

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

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Proposed Amendments to Regulations: Workers'
Compensation – Health Care Organizations**

PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), acting pursuant to the authority granted by Labor Code Sections 133, 4600.3, 4600.5, 4600.7, 4603.5 and 5307.3. proposes to amend existing regulations concerning the timing and amount of payments made by Health Care Organizations (HCOs) to the Administrative Director and adopt a new requirement for a monthly report of HCO enrollment.

The proposed amendments are to Section 9779.5. This Section concerns the payment of administrative fees by HCOs to the Administrative Director.

The proposed amendments will require payment of an existing administrative fee in one single payment instead of allowing an HCO the option of submitting two installments.

The proposed amendments will also reduce a 2004 loan repayment surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

The proposed amendments will also require each HCO to submit a monthly report to the Administrative Director, by the fifteenth day of each month, of its total enrollment as of the first day of that month.

Finally, Labor Code 4600.7 is being added to the reference note.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Tuesday, October 21, 2003

Time: 10:00 a.m.

Place: Auditorium

The Governor Hiram Johnson State Office Building

455 Golden Gate Avenue

San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, 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 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.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code Sections 133, 4600.5, 4600.7, 4603.5 and 5307.3.

Reference is to Labor Code Sections 4600, 4600.5 and 4600.7.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Labor Code Section 4600.7 creates the Workers' Compensation Managed Care Fund in the State Treasury and authorizes the Administrative Director to establish a schedule of fees and revenues to be charged to certified Health Care Organizations (HCOs) and applicants for certification to fund the administration of the HCO program.

Proposed Amendments to Section 9779.5 – Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense:

The HCO program in the Division of Workers' Compensation (DWC) was initially funded in 1994 with a \$1.7 million General Fund loan. Labor Code Section 4600.7 established the Workers' Compensation Managed Care Trust Fund in the State Treasury and required the Administrative Director to establish a schedule of fees and revenues to be charged to HCOs and applicants for certification in order to fully fund the administration of the managed care program and to repay a loan from the General Fund to the Workers' Compensation Managed Care Trust Fund.

Subdivision (a) of the existing regulation promulgated by the Administrative Director requires all organizations certified as HCOs or WCHCPOs to pay an annual assessment to the Workers' Compensation Managed Care Fund representing that entity's share of the costs and expenses reasonably incurred in the administration of the HCO program. The annual assessment may be paid in two equal installments, with the first payment falling due on or before July 1 and the second installment falling due on or before December 15.

The first proposed amendment would require the annual assessment to be paid in a single payment due on or before July 1.

Subdivision (b)(2) of the existing regulation will require each HCO to pay an annual surcharge to reimburse the general fund for the loan made to start up the Workers' Compensation Managed Care Fund. The current outstanding loan balance is approximately \$2.7 million. The existing regulation provides that the annual surcharge for each HCO will be allocated to each HCO as follows:

2004: (One-third of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2005: (One-half of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2006: (Total outstanding loan balance) divided by (total number of enrollees in all

certified HCOs) times (number of enrollees in HCO)

The second proposed amendment would reduce the total 2004 surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

The final proposed amendment would require each HCO to submit a monthly report to the Administrative Director, by the fifteenth day of each month, of its total enrollment as of the first day of that month.

In addition, Labor Code Section 4600.7 is being added to the reference note.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The only economic impacts of the proposed amendments would be to change the timing of existing payments by consolidating two existing payments into one; reduce the amount of the 2004 loan repayment surcharge; and, require each HCO to report its monthly enrollment. None of these changes would be economically significant.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The first proposed amendment would merely change the timing of existing payments by consolidating two payments into one. The second proposed change would reduce the amount of the 2004 loan repayment surcharge paid by each HCO. The third proposed amendment would not impose any new record-keeping requirements on HCOs to collect data they do not already maintain, it would merely require each HCO to report that data to the Administrative Director on a monthly basis.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.

- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments to not apply to any local agency or school district.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations may affect small businesses.

FINDING CONCERNING THE CREATION OF A REPORTING REQUIREMENT

Pursuant to Government Code Section 11346.3(c), the Administrative Director has made a finding that requiring each HCO to submit a monthly report of its enrollment is necessary for the health, safety, or welfare of the people of the state, and that it is necessary that this regulation apply to businesses.

The Administrative Director based this determination on the fact that tracking monthly enrollment in HCOs will allow the Administrative Director to more accurately project loan repayment surcharge requirements, allocate staff and resources for program oversight in response to non-linear growth in enrollment and it will assist the Administrative Director in responding to oversight inquiries concerning the HCO program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

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

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issues addressed are not so complex that it cannot easily be reviewed during the comment period.

In addition, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations 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 or a copy will be provided upon written request.

As of the date of this notice, the rulemaking file consists of the notice, the Initial Statement of Reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov

**PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE
FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulations, prior to the public hearings to:

Ms. Marcela Reyes,
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on October 21, 2003. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Administrative Director will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: dwcrules@hq.dir.ca.gov

The Administrative Director will also accept written comments transmitted by facsimile provided they are directed to the attention of Marcela Reyes and sent to the following facsimile number: (415) 703-4720.

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 RULEMAKING FILE AND LOCATION
WHERE RULEMAKING FILE MAY BE INSPECTED**

Any interested person may inspect a copy or direct questions about the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulations and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: 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 current Health Care Organizations rulemaking link.

CONTACT PERSON:

Nonsubstantive 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 directed to the contact person. The contact person is:

Ms. Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to: James M. Robbins, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list and the DWC Managed Care Program's mailing list.

If adopted, the proposed regulation as amended will appear in Title 8, California Code of Regulations, Section 9779.5.

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