposed regulations provide the forms and make specific the procedures to implement mandatory statutory changes under SB 863 to Medical Provider Networks.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations will not affect small businesses to a significant degree. The regulations apply predominantly to insurance companies and self-insured employers, which are not considered small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or brought to the attention of the Acting Administrative Director's attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the public hearing.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94612
E-mail: mgray@dir.ca.gov
Telephone: (510) 286-7100

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Yu-Yee Wu or John Cortes
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
Email: yu-yeewu@dir.ca.gov
jcortes@dir.ca.gov
Telephone: (510) 286-7100

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this Notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Medical Provider Network (MPN) link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Acting Administrative Director may adopt the proposed regulations substantially as described in this notice. If the Acting Administrative Director makes modifications which are sufficiently related to the originally proposed text, the Acting Administrative Director will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Acting Administrative Director adopts the regulations as received.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested form the contact person named in this Notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended, will appear in California Code of Regulations, title 8, commencing with section 9767.1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.