

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

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Independent Medical Review**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 9768.1 – 9768.17**

Section 9768.1	Definitions
Section 9768.2	Conflicts of Interest
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 9768.7	IMR Request to Be Placed on Voluntary Inactive Status
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 9768.13	Destruction of Records by the Administrative Director
Section 9768.14	Retention of Records by Independent Medical Reviewer
Section 9768.15	Charges for Independent Medical Reviewers
Section 9768.16	Adoption of Decision
Section 9786.17	Treatment Outside the Medical Provider Network

**BACKGROUND TO REGULATORY PROCEEDING**

In response to the State's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included several provisions designated to control workers' compensation costs including Labor Code section 4616 et seq. which provides for the implementation of medical provider networks. These regulations concern the mandatory independent medical review component of the medical provider network program authorized by Labor Code section 4616.4. The regulations define the terms used in the controlling statute, set forth the required qualifications to serve as an independent medical reviewer ("IMR"), clarify the contract application procedure, provide the required forms for the IMR contract application and the injured employee's application to request independent medical review, clarify the procedure to request an independent medical review, provide the procedures for an in-person examination or record review, set forth the required contents of the independent medical review reports, set forth the fees for the IMR services, and provide the procedure concerning the adoption of the IMR determination.

## **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Division relied upon:

(1) The Commission on Health and Safety and Workers' Compensation, Workers' Compensation Medical Care in California: Costs, Fact Sheet Number 2, August 2003: [http://www.dir.ca.gov/chswc/WC\\_factSheets/WorkersCompFSCost.pdf](http://www.dir.ca.gov/chswc/WC_factSheets/WorkersCompFSCost.pdf)); and

(2) Outline: Estimating the Range of Savings from Introduction of Guidelines Including ACOEM (Revised), Frank Neuhauser, UC DATA/Survey Research Center, University of California, Berkeley, October 20, 2003: <http://www.dir.ca.gov/chswc/EstimatingRangeSavingsGuidelinesACOEM.doc>).

(3) Consultation letter from Warren Barnes of Department of Managed Health Care dated December 10, 2004.

(4) Consultation e-mail from Tom O'Connor of the Board of Psychology dated December 21, 2004.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

None of the proposed regulations mandates the use of specific technologies or equipment.

## **FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

The Division made an initial determination that these regulations will not have a significant adverse effect on business. The medical provider networks are expected to result in a savings for the self-insured employers and insurers. The self-insured employers and insurers are not required to provide a medical provider network, but may choose to as the medical provider networks are intended to reduce medical costs. These regulations provide for an independent medical review process for employees covered by a MPN. It is anticipated that there will be very few requests for an IMR. The cost associated with proving notice to the employees regarding the IMR process and assisting the employee in arranging for the IMR is minimal and offset the substantial savings in medical treatment.

## **Section 9768.1        Definitions**

### Specific Purpose of Section 9768.1:

Section 9768.1 lists and defines the terms used in these regulations. The purpose of the definitions is to implement, interpret, and make specific Labor Code section 4616.4 and to ensure that the meanings of the terms are clearly understood by the regulated community.

### Necessity:

It is necessary to define each of the key terms used in the Independent Medical Provider Regulations to ensure that the content and meaning of the regulations are clearly understood by the workers' compensation community.

### Consideration of Alternatives:

No more effective alternative to any of the definitions, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.2        Conflicts of Interest**

### Specific Purpose of Section 9768.2:

Labor Code section 4616.4 requires the Administrative Director to ensure that the IMR physicians are independent and that there is adequate screening for conflicts of interest. The purpose of this section is to set forth the prohibited conflicts of interest for an independent medical reviewer to comply with the statute and to ensure that the IMR physician is independent and unbiased.

### Necessity:

Because a physician may not serve as an IMR in a case where he or she has a conflict of interest, it is necessary for the physicians, employees and MPN Contacts to know what constitutes a conflict of interest. The physicians need to be aware of the prohibited conflicts in order to complete the "Physician Contract Application," and the IMR, employee, and/or MPN Contact must also know what constitutes a conflict at the time the IMR is chosen by the Administrative Director so that the party may object to the appointment, if applicable.

### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

### **Section 9768.3           Qualifications of Independent Medical Reviewers**

#### Specific Purpose of Section 9768.3:

This purpose of this section is to set forth minimum qualifications to qualify to be on the Administrative Director's list of IMRs. The listed qualifications comply with Labor Code section 4616.4.

#### Necessity:

This section is necessary so that a physician who wishes to serve as an IMR knows whether or not he or she is qualified to be on the Administrative Director's list of IMRs.

#### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

### **Section 9768.4           IMR Contract Application Procedures**

#### Specific Purpose of Section 9768.4:

The purpose of this section is to set forth the procedure and requirements for applying to serve as an IMR. The section also sets forth the reasons why the contract application may be rejected and that the contract has a two year limit.

#### Necessity:

This section is necessary because physicians who wish to apply to serve as IMRs need to know how to apply to the Administrative Director in order to be placed on the list of physicians who will be chosen to serve as IMRs.

#### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

### **Section 9768.5           Physician Contract Application Form**

#### Specific Purpose of Section 9768.5:

This purpose of this section is to provide the mandatory contract form that may be completed by the physician who wishes to serve as an IMR and accepted by the Administrative Director.

Necessity:

In order to comply with Labor Code section 4616.4, the Administrative Director must contract with the individual physicians. This section is the form contract which requires the physician to provide the information necessary for the Administrative Director to determine if the physician is qualified to serve as an IMR.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.6            Administrative Director's Action on Contract Application Submitted by Physician**

Specific Purpose of Section 9768.6:

The purpose of this section is to set forth the procedure regarding the Administrative Director's actions once the physician has submitted the contract application and to set forth the physician's remedies if the contract is not accepted.

Necessity:

This section is necessary to ensure that physicians' due process rights are protected.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.7            IMR Request to Be Placed on Voluntary Inactive Status**

Specific Purpose of Section 9768.7:

The purpose of this section is to allow a physician to request to be placed on voluntary inactive status. An IMR is required to agree to see any injured employee assigned to him or her within 30 days unless there is a conflict of interest. However, there may be periods of time in which an IMR is not available to see injured employees. Therefore, this section will allow the IMR to be placed on voluntary inactive status and no injured employees will be assigned to the IMR during the voluntary inactive status period.

Necessity:

It is necessary that the IMR be allowed to be placed on voluntary inactive status as that status will alert the Administrative Director that the IMR is not available to accept any independent medical review assignments. If the IMR was not allowed to be placed on

voluntary inactive status, the IMR would be breaching his or her agreement to see an assigned injured worker if the IMR was on vacation or otherwise unavailable.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.8            Removal of Physicians from Independent Medical Review List**

Specific Purpose of Section 9768.8:

The purpose of this section is to set forth the mandatory and discretionary bases for removing a physician from the IMR list. The section also sets forth the physicians remedies if he or she is placed on the inactive list.

Necessity:

In order to comply with Labor Code section 4616.4, it is necessary to remove physicians from the IMR list when they are not performing the required duties, no longer have the required qualifications or made a material statement on the application that was untrue. The section also lists the physician's remedies, which is necessary to ensure that physicians' due process rights are protected.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.9            Procedure for Requesting an Independent Medical Review**

Specific Purpose of Section 9768.9:

The purpose of this section is to set forth the procedure that an injured employee must follow to request an independent medical review. The section also imposes requirements on the injured employee, the MPN Contact and the Administrative Director regarding completing the "Independent Medical Review Application" form and arranging the in-person exam or record review with the IMR. Additionally, the purpose of this section is to ensure that the IMR is randomly selected, is within thirty miles of the employee's residence address (for an in-person exam, if possible), and practices an appropriate specialty. The purpose of the imposed time limits are to ensure that the injured employee arranges an appointment with the IMR within 60 days and the IMR schedules the appointment within 30 days. The procedure also provides that the parties may object to the IMR if there is a conflict of interest.

Necessity:

This section is necessary because the Administrative Director needs the information contained on the “Independent Medical Review Application” in order to choose an IMR with the appropriate specialty, who does not have a conflict of interest, and who is located within 30 miles of the injured employee’s residence, if possible. The time frames are necessary to ensure that the process is completed in a timely manner. The information requested by the form is necessary so that the IMR will be able to review the disputed diagnosis, diagnostic service and/or medical treatment. The notification of the name and contact information of the IMR must be sent to the parties so they may contact the IMR to arrange the exam and so that they will have an opportunity to object to the IMR, if necessary.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.10 Independent Medical Review Application (Form)**

Specific Purpose of Section 9768.10:

The purpose of this section is to comply with Labor Code section 4616.4(c), which requires that the Administrative Director provide a one-page form for the employee to request an independent medical review. The form must contain a signed release authorizing the release of medical and treatment information. The purpose of the form is to provide the Administrative Director with the information needed to select an IMR with an appropriate specialty and with whom no conflict of interest exists. The purpose of the form is also to provide the injured employee’s medical information to the IMR, to list the reason for the request for an independent medical review, and to provide information so that the IMR can determine if a conflict of interest exists.

Necessity:

This section is necessary because the Administrative Director needs the information contained on the “Independent Medical Review Application” in order to choose an IMR with the appropriate specialty, who does not have a conflict of interest, and who is located within 30 miles of the injured employee’s residence, if possible. The information provided with the form is necessary so that the IMR will be able to determine if he or she has a conflict of interest and if he or she practices the appropriate specialty. The information requested on the form is also necessary so that the IMR will be able to determine the reason for the request for an independent medical review.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.11 In-Person Examination or Record Review IMR Procedure**

### Specific Purpose of Section 9768.11:

The purpose of this section is to ensure that the IMR is sent the relevant medical records by the MPN Contact, and to ensure the MPN Contact arranges for transportation and an interpreter, if necessary. The purpose of this section is also to require the IMR to apply the appropriate medical treatment utilization schedule or ACOEM guidelines. The due date for the IMR report is set forth in this section and the bases for an extension for good cause are listed.

### Necessity:

It is necessary for the IMR to be sent the medical records so that the IMR may review the records prior to completing his or her examination and report. In order to prevent the unnecessary ordering of tests, it is necessary to require the IMR to provide justification for a duplicative test. It is also necessary that the IMR apply the appropriate medical treatment utilization schedule if adopted by the Administrative Director, or if not yet adopted, the ACOEM guidelines. The 20 day requirement to issue the report is necessary to ensure a timely report. Finally, it is necessary that the IMR be informed that neither the employee, nor the employer, nor the insurer has any liability for payment for an independent medical review if it was not completed within the required timeframes.

### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.12 Contents of Independent Medical Review Reports**

### Specific Purpose of Section 9768.12:

The purpose of this section is to set forth the required contents of an independent medical review report.

### Necessity:

It is necessary that the IMR prepare the independent medical report in the required manner so that the report is accurate and the disputed issue is addressed in a way that allows the injured employee and insurer or employer to understand the report. By complying with the requirements of this section, the report will allow the injured employee to understand whether the disputed health care service was consistent with the recommended standards set forth in the medical treatment utilization schedule established pursuant to Labor Code section 5307.27, or prior to the adoption of the schedule, pursuant to the ACOEM guidelines. This finding will determine whether the injured employee must continue to treat within the MPN or if he or she will be able to choose a physician from outside the MPN.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.13      Destruction of Records by the Administrative Director**

Specific Purpose of Section 9768.13:

The purpose of this section is to allow the Administrative Director to destroy documents submitted to the Administrative Director as part of the IMR process two years after the date of receipt. The documents submitted to the Administrative Director will include the Independent Medical Review Applications and the IMR reports.

Necessity:

This section is necessary: (1) to allow the Administrative Director to monitor the IRM process and (2) to inform the public that after two years, the Administrative Director will destroy documents that were submitted as part of the IMR process. It is necessary to destroy the documents because the Administrative Director's office has limited storage capacity and the IRM and the parties will have copies of these documents.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 9768.14      Retention of Records by Independent Medical Reviewer**

Specific Purpose of Section 9768.14:

The purpose of this section is to allow the IMR to destroy all comprehensive medical reports completed by the IMR five years after the date of the IMR report.

Necessity:

It is necessary for the IMR to retain the report for a period of five years in case an additional dispute arises concerning the report or the injured employee's medical condition. However, the IMR is not required to keep the report beyond that time because the parties will have copies of the reports.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.15 Charges for Independent Medical Reviewers**

### Specific Purpose of Section 9768.15:

The purpose of this section is to set forth the fee that the IMR will receive.

### Necessity:

It is necessary to state that the fee is based on the Official Medical Fee Schedule in order to prevent disputes regarding the appropriate fee that should be paid to the IMR. It is also necessary to prevent the IMR from receiving any additional fee (except for services to treat a medical emergency that arose during an in-person exam) in order to prevent impropriety or the appearance of impropriety on the part of the IMR.

### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.16 Adoption of Decision**

### Specific Purpose of Section 9768.16:

The purpose of this section is to define the statutory requirement in Labor Code section 4616.4(h) to “promptly” issue a written decision to the parties as a period of time of “within 5 business days of receipt of the report.” This section also provides an appeal procedure to the parties.

### Necessity:

It is necessary for the public to know when to expect the issuance of the written decision of the adoption of the IMR determination. It is also necessary for the parties to have a remedy if they disagree with the Administrative Director’s decision regarding the adoption of the determination.

### Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

## **Section 9768.17 Treatment Outside the Medical Provider Network**

### Specific Purpose of Section 9768.17:

The purpose of this section is to inform the parties of the effect of the IMR’s determination with regard to continued medical treatment and the extent of the treatment

if the covered employee chooses to receive medical treatment from a physician outside the MPN.

Necessity:

It is necessary to inform the public when the covered employee must continue to receive medical treatment from physicians within the MPN and when the covered employee may seek treatment with a physician of his or her choice either within or outside the MPN in order to avoid disputes regarding medical care.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.