

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 9792.12(a)(8)	<p>Commenter strongly believes that requiring the amended request in writing prior to processing the decision when a Provider has agreed to withdraw a portion of the request will result in a great increase in the volume of Peer Review and increase the unnecessary involvement of Providers in the UR process. Commenter opines that it is not reasonable from a Provider perspective to believe that the Provider will agree to withdraw a request, rewrite the PR2 or prescription immediately, and the office staff will fax the document to the UR organization as soon as the request is amended. Commenter is concerned that given the time constraint to process the request, the amended written request will not be received within the time frame to allow the UR organization to process this as a withdrawal as outlined in the proposed regulations and this will force the request to be sent to Peer Review and result in either an unnecessary conversation between the Peer Reviewer and Provider or a non-certification. Commenter believes that if the intent is to have a record of documentation of an amended request that the amended request can be processed initially with verbal agreement by the Provider followed by written agreement of the Provider in some form as the responsibility of the UR organization.</p>	<p>Theodore Blatt, MD Medical Director Blue Cross of California March 15, 2007 Written Comment</p>	<p>We disagree the subdivision needs to be revised. As written, no penalty will be imposed if the written amended request is sent in after the approval. The written amended request may be added to the file after the approval has been given. However, a An amended written request is required by the statute. Labor Code section 4610(e)</p>	<p>None.</p>
Section 9792.12(a)(1)	<p>A Utilization Review plan must be established consistent with Labor Code section 4610. Section 9792.7(a)(5) mandates that “a description of the claims administrator’s practice, if applicable, of prior authorization process including but not limited to where authorization is provided without the</p>	<p>Theodore Blatt, MD Medical Director Blue Cross of California March 15, 2007 Written Comment</p>	<p>Disagree. Section 9792.7(a) sets forth the requirements of the UR plan. If the URO is filing the plan on behalf of the claims administrator it is required to include this information. The UR regulation explains the meaning of prior</p>	<p>None.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>submission of the request for authorization". Commenter believes that this is an issue for the claims administrator to address. An independent utilization review company would not have access necessarily to that information. Therefore commenter opines that this should not be a requirement of the UR plan filed by the utilization review company, but rather the responsibility of the claims administrator independent of the utilization review plan which is filed by the utilization review company. Commenter states that if this is not removed from the proposed regulations, he will again request clarification of what is meant by "prior authorization process".</p>		<p>authorization: "where authorization is provided without the submission of the request for authorization." For example, no requests for authorization are required for treatments that cost less than \$5,000 – they will be approved without review.</p>	
Section 9792.12(a)(6)	<p>Commenter states that the general format of this paragraph is improved. However, she continues to believe that the language of this paragraph is at variance with the statutory provision upon which this penalty is based, Labor Code § 4610(e). At a minimum, commenter believes the final parenthetical phrase, "(as set forth by the reviewer's licensing board)" should be amended to reference the reviewer's <u>specialty</u> board. This may be the intent of the proposed language, in that it refers to the "licensing <u>board</u>," but commenter believes the language should be clarified to prevent unnecessary litigation over this issue. Commenter states that obviously, the fact that a provider, for example a podiatrist, is licensed does not make that individual "competent to evaluate the specific clinical issues involved in the medical treatment services, and where those services are within the scope of the physician's</p>	<p>Linda F. Atcherley President California Applicants' Attorneys Association March 23, 2007 Written Comment</p>	<p>Disagree. The penalty is not addressing competency, only scope of practice. These regulations are not including competency because in order to determine competency it would be necessary for the investigators to go beyond reviewing the records. It would probably require a deposition. In order to be efficient and to be able to investigate all UROs and claims administrators routinely, the penalty investigation need to be less time consuming and less factually disputable.</p>	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	practice" as required by § 4610(e). Commenter recommends that this paragraph be amended to more accurately reflect these statutory requirements.			
Section 9792.12(a)(11)	Commenter notes that this paragraph has been amended to add the phrase "or document attempts to discuss..." Commenter believes that the current proposal is much too broad and will allow the adjuster to escape a penalty by merely documenting a single attempt made at 4:30 PM on a Friday afternoon to discuss the issue with the treating physician. Commenter recommends that this phrase be amended to say, "or document <i>reasonable</i> attempts to discuss...."	Linda F. Atcherley President California Applicants' Attorneys Association March 23, 2007 Written Comment	Disagree. In order to assess penalties based on a review of the records, there need to be clear standards regarding what constitutes a violation. Because good faith could encompass many different actions, the regulations are written to provide a minimum standard that must be present. If there is no documentation, a penalty will be assessed.	None.
Section 9792.12(c)	<p>Commenter notes this subdivision has been amended to state that the penalties under both subdivisions (a) and (b) are subject to mitigation under § 9792.13(a). Commenter believes that there is no justification for mitigating the penalties under subdivision (b).</p> <p>According to the Notice of 3<sup>rd</sup> 15 Day Changes to Proposed Text, page 6, "Subdivision (b)(2) has been revised to clarify that the subdivision (b) penalties shall be waived 'if the investigation subject's performance rating meets or exceeds eighty-five percent' or if the investigation subject agrees to the abatement procedure." This means that no penalties will be collected (1) if the subject's performance rating is 85% or higher, or (2) if the performance rating is lower than 85% but the subject agrees to an abatement procedure.</p>	Linda F. Atcherley President California Applicants' Attorneys Association March 23, 2007 Written Comment	Disagree. Section 9792.13 (a) already stated that the mitigation factors applied to the penalties in section 9792.12. The revision to section 9792.12(c) was made to keep it consistent with the statement in section 9792.13(a). If it is appropriate to apply the mitigation factors, it should not matter if the penalty falls under the (a) or (b) subdivisions.	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u><i>Thus, the only situation in which penalties will be assessed under subdivision (b) is where the subject has a lousy audit (less than an 85% performance standard) AND the subject does NOT agree to an abatement procedure.</i></u> Commenter asks under these circumstances, what possible justification is there for mitigating this subject's penalties? All this subject has to do to totally eliminate all penalties is agree to an abatement procedure. If the subject will not enter into that agreement, why mitigate the penalties?</p> <p>Commenter recommends that mitigation should not be applicable to subdivision (b) penalties.</p>			
Section 9792.13(a)(5)	<p>Commenter notes the addition of this new provision to mitigate penalties under extraordinary circumstances. Commenter understands that this same mitigation factor is part of the audit regulations but is concerned that phrases such as "extraordinary circumstances" and "clearly inequitable" are overly broad. Commenter recommends that the Division examine this language and attempt, in both these regulations and the audit regulations, to provide some guidelines or definitions to explain the type of circumstances under which this provision would be applicable.</p>	<p>Linda F. Atcherley President California Applicants' Attorneys Association March 23, 2007 Written Comment</p>	<p>Disagree. This section was adopted in the audit regulations after a claims administrator's office was destroyed by fire. The records were no longer available. This is the type of situation that the section would be applied to; however, there are other types of extraordinary situations that can occur.</p>	None.
Sections 9792.11(k), (l), (m), (q) and (v)	<p>Commenter notes that the timeframes indicated in these rules are not clearly defined. For example, does "shall provide.....within fourteen (14) days" mean that the requested information must be received by the Administrative Director within 14 days or mailed within 14 days? If the former, what</p>	<p>Harry Monroe, Jr. Director of Governmental Relations Concentra, Inc. March 23, 2007 Written Comment</p>	<p>Disagree. The date the documents are provided will be based on the date sent, which can be determined by the proof of service if one is provided or the postmark.</p>	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	will determine the “received” date? If the latter, what will determine the “mailed” date? The same questions can be asked regarding the meaning of “shall deliver” to the Administrative Director within 14 calendar days.			
Section 9792.11(n)	Commenter notes that this section uses the term “working day” while Section 9792.11 (q) uses the term “business day”. Commenter recommends that the terminology be consistent.	Harry Monroe, Jr. Director of Governmental Relations Concentra, Inc. March 23, 2007 Written Comment	Disagree. The use of the words is not confusing.	None.
General Comment	Commenter notes that the rules give no indication as to how a performance rating will be determined. Will it be calculated on a point system based on the level of severity of a violation? Will it be based solely on the number of violations? Will it be determined by number of claims that violations are found in? Will it be a combination of the aforementioned? Commenter believes that the specific areas of the performance rating tool and the methodology for computing the rating be identified.	Harry Monroe, Jr. Director of Governmental Relations Concentra, Inc. March 23, 2007 Written Comment	Disagree. The method for determining the performance rating is set forth in section 9792(b)(1).	None.
Section 9792.11(c)	<p>Commenter does not believe that the “stratified random sample” as described, can achieve a fair result. Commenter firmly supports a sampling technique with statistical validity and believes that this description of a “stratified random sample” would diminish the validity of the result.</p> <p>Commenter suggests the Division utilize the same sample as that for the PAR audit for Claims Administrator investigations. When the random files are chosen, the Claims Administrator audit subject would then</p>	Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment	Agree re “stratified.” Disagree re using the PAR sample. In order to be statistically valid, the pool must consist of requests for authorization, not indemnity files.	The regulations will be revised to delete the word “stratified.”

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>prepare a listing, consistent with the Administrative Director's requirements, of all requests for authorization included in those files for the period of time determined by the Administrative Director, be it three months or longer. The Administrative Director or his/her designee could then randomly select the requests for authorization that would be included, along with any complaint files, in the Utilization Review Investigation. Commenter suggests that the same sampling technique could also be utilized on Targeted Investigations.</p> <p>Additionally commenter recommends that the Request for Authorization Log be used for drawing a true random sample for Utilization Review Organizations without regard to the result of the review.</p>			
Section 9792.11(c)(1)(B)	<p>Commenter does not believe that the 85 percent passing score for Utilization Review Enforcement Investigation is equitable or consistent with public policy.</p> <p>Commenter points out that section 9792.11(d) states that the smallest sample of Request for Authorizations shall be five. Commenter believes that this population of audit subjects cannot avoid penalties unless they achieve a 100 percent result and therefore is not a fair standard.</p> <p>Commenter opines that the performance measure for a routine utilization review investigation should be the same as the 80 percent performance measure in the profile audit review process.</p>	Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment	<p>Disagree. The passing rate allows a claims administrator or URO to make some errors and yet pass the investigation without having to pay penalties.</p> <p>We disagree. If only five requests are reviewed, and every one was a violation under the (b) section, the highest total penalty amount on the first routine investigation would be \$500.</p> <p>Disagree. Creating a performance rating of 80% would not be the equivalent to the audit performance rating. The audit performance rating</p>	<p>None.</p> <p>None.</p> <p>None.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			<p>is not a straight 80% standard, it is based on a three year historical record of how audited claims administrators ranked. As explained in the annual audit report for 2006, the performance standard is recalculated yearly: “The PAR and FCA performance standards have been updated pursuant to Labor Code section 129(b) and Title 8, California Code of Regulations, section 10107.1(c), (d), and (e). This is accomplished by taking the 2005 audit results and using data for the five major keys subject to the profile audit review program. The results are then combined with the 2004 and 2003 performance rating scores to develop the 2007 PAR/FCA standards. <b>The PAR standard for 2007 is 1.83201 and the FCA standard is 2.21982.</b> Profile audit review audits (PAR audits) commencing after January 1, 2007 use the new standards.”</p> <p>For the UR investigation, there is no history and therefore, it is not possible to do a similar ranking and pass rate.</p>	
Section 9792.11(q)	<p>Commenter states that the language in this subdivision permits the Administrative Director to withhold all complaint information that triggers a non-routine investigation on the sole basis that the investigation might be “less useful.” Commenter believes that nothing could be less useful than commencing an investigation before the claims administrator</p>	<p>Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment</p>	<p>Disagree. The subdivision provides that the complaint or a description of the complaint shall be provided unless providing the information would make the investigation less useful.</p> <p>Some discretion must be allowed re disclosing the triggering information</p>	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>has been given an opportunity to respond. Commenter opines that the withholding of basic information treats claims administrators as suspects in criminal cases. Commenter state that at the very least, a description of the substance of the complaint and the Administrative Director’s rationale for determining that the complaint was justified, should be provided, along with sufficient information for the claims administrator to identify and locate the claim file to which the complaint relates.</p>		<p>because in certain instances, if the investigation subject was aware of the facts, it might alter its records.</p>	
<p>Sections 9792.11(t) and (v)</p>	<p>Commenter opines that section 9792.11(t) is unclear because it mentions a document but does not define its contents. This section provides that Utilization Review organizations and Claims Administrators must forward the Final Notice to employers. Commenter states that the regulation does not explain what information will be itemized in the Notice, but unspecified information will later be de-identified. Commenter is concerned that there may be “personal health information” in the Final Notice that the HIPPA law does not allow to be transmitted to an employer.</p> <p>Section 9792.11(t) and (v) provides, in the Notice of Modifications, that the “Final Report” is replaced with “performance rating and summary of violations” and that the latter will be de-identified. Commenter is concerned that this is not explained in the regulations and that this assurance should be explicit.</p>	<p>Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment</p>	<p>Disagree. A description of the contents of the Preliminary Investigation Report is contained in section 9792.11(t). The contents of the Final Investigation Report are described in section 9792.15 (b)(2). In this revision, the words “to every employer whose utilization review process was assessed with a penalty pursuant to section 9792.12” were deleted. Instead, to whom the notice must be sent depends of the investigation subject: “(2) For utilization review organizations: the notice must be served on any employer or third party claims administrator that contracted with the utilization review organization and whose utilization review process was assessed with a penalty pursuant to section 9792.12, and any insurer whose utilization review process was assessed with a penalty pursuant to section 9792.12. (3) For claims administrators: the</p>	<p>None.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			<p>notice must be served on any self-insured employer and any insurer whose utilization review process was assessed with a penalty pursuant to section 9792.12.”</p> <p>The above change was made because in most cases, the employer (unless it is a self-insured employer) is not the entity that contracted with the utilization review company. The revision will ensure that the party who has contracted with the utilization review company or the claims administrator will be advised of the outcome of the investigation if penalties were assessed. These parties are entitled to identifiable information because they are the claims adjustors for the workers’ compensation files. However, what will be posted on the DWC web site was also revised, to clarify that it will not contain personal information. Thus, section 9792.12(b)(6) now states that only the performance rating and a summary of the violations will be posted. Performance rating is described in 9792.12(b)(1).</p>	
Section 9792.12	Commenter again states that the increased proposed penalty amounts could have a chilling effect on the review of medical treatment services as claims administrators calculate the risk of penalties for even simple errors that would far outweigh the cost of simply approving those services, be they	Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment	Disagree. Physicians should not be required to have to file a dispute every time a claims administrator denies or modifies a request for authorization. This is a violation of the UR statute and regulations. If it is truly an amended request, the claims	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>reasonable and necessary or efficacious.</p> <p>Commenter offers the following example:</p> <p>Section 9792.12(a)(8) now specifies a \$1,000 penalty for failure of a non-physician reviewer who approves an amended request to not possess a written amended request for authorization. Commenter states that while reducing this penalty from \$25,000 is an improvement, the penalty continues to be far in excess of the vast majority of medical procedures.</p> <p>Commenter believes that if the amended agreement is not disputed and the file documentation is not adequately explanatory, this violation is a “paper violation” that allowed prompt treatment and should be treated as the other penalties in the (b)(5) arena.</p>		<p>administrator must have written documentation. Otherwise, there is no way of knowing if it simply a “paper violation” or a modification made by a non-physician that the injured worker or physician simply did not have the time to dispute.</p>	
Section 9792.13(d)	<p>Commenter states that the amendatory language in this subdivision shifts the burden of proof to the claims administrator to demonstrate that a physician’s refusal to cooperate has resulted in non-compliance with a requirement of statute or regulation. Commenter points out that subdivision (g)(5) of section 4610 of the Labor Code reads, in part:</p> <p>“Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).”</p>	<p>Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment</p>	<p>Disagree. There was no revision to this subdivision other than re-lettering. Disagree that this section should be revised. This statement only applies in the context stated in the subdivision: when the claims administrator or URO asserts that the injured worker or treating physician refused to cooperate and that the refusal prevented compliance. For example, the claims administrator’s or URO’s records should demonstrate that the request was made and that the medical information was not received.</p>	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that the regulated community might reasonably expect the requesting physician would be required to show that the requested information had been provided to the employer or the employer's insurer, but it could not have anticipated and had no opportunity to comment on the justification for the burden-shifting and very difficult, if not impossible task of proving that a given event or action did not occur. Commenter understands that the Division does not have authority over providers but does not believe that shifting their responsibilities to payors and their agents is an equitable solution.</p>			
Clarifying and Technical Change	<p>Commenter points out that section 9792.11(f) speaks of assessing penalties for violation subject to Labor Code section 4610 and refers to section 9792.12(a)(6) through (14). Commenter believes that it should also include subsection (a)(15).</p>	<p>Steven Suchil Assistant Vice President American Insurance Association March 23, 2007 Written Comment</p>	<p>Disagree. The penalties listed after (14) shall be imposed even if the request was not subject to Labor Code section 4610.</p>	<p>None.</p>
Section 9792.11(o)	<p>This subsection provides that, <i>except in cases involving concurrent or expedited review</i>, if the date or deadline to perform any UR act falls on a weekend or holiday, the act may be performed on the first normal business day after the weekend or holiday.</p> <p><b>Recommendation</b> Commenter recognizes the importance in expediting requests for treatment where the injured employee faces an imminent threat or during an inpatient stay. However, commenter is concerned that by excluding concurrent and expedited reviews, inconsistency may be created with other Government and Civil Code sections.</p>	<p>Jose Ruiz Claims Operations Manager State Compensation Insurance Fund March 23, 2007 Written Comment</p>	<p>Disagree. The 72 hour requirement is set forth in Labor Code section 4610(g)(2). Labor Code section 4610 (3)(A) requires decisions to be communicated within 24 hours. Medical treatments need to be addressed even when there are three day holidays, and when a person is hospitalized when imminent and serious threat to a person's health is in issue, there is no justification for extending time.</p>	<p>None.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Section 7 of the Civil Code is entitled “Holidays” and it defines holidays as every Sunday and “such other days as are specified or provided for as holidays in the Government Code.” State holidays are defined beginning with Government Code §6700. Civil Code §11 provides that whenever any act of a secular nature is appointed by law to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed on the day appointed.</p> <p>Commenter opines that the proposal to exclude expedited reviews could also result in automatic violations where a request for expedited review is received prior to a three-day weekend. Expedited requests for authorization are required to be processed within 72 hours after the receipt of the information reasonably necessary to make a decision. If a request is received after business hours on a Friday prior to a three-day weekend, the claims administrator or UR organization would be unable to review that request until the following Tuesday at which time it would already be late and subject to a penalty under this subsection.</p> <p>It is also noted that subsection 9792.9(g) allows for an extension of the timeframes in subsections 9792.9(b) <u>and</u> 9792.9(c), however subsection (c) was not referenced in the proposed language.</p>		Disagree. The subdivision references both sections.	
Section 9792.11(v)	Commenter states that the Notice of	Jose Ruiz	Disagree. The final report will only	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Modification to Text of Proposed Regulations document dated March 8, 2007 (page 4) states, “The final report, which will be presented to the investigation subject, <b>will contain identifiable information</b> . However, it will not be posted on the DWC website. Instead the performance rating and summary of violations, which will not contain identifiable information about the injured workers, will be posted on the DWC web site.” Since the final report must be provided to the employer, commenter recommends that this subsection outline the contents of the report to ensure that any medical information is excluded in order to protect the privacy of injured employees pursuant to LC §3762.	Claims Operations Manager State Compensation Insurance Fund March 23, 2007 Written Comment	be provided to the parties that contract with the URO or claims administrators. The only employers who fall within this category are self-insured employers who have a separate claims handling department.	
Section 9792.12(b)(4) and (5)	Commenter recommends clarifying how the UR timeframes will be calculated for the purposes of assessing penalties. Bearing in mind the five-day timeframe for prospective and concurrent requests and the 30-day timeframe for retrospective requests, will the date of receipt be considered ‘Day-1’? Or will the clock officially begin ticking the next business day? Clarification is needed to ensure the correct interpretation of the UR requirement by all parties and prevent unnecessary litigation.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund March 23, 2007 Written Comment	Disagree. The days are counting in the same way days are counted for all obligations – starting with the next day.	None.
Utilization Review Complaint Form	Commenter recommends that the form include a signature line and a corresponding statement that the information provided in the form is a true and correct to the best of their knowledge.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund March 23, 2007 Written Comment	Disagree. The complaint form is not within the scope of these regulations. The complaint form is not mandatory. Complainants may forward complaints in any manner, written or oral, with or without using the form. Therefore, it the form does not need to be part of the regulations. The investigating unit will	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			<p>confirm/investigate the allegations in the complaint to determine if it is credible prior to proceeding with an investigation. Also, as set forth in 9792.11(q), upon initiating an investigation based on a complaint, a description of the complaint or the information contained in the complaint will be forwarded to the investigation subject who has ten days to respond.</p> <p>We disagree that a complaint must be verified. There is no required format or method for a complaint. They may be oral or written. Requiring a verification would limit how the complaints could be made – they would have to be in writing and mailed. Many injured workers are not aware of the legal requirements of UR but have concerns that their treatment requests have been denied. The investigation unit can then determine if it appears that there has been an UR violation before an investigation is initiated.</p>	
<p>Sections 9792.11(c)(1)(A); (c)(1)(B)(3); (c)(2)(A) and (c)(2)(B)(3)</p>	<p><b>Stratified Random Sample</b> The sampling methodology contained in the proposed regulation (9792.11(c)(2)(A)) is not an appropriate stratified random sample because it contains the direction:  “When possible, at least 50% of the randomly selected requests for authorization shall be denied request.” Subdivision</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute</p>	<p>We agree to delete the “stratified” random sample and return to the pure random sample.</p>	<p>The words “stratified” and “(when possible, at least 50% of the randomly selected requests for authorization shall be denied requests)” will be deleted.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>9792.11(c)(2)(B)(3) contains a similar reference to a “stratified random sample.”</p> <p>A single random sample from the entire population of records can measure how often a particular type of event occurs within that population. For example, UR denials are one <i>strata</i> or a fraction of all UR decisions. As a stratified sample by definition does not reflect the characteristics of total population, the results of any analysis on a stratified sample only apply to that strata of claims and cannot be applied directly to the overall population without further statistical adjustment. Commenter believes that to produce meaningful results for each stratified sample the Division must select a separate stratified sample for each subgroup of interest. That is not what the newly proposed regulations call for. The regulations merely impose multiple characteristics on the initial random sample. Section 9792.11(d) sets out the process for establishing the random sample on which the performance rating will be based.</p> <p>Imposing a pre-determined criterion (denied requests for authorization) on the initial random sample invalidates the sample.</p>	<p>March 23, 2007 Written Comment</p>		
<p>Section 9792.11(c)(2)</p>	<p>Commenter recommends the following language:</p> <p>(2) For a claims administrator:</p> <p>(A) A Routine Investigation shall be initiated at each claims adjusting location at least once every five (5) years concurrent with the</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’</p>	<p>We agree to delete “stratified” and the sentence, “When possible, at least 50% of the randomly selected requests for authorization shall be denied request.”</p> <p>We disagree that the sample will be those contained in the PAR sample</p>	<p>None.</p>

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>profile audit review done pursuant to Labor Code sections 129 and 129.5. The investigation shall include a review of a <del>stratified</del> random sample of requests for authorization, as defined by section 9792.6(o), received by the claims administrator during the three most recent full calendar months preceding the date of the issuance of the Notice of Utilization Review Investigation <u>in the claims selected for profile audit review.</u> <del>When possible, at least 50% of the randomly selected requests for authorization shall be denied request.</del> The investigation may also include a review of any credible complaints received by the Administrative Director since the time of the previous investigation. If there has not been a previous investigation, the investigation may include a review of any credible complaints received by the Administrative Director since the effective date of these regulations.</p> <p>(B) Target Investigations:  1. A Return Target Investigation shall be conducted within 18 months of the date of any previous investigation of the same investigation subject if the performance rating was less than eighty-five percent.  2. A Special Target Investigation may be conducted at any time based on credible information indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.  3. The Return Target Investigation and the Special Target Investigation may include (1) a review of the requests for authorization previously investigated which contained</p>	<p>Compensation Institute  March 23, 2007  Written Comment</p>	<p>files. The PAR sample includes specific types of cases (indemnity files) over a three year period. There may be no files selected that would fall in the three month period following the effective date of the regulations. Also, the PAR sample would not be valid because it only seeks indemnity claims. The requested pool should include all requests for authorization in order for the sample to be valid. Additionally, this system would not work for the UROs.</p>	

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
------------------------------	--	--------------------------------	----------	--------

	<p>violations; (2) a review of the file or files pertaining to the complaint or possible violation; (3) a <del>stratified</del> random sample of requests for authorization received by the claims administrator during the three most recent full calendar months preceding the date of the issuance of the Notice of Utilization Review Investigation <u>in a random sample of claims files selected in the manner of a profile audit review (when possible, at least 50% of the randomly selected requests for authorization shall be denied requests)</u>; (4) a sample of a specific type of requests for authorization; and (5) any credible complaints received by the Administrative Director since the time of any prior investigation. If there has not been a previous investigation, the investigation may include a review of any credible complaints received by the Administrative Director since the effective date of these regulations.</p> <p><b>Discussion</b></p> <p>The system for randomly selecting claims for the profile audit review provides an adequate population of requests for authorization from which the random sample for a claims administrator’s utilization review investigation can be drawn. Commenter suggests that if the Division wishes to draw the random sample from a larger population of requests for authorization than from the three months now specified, the number of months can be changed.</p> <p>Commenter states that many claims administrators do not have a system that</p>			
--	---	--	--	--

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
------------------------------	--	--------------------------------	----------	--------

	<p>tracks all requests for authorization, particularly those routinely authorized by non-physicians. Selecting the UR investigation sample from the files chosen for the PAR would be a significantly less onerous and more statistically reliable methodology because only requests for authorization contained in the random sample for the PAR would be produced, as opposed to a listing of all requests for authorization received during the three month period in every single claim. The methodology used to select the random sample for a PAR could be applied to produce a reliable random sample for the Return or Special Target Investigation, as well.</p> <p>For example, the investigation for the claims administrator might proceed as follows:</p> <ol style="list-style-type: none"> <li>1. The claims administrator receives a Notice Utilization Review Investigation and the list of claims randomly selected for the profile audit review (5 – 59 claims).</li> <li>2. Within 14 days, the claims administrator submits a listing of all requests for authorization received during the specified time period in the randomly selected claims, and the required data elements.</li> <li>3. The AD randomly selects requests for authorization for investigation and performance rating (5 – 59 requests).</li> <li>4. The AD provides the claims administrator with a Notice of Investigation Commencement and a list of randomly selected requests for authorization.</li> <li>5. The claims administrator produces copies of the randomly selected requests for authorization on the first day of the onsite</li> </ol>			
--	--	--	--	--

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>investigation.</p> <p>6. The claims administrator produces additional records within one working day of the request or within 5 working days if the records are offsite.</p> <p>7. Performance rating is based on number of violations in the randomly selected requests for authorization.</p>			
Section 9792.11(j)(1)	<p>Commenter recommends the following language:</p> <p>(1) A description of the system used to identify each request for authorization (if applicable). To the extent the system identifies any of the following information in an electronic format, <del>the claims administrator or</del> utilization review organization shall provide in an electronic format a list of each and every request for authorization received at the investigation site during a three month calendar period specified by the Administrative Director, or his or her designee; <u>the claims administrator shall provide in an electronic format a list of each and every request for authorization received at the investigation site for the claims selected according to the profile audit review process during a three month calendar period specified by the administrative director, or his or her designee;</u> and the following data elements: i) a unique identifying number for each request for authorization if one has been assigned; ii) the name of the injured worker; iii) the claim number used by the claims adjuster; iv) the initial date of receipt of the request for authorization; v) the type of review (expedited prospective, prospective,</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers' Compensation Institute March 23, 2007 Written Comment</p>	Disagree for the reasons stated above.	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>expedited concurrent, concurrent, retrospective, appeal); vi) the disposition (approve, deny, delay, modify, withdrawal); and, vii) if applicable, the type of person who withdrew the request (requesting physician, claims adjuster, injured employee or his or her attorney, or other person). In the event the claims administrator or utilization review organization is not able to provide the list in an electronic format, the list shall be provided in such a form that the listed requests for authorization are sorted in the following order: by type of utilization review; type of disposition; and date of receipt of the initial request.</p> <p><b>Discussion</b> Commenter states that this change is necessary to conform with the recommended changes in Section 9792.11(a)(2).</p>			
Section 9792.11(j)(1)	<p>(1) <del>A description of the system used to identify each request for authorization (if applicable).</del> <u>If the claims administrator or utilization review organization uses a system to identify each request for authorization, then it shall describe that system and shall provide the following information. ...</u></p> <p><b>Discussion</b> <b>Clarity</b> Commenter states that there is a statutory presumption that a regulation is ambiguous if it can, “on its face, be reasonably and logically interpreted to have more than one meaning and the varying interpretations cannot be harmonized by settled rules of construction.”</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute March 23, 2007 Written Comment</p>	Disagree that the proposed subdivision is unclear.	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	The parenthetical phrase, “(if applicable),” makes the sentence unclear. The recommended change indicates that subdivision (1) will not apply, unless the subject of the investigation maintains a system “to identify each request for authorization.”			
Section 9792.11(k)	<p>Commenter recommends the following language:</p> <p>(k) The utilization review organization or claims administrator shall provide the requested information listed in subdivision (j) within fourteen (14) calendar days of receipt of the Notice of Utilization Review Investigation. Based on the information provided, the Administrative Director, or his or her designee, shall provide the claims administrator or utilization review organization, with a Notice of Investigation Commencement, which shall include a list of randomly selected requests for authorization <del>from a three month calendar period designated by the Administrative Director</del> and complaint files (if applicable), for investigation.</p> <p><b>Discussion</b> Commenter believes that the selection period referred to in this subdivision (k) has been adequately defined in subdivision 9792.11(c) and opines that the reiteration of this period here creates more uncertainty than clarity.</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute March 23, 2007 Written Comment</p>	Disagree that the proposed subdivision is unclear.	None.
Section 9792.11(v)	<p>Commenter recommends the following language:</p> <p>(2) For utilization review organizations: the notice must be served on any <del>employer or</del></p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez</p>	Disagree. Labor Code section 3726 exempts self-insured employers and those employees and agents specified by the self-insured employers to administer the employer’s workers’	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><del>third party</del> claims administrator that contracted with the utilization review organization and whose utilization review process was assessed with a penalty pursuant to section 9792.12, <del>and any insurer whose utilization review process was assessed with a penalty pursuant to section 9792.12.</del></p> <p>(3) For claims administrators: the notice must be served on any <del>self insured employer and any insurer</del> whose utilization review process was assessed with a penalty pursuant to section 9792.12.</p> <p><b>Discussion</b> The third Notice of Modification to Text of Proposed Regulations dated March 8, 2007, notes on page 4 that “the sentence stating the final report shall not contain any identifiable information has been deleted” and that “the final report, which will be presented to the investigation subject, will contain identifiable information.” Labor Code section 3762(c) prohibits claims administrators and their agents from disclosing any medical information about an injured employee, with certain exceptions, to an employer. If the final investigation report includes covered medical information, the requirement to serve it on an employer should be removed as recommended. The definition of medical information in Civil Code section 56.05(g) is broad and includes treatment requested, but not provided.</p> <p>Treatment requested, but not provided, falls under the medical information definition, but not under the section 3762(c) exceptions. In</p>	<p>Claims &amp; Medical Director California Workers’ Compensation Institute March 23, 2007 Written Comment</p>	<p>compensation claims. The employers who contract with the UROs or claims administrators for UR services are self-insured employers who have employees and agents who administer the workers’ compensation claims. They are entitled to the final report information, including medical information.</p>	

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	other words, claims administrators are prohibited from disclosing that information to employers.			
Section 9792.11(i) deleted	<p>Commenter recommends that we delete the wording “upon request” as it appears to be a clerical error.</p> <p><del>(i)(b) Any claims administrator, utilization review organization or other person performing utilization review services for an employer, that possesses or is able to obtain the employer’s current legal name, address and phone number, shall provide this information to the Administrative Director, or his or her designee, the current legal name, address, and phone number of the employer, upon request.</del></p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute March 23, 2007 Written Comment</p>	Agree.	“Upon request” will be deleted.
Section 9792.12(a)(8)	Commenter recommends that we delete (5).	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute March 23, 2007 Written Comment</p>	Agree.	The “(5)” will be deleted.
<p>Section 9792.15(d)</p> <p>Section 9792.15(f)</p> <p>Section 9792.15(u)</p>	<p>Commenter points out that there should be a colon added after “Re.”</p> <p>Commenter points out that the “c” in “cause” should be capitalized.</p> <p>Commenter points out that the “(t)” should be deleted.</p>	<p>Michael McClain General Counsel &amp; Vice President</p> <p>Brenda Ramirez Claims &amp; Medical Director California Workers’ Compensation Institute</p>	Agree to make all of the listed corrections.	All of the listed corrections will be made.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 3 <sup>rd</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 9792.15(v)	Commenter points out that the “(u)” should be deleted.	March 23, 2007 Written Comment		
Section 9792.15(w)	Commenter points out that the “(v)” should be deleted.			
Section 9792.15(x)	Commenter points out that the “(w)” should be deleted.			
Section 9792.15(y)	Commenter points out that the “(x)” should be deleted.			
General Comment	Commenter has reviewed the proposed regulations and feels that they are manageable. Commenter doesn't like the penalty amounts or the prospect of another audit, but feels that the regulations have improved significantly since the first iteration.	Tina Coakley Legislative & Regulatory Analyst The Boeing Company March 24, 2007 Written Comment	Agree that no revisions are necessary except for those noted in this chart.	The changes noted through out this chart will be made.