

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Workers' Compensation Benefit Notices and Medical Provider Networks

Title 8, California Code of Regulations, Sections 9767.1, 9767.16, 9810, 9811, 9812, 9813, 9813.1 and 9813.2

NOTICE IS HEREBY GIVEN, pursuant to Government Code section 11346.8(c) that the Acting Administrative Director of the Division of Workers' Compensation, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9767.1	Medical Provider Networks - Definitions
Section 9767.16	Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network
Section 9810	General Provisions
Section 9811	Definitions
Section 9812	Benefit Payment and Notices
Section 9813	Vocational Rehabilitation Notices
Section 9813.1	Notice of Supplemental Job Displacement Benefit and Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after January 1, 2004
Section 9813.2	Return to Work Notices for Injuries Occurring on or After January 1, 2005

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulation will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on Wednesday, August 29, 2007.

Written comments may be submitted by facsimile transmission (FAX), addressed to the 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

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the original codified regulatory text noticed for the 45-comment period are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the 45-comment period are indicated by single underlining, thus: deleted language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-comment period are indicated by double strike-through: ~~~~deleted language~~~~.

Newly proposed additions to the original codified regulatory text noticed for the 45-comment period are indicated by double underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9767.1: Medical Provider Networks - Definitions

A new definition of the term “Cessation of use” has been added as subdivision (a)(2): The added definition states that: “Cessation of use” means the discontinued use of an implemented MPN that continues to do business.

A new definition of the term “Termination” has been added as subdivision (a)(25): The added definition states that the term “Termination” means the discontinued use of an implemented MPN that ceases to do business.

The other subdivisions have been re-lettered to accommodate these additions.

Modifications to Section 9767.16: Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network

In response to comments received, the proposed section has been modified.

The proposed unnumbered first paragraph, now renumbered as paragraph (a), has been revised to specify that it is the MPN applicant that is responsible for ensuring notice is given to employees. Also, the subdivision was revised to provide that the MPN applicant is responsible for ensuring that each covered employee is informed in writing of the MPN policies under which he or she is covered and when the employee is no longer covered by an MPN. Finally, the notice period for notice of termination or cessation of use was revised to be consistent with existing MPN regulation 9767.12(c), which requires 30-day notice for a change of MPNs.

Subdivision (a)(1) has been added and consolidates proposed subdivisions (c)(1) and (c)(2) into one subdivision to clarify that the MPN Applicant must advise every covered employee of the insurer’s liability for continuing care for ongoing claims, and the potential penalties that may be imposed by the WCAB for unreasonable delay or interruption of that care.

A new subdivision (a)(2) has been added to revise and replace former subdivision (d) and clarify that a notice of termination or cessation of use must include contact information for an individual who can answer questions if an employee has questions about the notice.

Subdivision (b) has been revised to only apply to the notice required when an MPN is terminated. The subdivision clarifies that a covered employee with an existing injury be notified of his or her right to choose a physician after an MPN is terminated.

A new subdivision (b)(1) has been added, revising former subdivision (c) to clarify the right of an employee with an existing injury to potentially continue care with his or her existing physician after the MPN has been terminated.

A new subdivision (b)(2) has been added to clarify and require that an employee who has a new injury is notified of his or her right to choose a physician after an MPN is terminated.

Subdivision (c) has been revised to clarify that an employee with a new or an existing injury must be notified of his or her right to choose a physician when existing MPN coverage has ended but new MPN coverage has not yet begun.

Subdivision (c)(1) has been revised to clarify the right of an employee with an existing injury to potentially continue treating with his or her existing physician before being transferred into the new MPN.

Subdivision (d) has been revised to address the status of a pending Independent Medical Review when an MPN is terminated.

Subdivision (e) has been revised to require that notice be given to DWC when an MPN is terminated or no longer used and requires prior approval from DWC of the employee notices. It also requires informing the Division whether new MPN coverage will be implemented.

In addition, a new subdivision (e)(1) has been added to clarify that a separate filing with DWC is required if a material modification is triggered under section 9767.8 as a result of a change in MPN coverage. The section also clarifies that the requisite 30-day notice of a change in MPN coverage cannot be distributed to employees until any pending modification or new MPN application is approved by DWC.

Modifications to Section 9810: General Provisions.

In response to comments received, the section has been modified.

Subdivision (a) has been revised to state that the revised regulations will become effective for notices required to be sent 120 days after the date of the regulations' filing with the Secretary of State.

Subdivision (c) has been revised to clarify that benefit notice letters may be produced on the claims administrator's letterhead, except for those notices whose language or format are set forth in statute or where a specific notice form has been adopted as a regulation.

The subdivision has also been revised to state that a claims administrator need only provide its mailing address, and that the claims administrator's name, mailing address and telephone number need not be separately provided if the benefit notice is sent on the claims administrator's letterhead.

Finally, the subdivision has been revised to clarify that the inclusion of a notation on the notice is mandatory if any attachments are being sent with the notice. This was done by inserting the word "shall" as follows:

All notices shall clearly identify the name and telephone number and mailing address of the individual claims examiner responsible for the payment and adjusting of the claim, and shall include a notation if one or more attachments are being sent with the notice and shall clearly state that additional information may be obtained from an Information and Assistance officer with the Division of Workers' Compensation.

Minor grammatical changes have also been made to improve the subdivision.

Subdivision (d) has been revised to clarify that benefit notices may be produced in any format developed by the claims administrator, except for those notices whose language or format are set forth in statute or where a specific notice form has been adopted as a regulation.

Subdivision (e) has been revised to state that a claims administrator must provide copies of all medical reports, relevant to any benefit notice issued, or which are not required to be provided along with a notice and have not yet been provided to the employee, upon the employee's request, instead of merely making copies of any report available which has not already been provided. The subdivision has also been revised to eliminate the claims administrator's ability to withhold psychiatric reports which the physician has recommended not be provided to the employee.

Modifications to Section 9811: Definitions.

In response to comments received, the proposed section has been modified.

Subdivision (e) has been revised to state that the final sentence of this subdivision should only be used in notices to employees subject to an ADR program under Labor Code section 3201.5, and then only if it is appropriate under the provisions of that ADR program.

Modifications to Section 9812: Benefit Payment and Notices.

In response to comments received, portions of the proposed revisions have been modified.

Section 9812(a)(2) has been revised to require more accurate notice to injured workers of the appropriate options available to an injured worker upon a **delay** in any temporary disability payment.

Unrepresented injured workers will be required to be advised of one of the following options:

- That if the injured worker has already received a comprehensive medical evaluation and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.
- That if no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims

administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Represented injured workers will be required to be advised of one of the following options:

- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.
- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

The final sentence of the subdivision has also been revised to state that no copy of the DWC informative pamphlet "QME/AME Fact Sheet" need be provided with an additional delay notice unless the pamphlet has been revised since it was last provided.

Section 9812(a)(3) has been revised to require more accurate notice to injured workers of the appropriate options available to an injured worker upon a **denial** of any temporary disability payment.

Unrepresented injured workers will be required to be advised of one of the following options:

- That if the denial is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.

- That if the injured worker has already received a comprehensive medical evaluation and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.
- That if no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Represented injured workers will be required to be advised of one of the following options:

- That if the denial is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.
- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

The final sentence of the subdivision has also been revised to require that a copy of the relevant DWC informative pamphlet(s) "TD Fact Sheet," "QME/AME Fact Sheet" and/or "Permanent Disability Fact Sheet" be provided with the notice, even if one has been previously provided.

Section 9812(c) has been revised to correct an erroneous reference from a changed payment “rate” to changed payment “amount.”

Section 9812(d) has been revised to clarify that if an unrepresented injured worker has already received a comprehensive medical evaluation the injured worker may only be asked to return to that physician for a new evaluation if either party disputes the results of that evaluation.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Finally, the final sentence of the subdivision has been revised to require that a copy of the relevant DWC informative pamphlet(s) “TD Fact Sheet,” “QME/AME Fact Sheet” and/or “Permanent Disability Fact Sheet” be provided with the notice, even if one has been previously provided.

Section 9812(f)(2) has been revised to clarify that if an unrepresented injured worker has already received a comprehensive medical evaluation the injured worker may only be asked to return to that physician for a new evaluation if either party disputes the results of that evaluation.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

In addition, the notice to a represented injured worker has been revised to delete the reference to the Qualified Medical Evaluator being chosen from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4602.2.

Finally, the final sentence of the subdivision has been revised to require that a copy of the DWC informative pamphlet “QME/AME Fact Sheet” be provided with the notice, even if one has been previously provided.

Section 9812(f)(3) has been revised to require more accurate notice to injured workers of the appropriate options available to an injured worker upon receipt of a notice of permanent disability payment.

Unrepresented injured workers will be required to be advised of one of the following options:

- That if the denial is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That if the injured worker has already received a comprehensive medical evaluation and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.

- That if no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Represented injured workers will be required to be advised of one of the following options:

- That if the denial is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.
- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Section 9812(f)(4) has been revised to more accurate notice to injured workers of the appropriate options available to an injured worker upon issuance of a notice that the claims administrator alleges that no permanent disability exists.

The first paragraph of the subdivision has been revised to require that a copy of the DWC informative pamphlet "QME/AME Fact Sheet" be provided with the notice, even if one has been previously provided.

Unrepresented injured workers will be required to be advised of one of the following options:

- That if the determination is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That if the injured worker has already received a comprehensive medical evaluation and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.
- That if no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Represented injured workers will be required to be advised of one of the following options:

- That if the determination is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.
- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Section 9812(g)(2) has been revised to correct the references to a claims administrator's "determination" of the amount of permanent disability indemnity payable to the claims administrator's "estimate" and to require that a copy of the most recent DWC informative pamphlet(s) "QME/AME Fact Sheet" and/or "Temporary Disability Fact Sheet" be provided with the notice, even if they have been previously provided.

In addition, the required notice to an unrepresented injured worker has been revised to clarify that if an unrepresented injured worker has already received a comprehensive medical evaluation the injured worker may only be asked to return to that physician for a new evaluation if either party disputes the results of that evaluation.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

The notice requirement for represented injured workers will be revised to require that the injured worker be advised of one of the following options:

- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.
- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Subdivision (g)(2)(C) has been revised to delete the phrase "State of California" in the reference to the "Disability Evaluation Unit."

Section 9812(g)(3) has been revised to require that a copy of the medical report on which the claims administrator's determination of no permanent disability was based, and a copy of the most recent version of the DWC informative pamphlets, QME/AME Fact Sheet and Permanent Disability Fact Sheet be provided with the notice, even if they have been previously provided.

The subdivision has also been revised to require more accurate notice to injured workers of the appropriate options available to an injured worker to challenge the claims administrator determination that no permanent disability exists.

Subdivision (3)(A) will require unrepresented injured workers to be advised of one of the following options:

- That if the determination is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That if the injured worker has already received a comprehensive medical evaluation and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.
- That if no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

In addition, a notice to an unrepresented injured worker will be required to be sent in an envelope that contains the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.

Subdivision (3)(B) has been revised to require that the notice advise the worker that he or she may contact an Information and Assistance office to have the treating physician's evaluation reviewed and rated by the Disability Evaluation Unit only if the denial is based upon the treating physician's report.

Represented injured workers will be required to be advised of one of the following options:

- That if the denial is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
- That for dates of injury from January 1, 1994 through December 31, 2004, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

- That for dates of injury on or after January 1, 2005, if the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. That if no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Subdivisions (g)(3)(B) and (C) have been revised to delete the proposed references to the “Disability Evaluation Unit as the “DWC Disability Evaluation Unit.”

Section 9812(g)(4) has been revised to require that a copy of the most recent version of the DWC informative pamphlet “Permanent Disability Fact Sheet” be provided with the notice, even if it has been previously provided.

The second paragraph of the subdivision has also been revised to delete any references to the injured worker’s acceptance or refusal of an employer’s offer of regular, modified or alternative work.

Section 9812(i) has been revised to accurately state the conditions under which an injured worker may be entitled to payment of medical care under Labor Code section 5402(c).

The subdivision has been revised to require that for claims reported on or after April 19, 2004, if an injured worker has filed a completed claim form with the employer, the claims administrator will be required to advise the injured worker to send for consideration of payment, all bills for medical services provided between the date the completed claim for was given to the employer and the date that liability for the claim is rejected, unless he or she has done so already. The claims administrator will also be required to advise the employee that the maximum payment for medical services that were provided consistent with the applicable treatment guidelines is \$10,000.

Modifications to Section 9813: Vocational Rehabilitation Notices.

In response to comments received, the section has been modified.

Section 9813(a)(3)(C) has been revised, in its final sentence, to require that a copy of the most recent version of the DWC informative pamphlet “QME/AME Fact Sheet” be provided to the injured worker with the notice, even if one has been previously provided.

Section 9813(c)(4) has been revised, in its final sentence, to correct a typographical error in the existing codified regulation by inserting the word “shall” as follows:

The notice shall include a DWC Form RU 103 “Request for Dispute Resolution.”

Modifications to Section 9813.1: Notice of Supplemental Job Displacement Benefit and Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after January 1, 2004.

In response to comments received, the proposed section has been modified.

The reference to “regular” work in the section title has been deleted.

In the first subdivision, now renumbered as subdivision (a), all references to the term “employer” have been revised to “claims administrator.”

Proposed subdivisions (2) and (4) referring respectively to the notice of regular work and the notice of alternative work, and the proposed final sentence of the section, have been deleted.

In proposed subdivision (3), now renumbered as subdivision (b), the clause “, (where the injured worker is unable to return to their usual and customary job)” has been deleted.

New Section 9813.2: Return to Work Notices for Injuries Occurring on or After January 1, 2005.

A new section has been added concerning return to work notices for injuries occurring on or after January 1, 2005. That section will provide as follows:

§9813.2 Return to Work Notices. For injuries occurring on or after January 1, 2005.

Notice of Offer of Regular Work, Notice of Offer of Modified or Alternative Work. Within 60 calendar days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:

(a) If an employer does not serve the employee with a notice of offer of regular work, modified work or alternative work as set forth in section 10002, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in accordance with Labor Code section 4658 (d)(1) and increased by 15 percent.

(b) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work as set forth in section 10002(b)(3) and (4), each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor Code section 4658 (d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.

(c) The employer shall use Form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or Form DWC-AD 10003 (Section 10003) to offer regular work. The claims administrator may serve the offer of work on behalf of the employer.

Authority: Sections 59, 133, 138.3, 138.4, 4658, 5307.3, Labor Code.

Reference: Sections 124, 4658, and 4658.1, Labor Code.