

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

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation
Utilization Review Standards**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9792.6 – 9792.11**

Section 9792.6	Utilization Review Standards—Definitions
Section 9792.7	Utilization Review Standards—Applicability
Section 9792.8	Utilization Review Standards—Medically-Based Criteria
Section 9792.9	Utilization Review Standards—Timeframe, Procedures and Notice Content
Section 9792.10	Utilization Review Standards—Dispute Resolution
Section 9792.11	Utilization Review Standards—Penalties

BACKGROUND TO REGULATORY PROCEEDING

In response to the State's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 228 (Chapter 639, Stats. of 2003, effective January 1, 2004) which adopted several provisions designated to control workers' compensation costs: section 5307.27, requiring the Administrative Director to adopt a medical treatment utilization schedule on or before December 1, 2004; section 4604.5, providing that the medical treatment utilization schedule pursuant to Labor Code section 5307.27 is presumptively correct on the issue of extent and scope of medical treatment, and that until such schedule is adopted the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines), is presumptively correct on the issue of extent and scope of medical treatment; and section 4610, requiring employers to establish and maintain a utilization review process. These regulations set forth the applicability of the utilization review process, set forth the medically-based criteria required for the utilization review process, set forth the timeframe, procedures and notice content with respect to the utilization review requirements, provide clarification and guidance with respect to the dispute resolution process, and set forth the penalties which will be imposed for failure to comply with the requirements of the statute.

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); 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>).

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 Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business. All California employers will be required to establish and maintain a utilization review process through their claims administrator. Many of these employers have some type of utilization review process in place. A small number of these businesses who do not have a utilization review process in place or employers who need to update their utilization review process could experience a minor impact. There will be some small costs related to revising and updating computer systems in connection with the utilization review process/plan, and purchase of the ACOEM Practice Guidelines at the cost of \$195.00 per book. These costs will be offset by savings resulting from controls on overutilization of medical treatment and more effective authorization of medical treatment.

Section 9792.6 Utilization Review Standards—Definitions

Specific Purpose of Section 9792.6:

Section 9792.6 lists and defines the terms used in these regulations. The purpose of the definitions is to implement, interpret, and make specific Labor Code section 4610, and to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

Necessity:

It is necessary to define each of the key terms used in the Utilization Review Standards 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 9792.7 Utilization Review Standards—Applicability

Specific Purpose of Section 9792.7:

The purpose of this section is to set forth the applicability of the utilization review rules. The section informs the claims administrator to establish and maintain a utilization review process for treatment, and sets forth the requirements of the utilization review process/plan. The section further provides that prior to and until the Administrative Director adopts a medical treatment utilization schedule pursuant to Labor Code section 5307.27, the written policies and procedures governing the utilization review process shall be consistent with the recommended standards set forth in the ACOEM Practice Guidelines. The section further requires that the complete utilization review plan be filed by the claims administrator, or by the external utilization review organization contracted by the claims administrator to perform the utilization review, with the Administrative Director, and that it be made available to the public upon request by the public.

Necessity:

It is necessary to set forth who the utilization review rules apply to and to ensure that the process is understood by the claims administrator and public.

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 9792.8 Utilization Review Standards—Medically-Based Criteria

Specific Purpose of Section 9792.8:

The purpose of this section is to set forth the medically-based criteria required in the utilization review process which is to be reflected in the utilization review plan. This section also requires the claims administrator to disclose the criteria in written form to the physician, the provider of goods, if any, the injured worker, and if the injured worker is represented by counsel, the injured worker's attorney, if used as the basis of a decision to

modify, delay, or deny services in a specific case under review. The claims administrator may not charge for a copy of the criteria or guidelines used to modify, delay or deny the treatment request.

Necessity:

This section is necessary so that the claims administrator and the public know the medically-based criteria required in the utilization review process/plan.

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 9792.9 Utilization Review Standards—Timeframe, Procedures and Notice Content

Specific Purpose of Section 9792.9:

The purpose of this section is to set forth the timeframe, procedures and notices required in the utilization review process. It informs the claims administrator that he or she is required to maintain telephone access from 9:00 AM to 5:30 PM Pacific Standard Time, on normal business days, for health care providers to request authorization for medical services. It further provides that every claims administrator shall have a facsimile number available for physicians to request authorization for medical services. It also provides that every claims administrator shall maintain a process to receive communications from health care providers requesting authorization for medical services after business hours. The purpose of this section is to set forth the requirements relating to a written decision modifying, delaying or denying treatment authorization. This section further informs the claims administrator that authorization may not be denied on the basis of lack of information without documentation reflecting an attempt to obtain the necessary information from the physician or from the provider of goods either by facsimile or mail.

Necessity:

This section is necessary to inform the claims administrator and the public of the timeframe, procedures and notices required in the utilization review process.

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 9792.10 Utilization Review Standards—Dispute Resolution

Specific Purpose of Section 9792.10:

The purpose of this section is to set forth the dispute resolution process applicable to utilization review decisions. This section informs the claims administrator and the public that if the request for authorization of medical treatment is not approved, or if the request for authorization for medical treatment is approved in part, any dispute shall be resolved in accordance with Labor Code section 4062. It further informs the claims administrator and the public that the injured worker or the injured worker's attorney may also file an Application for Adjudication of Claim, and a Request for Expedited Hearing, DWC Form 4, and request an expedited hearing and decision on his or her entitlement to medical treatment if the request for medical treatment is not authorized within the time limitations set forth in section 9792.9, or when there exists a bona fide dispute as to entitlement to medical treatment. This section further informs the claims administrator and the public that in the case of concurrent review, medical care cannot be discontinued until the injured worker's physician and provider of goods, if any, has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the injured worker. Further, medical care provided during a concurrent review must be medical treatment that is reasonably required to cure or relieve from the effects of the industrial injury.

Necessity:

This section is necessary to inform the claims administrator and the public of the dispute resolution process applicable to utilization review decisions.

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 9792.11 Utilization Review Standards—Penalties

Specific Purpose of Section 9792.11:

The purpose of this section is to set forth the penalties applicable in the utilization review process. Subdivision (a) is reserved for a Labor Code section 4610 penalty rule. Subdivision (b) provides that the Administrative Director, or his or her delege, may use the audit powers pursuant to Labor Code sections 129 and 129.5 to assess administrative and civil penalties for violations of this Article.

Necessity:

Penalties are necessary to insure compliance with the utilization review regulations.

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.