

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

FINAL STATEMENT OF REASONS

Subject Matter:

WORKERS' COMPENSATION –PRIMARY TREATING PHYSICIAN REPORTING REQUIREMENTS; PETITION FOR CHANGE OF PRIMARY TREATING PHYSICIAN

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9785, 9785.2, 9785.3, 9786, AND 9787.

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 133, 139.5, and 5307.3 and Government Code Section 11346.8(c), has adopted following amendments to Title 8, California Code of Regulations:

Amended Section 9785	Reporting Duties of the Primary Treating Physician
Amended Section 9785.2	Form PR-2 "Primary Treating Physician's Progress Report"
Amended Section 9785.3	Form PR-3 "Primary Treating Physician's Permanent and Stationary Report"
Amended Section 9786	Petition for Change of Primary Treating Physician
Amended Section 9787	Appeal from Administrative Director's Order Granting or Denying Petition for Change of Primary Treating Physician

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

Pursuant to Government Code Section 11346.9(b), the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director") incorporates the Initial Statement of Reasons and Informative Digest prepared in this matter. There have been no changes to the statutes directly relating to this rulemaking. The proposed regulation changes are summarized below.

The following sections were amended following the public hearing and circulated for a 15-day comment period.

1. Modifications to Section 9785 Reporting Duties of the Primary Treating Physician

A typographical in the heading of the section was corrected to state: “Transfer of Medical Treatment.”

Modifications to Subdivision 9785(a)(1)

Subdivision 9785(a)(1) was modified to delete the word “injured” when referring to the term “employee.” The modification was in response to comments that, for consistency purposes, the word “injured” should be deleted from this subdivision when referring to the term “employee.”

Modifications to Subdivision 9785(a)(4)

Subdivision 9785(a)(4) defining the term “medical determination” was modified in response to comments to include the primary treating physician’s “decision whether to release an employee from care” as part of the definition of “medical determination.”

Modifications to Subdivision 9785(a)(6)

Subdivision 9785(a)(6) defining the term “continuing medical treatment” was modified in response to comments to include the term “occurring” as part of the definition. Thus, the subdivision now defines the term “continuing medical treatment” as “occurring or presently planned treatment that is reasonably required to cure or relieve the employee from the effects of the injury.”

Modifications to Subdivision 9785(a)(7)

Subdivision 9785(a)(7) defining the term “future medical treatment” was modified in response to comments to delete the phrase “not presently planned.” Further, the proposed definition was modified to be consistent with the Labor Code to include the phrase “reasonably required.” Thus, the subdivision now defines “future medical treatment” as treatment “which is anticipated at some time in the future and is reasonably required to cure or relieve the employee from the effects of the injury.”

Modifications to Section 9785(c)

Section 9785(c) was modified in response to comments requesting that the proposed requirement that the primary treating physician provide a copy of the required reports under this section to the employee, or to the employee’s attorney if represented, in addition to the claims administrator be deleted from the proposed regulation.

Modifications Section 9785(d)

Section 9785(d) was modified in response to comments requesting the proposed amendment requiring the primary treating physician to also transmit the required reports to the employee, or to the employee's attorney if represented, by mail or FAX or by any other means satisfactory to the employee or to the employee's attorney be deleted from the proposed regulation.

Modifications to Subdivision 9785(e)(4)

Subdivision (e)(4) was modified in response to comments objecting to the requirement that the primary treating physician be required to "promptly" incorporate, or comment upon, the findings and opinions of secondary physicians in the treating reports be deleted from the proposed regulation.. This subdivision was modified to require that the primary treating physician is required, unless good cause is shown, to incorporate or comment upon, the findings and opinions of secondary physicians in the treating reports within 20 days of receipt of each report.

Further the subdivision was modified in response to comments requesting the requirement that the primary treating physician submit the secondary physicians' reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator be deleted from the proposed regulation.

Modifications to Section 9785(f)

Section 9785(f) was modified after comments objecting to the requirement that the primary treating physician to promptly submit reports when certain enumerated conditions occur be deleted from the proposed regulation. The section was modified to require that the primary treating physician submit these reports, unless good cause is shown, within 20 days when the enumerated conditions occur.

This subsection was further modified to delete the requirement that the primary treating physician submit the required reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator.

Section 9785(g)

Section 9785(g) was modified in response to comments objecting the requirement that the primary treating physician to promptly submit the permanent and stationary report. The section was modified to require that the primary treating physician submit the permanent and stationary report, unless good cause is shown, within 20 days from the date of examination.

This section was further modified in response to comments requesting the requirement that the primary treating physician submit the permanent and stationary report to the employee,

or to the employee's attorney if represented, in addition to the claims administrator be deleted from the proposed regulation.

2. Modifications to Section 9785.3 Primary Treating Physician's Permanent and Stationary Report

Section 9785.3 was modified in response to comments to add a field for the claim number at page one (1) of the DWC Form PR-3. Further, the description of "future medical treatment," as set forth in page four (4) of the DWC Form PR-3, was modified to be consistent with the modified definition of this term in Subdivision 9785(a)(7).

LOCAL MANDATES DETERMINATION

- **Local Mandate:** None. The regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The amendments do not apply to any local agency or school district.
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** The regulations may impose discretionary costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement for employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California
- **Other nondiscretionary costs/savings imposed upon local agencies:** The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private.

CONSIDERATION OF ALTERNATIVES

The Division of Workers' Compensation considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and as less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations:

July 26, 2002 through September 13, 2002.

15-day comment period on modifications to proposed text:

December 18, 2002 through January 6, 2003.

Responses to the comments received during the 45-day comment period on these regulations are found on the chart entitled “Chart of Responses to Comments on Initially Proposed Regulations (45 day Comment Period).” Responses to the comments received during the 15-day comment period on the modified regulations are found on the chart entitled “Chart of Responses to Comments on Modified Regulations” (15 Day Comment Period).