

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter concurs with the amendments as written.	Tina Coakley Legislative & Regulatory Analyst The Boeing Company April 2, 2007 Written Comment	Agree.	None.
Section 9792.11(c)(1)(b)	Regarding performance rating, this section requires the audited entity to obtain a score of 85% or higher to avoid a return audit and to avoid imposition of penalties. For routine claims audits covered under sections 129 and 129.5, the performance standard is 80%. Commenter opines that this disparity implies that the correct handling of utilization review requests is more important than the timely provision of benefit checks and notices. <u>Commenter states that the choice of the 85% standard has not been explained, and there is certainly no legislative requirement in place to mandate a higher standard. Commenter opines that the scoring should be changed to 80% to be consistent with other audit functions.</u>	Philip M. Vermeulen Legislative Advocate Governmental Relations April 5, 2007 Written Comment	Disagree. Changing the performance rating to 80% would not be the equivalent to the audit performance rating. The audit performance rating 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. The PAR standard for 2007 is 1.83201 and the FCA standard is 2.21982. Profile audit review audits (PAR audits) commencing after January 1, 2007 use the new standards.” For the UR investigation, there is no history and therefore, it is not	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			possible to do a similar ranking and pass rate. 85% was chosen to allow claims administrators and UROs some margin of error, but still requiring substantial compliance with the UR timeframes and requirement.	
Section 9792.11(e)	<p>Commenter points out that a Complaint Form has been made available for parties to file a complaint when they feel a violation has occurred. Commenter believes that this presents an opportunity for parties to file complaints with impunity, since there are <u>no consequences attached for specious or unmerited filings.</u> Commenter opines that this will produce a tremendous administrative burden for the State as well as the regulated community. <u>In order to avoid what promises to be a tangled mess, commenter requests that language should be added clearly indicating that filing a specious or false complaint will be subject to the statutes regarding Workers' Compensation fraud prosecution.</u></p> <p>Commenter objects to the fact that the Complaint Form appeared on the Division's website without any public discussion regarding the merits of the form and he believes that benefit notices used in providing benefits to injured workers are subject to the regulatory process before adoption. <u>Commenter states that the Complaint Form should be subject to the same scrutiny.</u></p>	Philip M. Vermeulen Legislative Advocate Governmental Relations April 5, 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. It is not necessary to include any fraud language to the form. The investigating unit will confirm/investigate the allegations in the complaint to determine if it is credible prior to proceeding with a investigation. Also, as set forth in 9792.11(q), upon initiating an investigation based on a complaint, a copy of the complaint or the information contained in the complaint will be forwarded to the investigation subject who shall have ten days to respond.	None.
Section 9792.12(a)(8)	This section requires a non-medical reviewer to have a written amended request for	Philip M. Vermeulen Legislative Advocate	Disagree. Labor Code section 4610(e) provides that no person other	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>treatment when the original request has been withdrawn. Failure to possess the request results in a \$1,000 fine. Commenter fears that in order to avoid the fine, the reviewer will be forced to take no action on an amended request until they receive the <u>written</u> amended request. Typically, this function has been handled telephonically and has resulted in many mutual agreements regarding treatment. Commenter believes that this section of the proposed regulations will have the unintended consequence of further delaying approvals for treatment, which works directly against the intended goals that were the genesis of these enforcement regulations.</p> <p>Commenter opines that penalizing the reviewer for the intransigence of the requesting physician penalizes the injured worker as well, delaying the timely provision of medical treatment. Commenter strongly contends that a fine of \$1,000 for failure to possess a piece of paper is clearly excessive. Commenter states that this section should be eliminated altogether.</p>	<p>Governmental Relations April 5, 2007 Written Comment</p>	<p>than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve. 8 CCR 9792.6(o) defines a "request for authorization" as a written confirmation of an oral request. In order to comply with these requirements, it is necessary for the non-physician review to obtain a written amended request. Without it, it will appear that the non-physician reviewer has modified the original request for authorization, which would be a UR violation. Nonetheless, the section is written to allow the written amended request to be sent after the verbal agreement was given.</p>	
Section 9792.11(o)	<p>This section provides that, <i>except in cases involving concurrent or expedited review</i>, if the deadline to perform any UR act falls on a weekend or holiday, it may be performed on the first normal business day after the weekend or holiday. Commenter recognizes the importance of expediting treatment where an employee faces an imminent threat or during an inpatient stay. However, by excluding concurrent and expedited reviews, commenter believes that inconsistency may be created with other Government and Civil</p>	<p>Jose Ruiz Claims Operations Manager State Compensation Insurance Fund April 5, 2007 Written Comment</p>	<p>Disagree. Pursuant to the UR regulations, decisions regarding concurrent review must be made within 5 working days (9792.9(b)(1) and expedited review must be made within 72 hours (9792.9(e)). These are situations where the injured worker is either in the hospital or facing imminent and serious threat to his health. The timelines are strict and must be met. There is no allowance for additional days due to</p>	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Code sections and could result in automatic violations.		holidays or weekends.	
Section 9792.11(v)	This section requires the claims administrator or UR organization to provide a copy of the final report to the employer. Commenter recommends outlining the contents of the report to ensure that any medical information is excluded pursuant to LC §3762.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund April 5, 2007 Written Comment	Disagree the regulations need to be revised. The final report, which will be prepared by the investigating unit is described in Section 9792.15(b)(2). It shall consist of the notice of UR penalty assessment, the performance rating, and may include one or more requests for documentation or compliance.	None.
Section 9792.14(b)(4) and (5)	These subsections assess a penalty of \$100 or \$50 for each violation listed. Commenter recommends clarifying how the UR timeframes will be calculated for the purposes of assessing these penalties.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund April 5, 2007 Written Comment	Disagree. Some of the subdivisions deal with time frames, others deal with failure to notify all of the parties, failure to document efforts to obtain information, failure to include required elements of a notice. However, those that do relate to a time frame either state the number of days or refer to the UR regulation upon which it is based.	None.
Complaint Form	Commenter opines that the UR complaint form is an essential part of the investigation process since it may initiate an investigation. Commenter states that the form should include a signature line for the individual to attest that the information provided is true and correct to the best of their knowledge.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund April 5, 2007 Written Comment	Disagree. The form is not part of the scope of the regulations, as it is not a mandatory form. Also, the form is designed to allow it to be downloaded and e-mailed to the division, which would not be possible if a signature were required.	None.
Section 9792.11(c)(1)(B)(1)	Commenter strongly opposes the proposed language as written. Commenter disagrees with the proposed extension of time for which a “return target investigation shall be conducted” from less than one year to “within 18 months following the date of any previous investigation.”	Joseph L. Dunn Executive Vice President California Medical Association April 5, 2007 Written Comment	Disagree. The change to the “within 18 month time frame” was to allow more flexibility in scheduling the return audits, particularly during the winter holiday season. If it is determined that the investigation unit should return in less than 18 months, the	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Additionally, commenter opposes the proposed additional condition that a return target investigation be tied to a performance standard rating of less than 85%.</p> <p>Commenter urges the Division to conduct return target investigations within one year of the finding of previous violation(s) irrespective of any performance rating. In the event the Division disagrees with his recommendation to remove reference to the previous performance rating, commenter strongly recommends that the standard be not less than 95% of the calculation methodology.</p>		<p>wording will allow a more rapid return date. As it was worded before, a return investigation could not be conducted until one year had passed.</p> <p>Disagree. The condition that a return target audit will be tied to a performance rating of less than 85% was introduced in the previous revision. The types of violations in the (b) penalty section (for which the 85% performance rating is determined) are lesser violations dealing with timeliness, notice content and service. In order to allow a margin of error but still expect good UR handling, if the claims administrator or URO meets the 85% performance rating standard, it does not have to pay the penalties and a return investigation is not required. This is similar to how the PAR audit works under Labor Code section 129.5. They will be investigated again in 3 years if they are a URO or within 5 years if they are a claims administrator. We believe a 95% standard is too high, but are willing to revisit these standards after the UR penalty investigations begin.</p>	None.
Section 9792.11(c)(1)(B)(2)	Commenter strongly supports this provision and is pleased that the Division has proposed a Utilization Review Complaint Form but is concerned that the regulations are silent on the process once a complaint has been filed with the Division. Commenter believes that the	Joseph L. Dunn Executive Vice President California Medical Association April 5, 2007 Written Comment	Disagree. The complaint form is not part of these regulations as it is not mandatory. Reference is made to it so that the public will know how and to whom to make a complaint. However, any and all complaints,	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Division’s internal complaint policy and procedures should be included in these regulations.</p> <p>Commenter states that at minimum the policy and procedure should include: (1) acknowledgement of receipt of complaint; (2) tracking and/or document numbers so that the physician and or injured worker may more easily follow-up on the status of the complaint; and (3) be notified of any action taken by the Division.</p>		<p>written or oral, will be accepted by the division. The investigating unit will confirm/investigate the allegations in the complaint to determine if it is credible prior to proceeding with an investigation (section 9792.11(c)). Also, as set forth in 9792.11(q), upon initiating an investigation based on a complaint, a copy of the complaint or the information contained in the complaint will be forwarded to the investigation subject who shall have ten days to respond. We disagree that the internal tracking of the complaints needs to be set forth in the regulations.</p>	
Section 9792.12(a)(6)	<p>Commenter believes that only a licensed health care professional who is competent to evaluate the specific clinical issues involved may deny or modify requests for authorization, when based on medical necessity.</p> <p>Commenter requests that the Division include the following language in this section: “<u>and professional competence of the reviewer who made the decision.</u>”</p>	Joseph L. Dunn Executive Vice President California Medical Association April 5, 2007 Written Comment	Disagree. Determining the professional competence of the reviewer will require more than review of the documents provided. For example, a deposition may be required. Because of the time and resources that would be required, the division has chosen not to include “professional competency” for purposes of the UR penalties.	None.
Section 9792.12(b)(4)(A) – stricken language	<p>Commenter opines that failure to report the medical criteria or guidelines relied on to delay, deny or otherwise modify treatment requests is crucial for several reasons notwithstanding that this provision is required under the UR standards: (1) Physicians must know and understand the basis of a decision; (2) The ability to verify the criteria or guidelines relied upon were accurately</p>	Joseph L. Dunn Executive Vice President California Medical Association April 5, 2007 Written Comment	Disagree. This subdivision was deleted in the prior revision. The requirement to provide a description of the medical criteria or guidelines used when modifying, denying or delaying a request for authorization is required by section 9792.0 (j) and is included in the UR penalty regulation section 9792.12(b)(4)(E).	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>applied; and (3) necessary to form the basis of an appeal.</p> <p>Commenter requests that the Division reinstate this provision with deletion of the term "maximum."</p>		The deleted subdivision would have been duplicative of this subdivision.	
Section 9792.12(a)(12), (13) and (14)	<p>Commenter continues to object to the proposed penalties for these subdivisions relating to the failure to respond to the treating physician's request for authorization. Commenter opines that these requirements are critically important for the protection and wellbeing of the injured worker. Commenter believes the proposed penalties for these sections are woefully inadequate and will have not significant affect as a deterrent as currently written.</p>	<p>Joseph L. Dunn Executive Vice President California Medical Association April 5, 2007 Written Comment</p>	<p>Disagree. These penalty amounts were introduced in the previous revision. The failure to respond to a request for an expedited review remains at \$15,000 (9792.12(a)(9)). The penalties for the concurrent requests, prospective requests and retrospective requests are now \$2,000, \$1,000, and \$500. Although the non-expedited requests for authorization are also important, the potential harm is less severe, as there is time for the physician to contact the claims administrator or URO if no response is received. Further, claims administrators and UROs have commented that often the request for authorization is not well marked and therefore inadvertently missed, as there is no specific form required for requests for authorizations. Finally, this penalty is not for failure to pay for the treatment, which in many cases occurs even though there was a failure to approve the request as required by the UR statute and regulations. Therefore, the penalty may be imposed even if the treatment was received and paid for.</p>	None.
General Comment	Commenter requests that the Division post the	Joseph L. Dunn	Agree. As stated in section	None.

UTILIZATION REVIEW STANDARDS	RULEMAKING COMMENTS 4 th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	following information on its website: (1) the name of the insurance carrier, claims administrator, utilization review company; (2) type of violation; (3) number of violations; and (4) dollar amount of penalties imposed.	Executive Vice President California Medical Association April 5, 2007 Written Comment	9792.12(b)(6), the AD “shall post the performance rating and summary of violations for each utilization review investigation.” This will include the name of the investigation subject (the URO or claims administrator), the types of violations, the number of violations and the dollar amount of penalties.	