

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

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS  
(Adoption of Emergency Regulations)

Workers' Compensation – Independent Medical Review

TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 9768.1 – 9768.17

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9768.1	Definitions
Section 9768.3	Qualifications of Independent Medical Reviewers.
Section 9768.4	IMR Contract Application Procedures
Section 9768.5	Physician Contract Application Form
Section 9768.6	Administrative Director's Action on Contract Application Submitted by Physician
Section 9768.8	Removal of Physicians from Independent Medical Reviewer List
Section 9768.9	Procedure for Requesting an Independent Medical Review
Section 9768.10	Independent Medical Review Application (Form)
Section 9768.11	In-Person Examination or Record Review IMR Procedure
Section 9768.12	Contents of Independent Medical Review Reports
Section 9768.14	Retention of Records by Independent Medical Reviewer
Section 9768.15	Charges for Independent Medical Reviewers
Section 9768.16	Adoption of Decision

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Kathleen Llemos, 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 Thursday, April 14, 2005**. 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](mailto:dwcrules@hq.dir.ca.gov).

## AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and 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 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Kathleen Llemos, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 9768.1	Definitions
Section 9768.3	Qualifications of Independent Medical Reviewers.
Section 9768.4	IMR Contract Application Procedures
Section 9768.5	Physician Contract Application Form
Section 9768.6	Administrative Director's Action on Contract Application Submitted by Physician
Section 9768.8	Removal of Physicians from Independent Medical Reviewer List
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Section 9768.16	Adoption of Decision

## DOCUMENTS SUPPORTING THE RULEMAKING FILE

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

## FORMAT OF PROPOSED MODIFICATIONS

### Proposed Text Noticed for 45-Day Comment Period:

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

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

Deletions from the regulatory text, as proposed in January 2005, are indicated by double strike-through, thus: ~~~~deleted language~~~~.

Additions to the regulatory text, as proposed in January 2005, are indicated by a double underline, thus: added language.

## **SUMMARY OF PROPOSED CHANGES**

### **1. Modifications to section 9768.1 Definitions.**

Subdivision (a)(10) is added to provide a definition of “panel,” which is a term used in section 9768.9 and Labor Code 4616.4. Subdivision (a)(11) is added to provide a definition of “relevant medical records,” which is a term used in sections 9768.10 and 9768.11. The definitions are provided to ensure that their meaning, as used in the regulations, will be clear to the public. The former number “(10)” is renumbered as “(12).” The phrases “Independent Medical Review” and “Independent Medical Reviewer” are capitalized throughout the section for consistency.

### **2. Modifications to section 9768.3 Qualifications of Independent Medical Reviewers.**

The phrase “Independent Medical Reviewers” is capitalized for consistency with the other sections.

### **3. Modifications to section 9768.4 IMR Contract Application Procedures.**

The phrases “Independent Medical Review” and “Independent Medical Reviewer” are capitalized for consistency with the other sections.

### **4. Modifications to section 9768.5 Physician Contract Application Form.**

The font of the last sentence of the first paragraph in Block 4 (page two of the contract) is changed to bold in order to make it more visible to the physicians. In Block 6 (page three of the contract), the following sentence is added: “If the answer is “NO”, please furnish full particulars on a separate sheet.” This will allow the physicians to clarify the response to the question. In the verification section, the following sentence is added: “I understand that I must maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law.” This sentence is added to ensure that the physicians maintain the confidentiality of the medical records as required by Labor Code section 4616.4. On page five of the contract, additional specialty codes were added in order to provide additional information to assist the Administrative Director when selecting the appropriate specialty for the injured worker. The phrases “Independent Medical Review” and “Independent Medical Reviewer” are capitalized for consistency.

### **5. Modifications to section 9768.6 Administrative Director’s Action on Contract Application Submitted by Physician.**

The phrases “Independent Medical Reviewer” and “Independent Medical Reviewers” are capitalized for consistency with the other sections.

### **6. Modifications to section 9768.8 Removal of Physicians from Independent Medical Reviewer List.**

This section provides that the Administrative Director may cancel the IMR contract and remove a physician from the independent medical reviewer list if the Administrative Director determines that the physician has failed to meet certain requirements. An additional requirement is added as subdivision (a)(5): “That the physician has failed to maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law.” This section was added because Labor Code section 4616.4(a)(3)(D) requires the Administrative Director ensure that the independent medical reviewer ensures the confidentiality of medical records and the review materials, consistent with the requirements of the section and applicable

state and federal law. An “or” is added to subdivision (a)(4). The phrases “Independent Medical Review” and “Independent Medical Reviewer” are capitalized for consistency.

#### **7. Modifications to section 9768.9 Procedure for Requesting an Independent Medical Review.**

Subdivision (a) is amended to include a comma after the word “Additionally,” and to capitalize “Section.” Subdivisions (d) and (e) are amended by striking the word “list” and adding the word “panel” in order to comply with the statutory language of Labor Code section 4616.4(a)(3)(C).

Through the section, the phrases “Independent Medical Reviewer” and “Independent Medical Reviewers” are capitalized for consistency.

Subdivision (j) is also amended to state: “During this process, the employee shall remain within the MPN for treatment pursuant to section 9767.6.” This change was made to clarify that during the IMR process, any treatment received by the employee must be from MPN providers.

#### **8. Modifications to section 9768.10 Independent Medical Review Application (Form).**

The date at the top of the form is changed to 4/30/05. The phrase “or additional materials, such as medical records,” is added to the employee section of the form to inform the employee that he or she may send additional materials to the IMR. “And treatment information” is replaced by the word “records” as “relevant medical records” is now defined in the definitions to include all the records that the MPN Contact is required to send to the IMR.

The instructions for the application form is revised to instruct the MPN Contact to send the employee’s “relevant medical records as defined by section 9768.1(a)(11).” This change is consistent with the employee’s release and section 9768.11.

Two specialty codes are changed. “MTO” is changed to “MTX” because “MTO” was listed for two different specialty codes. “MHA” is changed to “MHD” because “MHA” was listed twice.

The phrases “Independent Medical Review” and “Independent Medical Reviewer” is capitalized throughout the section for consistency.

#### **9. Modifications to section 9768.11 In-Person Examination or Record Review IMR Procedure.**

Subdivision (a) is revised to require the MPN Contact to send the IMR all relevant medical records. The language describing which documents must be included is stricken as the term “relevant medical records” is now defined in section 9768.1(a)(11) to include the documents described in Labor Code section 4616.4 and the additional documents previously listed in this section. The phrase “Independent Medical Reviewer” is capitalized for consistency.

The phrase “or additional materials” is added to subdivision (a) to allow the employee to send additional materials to the IMR.

In subdivisions (j) and (k), the phrase “Independent Medical Review” is capitalized for consistency.

#### **10. Modifications to section 9768.12 Contents of Independent Medical Review Reports.**

The phrases “Independent Medical Review” and “Independent Medical Reviews” are capitalized for consistency.

**11. Modifications to section 9768.14 Retention of Records by Independent Medical Reviewer.**

The phrase “Independent Medical Review” is capitalized for consistency.

**12. Modifications to section 9768.15 Charges for Independent Medical Reviewers.**

The phrase “Independent Medical Review” is capitalized for consistency.

**13. Modifications to section 9768.16 Adoption of Decision.**

The phrase “Independent Medical Reviewer” is capitalized for consistency.