

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
LEGAL UNIT

1515 Clay Street, Suite 1700  
Oakland, California 94612  
Tel (510) 286 -7100 Fax (510) 286-0687



September 11, 2013

## **NOTIFICATION OF INTENT TO READOPT EMERGENCY REGULATIONS**

Subject: Utilization Review and Independent Medical Review

The Department of Industrial Relations, Division of Workers' Compensation (DWC) proposes to readopt for a second time the emergency regulations that were adopted effective January 1, 2013 (OAL File No. 2012-1219-04E) affecting Utilization Review and implementing Independent Medical Review (IMR). The emergency regulations can be found at Article 5.5.1 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9785, 9785.5, 9792.6, 9792.6.1, 9792.9, 9792.9.1, 9792.10, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, and 9792.10.9, 9792.10, and 9792.12

Pursuant to California Code of Regulations, title 1, section 52(c), DWC is incorporating by reference the rulemaking file, OAL File No. 2012-1219-04E, submitted to the office of Administrative Law on December 19, 2012, for the initial adoption of the emergency regulations.

Pursuant to California Code of Regulations, title 1, section 52(b)(1), DWC has made progress and proceeded with diligence to comply with Government Code section 11346.1(e). On February 15, 2013, the Notice of Proposed Action for the above-described regulations was published in the California Regulatory Notice Register. DWC correspondingly posted all required rulemaking materials on its website and mailed the notice to the DWC interested parties list. On April 4, 2013, DWC conducted an open, regulatory hearing on the proposed utilization review and independent medical review regulations. Since that date, DWC has been meeting with stakeholders, such as utilization review organizations, physician associations, applicant attorneys, and employer/ claims administrators' representatives to discuss various problems and issues that have arisen during the course of the IMR process and the possible substantive changes that will need to be made to the emergency regulations. DWC has further met regularly with its designated Independent Medical Review Organization (IMRO), Maximus Federal Services, to discuss and implement procedures that would improve utilization review procedures (including revisions to the request for authorization form), the IMR application process for injured workers (including revisions to the IMR request form), the submission of relevant documentation by both employees and claims administrators, and the processing of IMR applications by the IMRO to ensure the expeditious issuing of IMR determinations. By the end of September 2013, DWC will modify their proposed final regulations and make the modifications available to the public for a 15-day comment

period.

The IMR program has been in effect since January 1, 2013 for occupational injuries occurring on and after that date; and since July 1, 2013 for all occupational injuries regardless of the date of injury. Prior to July, DWC received approximately 580 IMR applications, which gave DWC staff a measure of insight as to how the regulations effectively implementing the new dispute resolution process. Since July, when the IMR process became effective for all dates of injury, the number of IMR applications has increased dramatically. In August alone, the IMRO received 15,731 IMR applications by mail and fax. The large number of applications received has enabled DWC staff to gain substantial knowledge regarding utilization review, thereby allowing for better efficiency in identifying applications eligible for IMR, by medical evidence guidelines by which treatment recommendations are decided, and the adequacy of the emergency regulations. A second re-adoption of the emergency regulations will provide DWC with additional time to gain a better understanding of the new dispute resolution process and to complete the regular rulemaking process and Certificate of Completion.

Pursuant to California Code of Regulations, title 1, section 52(b)(2) there have been no changes in emergency circumstances since the original adoption of the emergency regulations.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulations action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, DWC will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Attached to this notice is the specific regulatory language now in place following DWC's emergency action and an updated version of the Finding of Emergency that was initially submitted to OAL in December 2012.

You may also review the regulatory language and Finding of Emergency on the DWC's website at the following address: <http://www.dir.ca.gov/dwc/dwcRulemaking.html>

If you have any questions regarding this proposed emergency action, please contact Maureen Gray at [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov) or (510) 286-0676.