

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
LEGAL UNIT

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September 11, 2013

## NOTIFICATION OF INTENT TO READOPT EMERGENCY REGULATIONS

Subject: Independent Bill Review

The Department of Industrial Relations, Division of Workers' Compensation (DWC) proposes to readopt for a second time the emergency regulations that were adopted effective January 1, 2013 (OAL File No. 2012-1219-02E) affecting and implementing Independent Bill Review (IBR). The emergency regulations can be found at Article 5.5.0 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9792.5.1, 9792.5.4, 9792.5.5, 9792.5.6, 9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10, 9792.5.11, 9792.5.12, 9792.5.13, 9792.5.14, and 9792.5.15, and at Article 5.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9793, 9794, and 9795. The emergency action also incorporates by reference the California Division of Worker's Compensation Electronic Medical Billing and Payment Companion Guide Version 1.1, and the California Division of Worker's Compensation Medical Billing and Payment Guide Version 1.1.

Pursuant to California Code of Regulations, title 1, section 52(c), DWC is incorporating by reference the rulemaking file, OAL File No. 2012-1219-02E, submitted to the Office of Administrative Law on December 19, 2012, for the initial adoption of the emergency regulations.

Pursuant to California Code of Regulations, title 1, section 52(b)(1), DWC has made progress and proceeded with diligence to comply with Government Code section 11346.1(e). On February 22, 2013, the Notice of Proposed Action for the above-described regulations was published in the California Regulatory Notice Register. DWC correspondingly posted all required rulemaking materials on its website and mailed the notice to the DWC interested parties list. On April 9, 2013, DWC conducted an open, regulatory hearing on the proposed Independent Bill Review, Standardized Paper Billing and Payment, and Electronic Billing and Payment regulations. Since that period of time, DWC has been meeting with stakeholders, such as physician associations and employer/claims administrators' representatives to discuss various problems and issues that have arisen during the course of the IBR process and the possible substantive changes that will need to be made to the emergency regulations. DWC has further met regularly with its designated Independent Bill Review Organization (IBRO), Maximus Federal Services, to discuss and implement procedures that would improve the application process for medical providers, the submission of documentation by claims administrators and payors, and the processing of IBR applications to ensure the expeditious issuing of IBR

determinations. By the end of September 2013, DWC will modify their proposed final regulations and make the modifications available to the public for a 15-day comment period.

The IBR program has been in effect since January 1, 2013 for medical treatment and medical-legal bill where service was rendered on and after that date. Since the beginning of the year, the number of IMR applications received by the IBRO has steadily increased. In July, 113 applications were received. In August, the number rose to 159. The number of applications received has enabled DWC staff to gain substantial knowledge regarding industry billing practices, thereby allowing for better efficiency in identifying applications eligible for IBR and recognizing those documents that are relevant in reaching a final determination. A second readoption of the emergency regulations will provide DWC with additional time to gain a better understanding of the new dispute resolution process and to complete the regular rulemaking process and Certificate of Completion.

Pursuant to California Code of Regulations, title 1, section 52(b)(2) there have been no changes in emergency circumstances since the original adoption of the emergency regulations.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulations action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, DWC will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Attached to this notice is the specific regulatory language now in place following DWC's emergency action and an updated version of the Finding of Emergency that was initially submitted to OAL in December 2012.

You may also review the regulatory language and Finding of Emergency on the DWC's website at the following address: <http://www.dir.ca.gov/dwc/dwcRulemaking.html>

If you have any questions regarding this proposed emergency action, please contact Maureen Gray at [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov) or (510) 286-0676.