

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

FINAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Provider Suspension Procedure**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9788.1, 9788.2, 9788.3, 9788.4, 9788.5 and 9788.6**

The Administrative Director of Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 59, 133, 139.21, and 5307.3, has adopted regulations described below, to implement, interpret, and make specific the provisions of Labor Code section 139.21 of Assembly Bill 1244 (Gray, Chapter 852, Statutes of 2016), effective January 1, 2017. The regulations adopt Article 5.1 of Chapter 4.5, Subchapter 1 of Title 8, California Code of Regulations, sections 9788.1 through 9788.6. The regulations govern provider suspension procedure.

The list of regulations appears below:

Adopt Section 9788.1	Notice of Provider Suspension
Adopt Section 9788.2	Provider Request for Hearing
Adopt Section 9788.3	Suspension Hearing
Adopt Section 9788.4	Suspension Notification
Adopt Section 9788.5	Amendment of the Order of Suspension or Determination and Order re: Suspension
Adopt Section 9788.6	Service and Computation of Time

REQUEST AND GOOD CAUSE FOR EFFECTIVE DATE UPON FILING WITH THE SECRETARY OF STATE

The proposed regulations adopt Article 5.1 of Chapter 4.5, Subchapter 1 of Title 8, California Code of Regulations, sections 9788.1 through 9788.6. Currently there are emergency regulations in place but they do not reflect the changes made to sections 9788.1 through 9788.4 and do not include sections 9788.5 and 9788.6 of the proposed regulations. The emergency regulations became effective on January 6, 2017. They were readopted on September 28, 2017.

Unless the regulations become effective upon filing with the Secretary of State, the earliest they can take effect is April 1, 2018, depriving injured workers of protections they need from unscrupulous physicians, practitioners, or providers. The Division provides the following reasons why there is good cause for the effective date of these regulations to become effective upon filing with the Secretary of State.

The proposed regulations create a suspension process for medical providers: (1) convicted of any felony or misdemeanor involving fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, fraud or abuse of a patient, or related types of misconduct; (2) who have had their license, certificate, or approval to provide health care surrendered or revoked; or (3) who have been suspended, due to fraud or abuse, from participation in the Medicare or Medicaid programs.

By making the regulations effective on the date filed with the Secretary of State, new section 9788.5, not included in the emergency regulations, can be immediately implemented. Section 9788.5 permits the Administrative Director to amend an Order of Suspension, upon discovery of additional grounds for the suspension apart from the ground set forth in the original order, after appropriate notice to the provider and an opportunity for a hearing. Allowing the Administrative Director to amend the Order of Suspension will assure that providers are suspended based upon all pertinent grounds authorized by the legislature. This will assure that if one basis for suspension is later no longer applicable, unscrupulous providers will remain prevented from access to the workers' compensation system because of the continuing validity of the remaining grounds for suspension.

This important section will further the legislature's intent in enacting and amending Labor code section 139.21, by preventing physicians, practitioners, or providers from further harming California's injured workers and providing deterrence to future abusive or fraudulent conduct.

By making the regulations effective on the date filed with the Secretary of State, new section 9788.6, not included in the emergency regulations, can be immediately implemented. Section 9788.6 is a definitions section that clarifies terms used for service of documents and computation of time in the regulations, which is important to eliminate any confusion regarding the timeliness of notices or requests sent by the Administrative Director or the parties, and preclude any challenges to provider suspensions based upon those issues.

Finally, making the regulations effective on the date filed with the Secretary of State will eliminate uncertainty for the public regarding whether the emergency regulations or permanent regulations apply and avoid confusion caused by portions of the regulations taking effect immediately and additional regulations taking effect three months later.

Accordingly, for all the reasons mentioned above, there is good cause for the effective date of these regulations to be effective upon filing with the Secretary of State.

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates by reference the entire Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated below for any modification to the regulations as initially

proposed, the necessity for the amendments to existing regulations and for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as now adopted. No modifications from the initially proposed text of the regulations have been made.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed 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: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods. No modifications have been made based on those comments to the regulations as initially proposed. The Administrative Director has now 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 less burdensome to affected private persons and businesses than the regulations that were adopted or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 period was as follows:

Initial 45-day comment period on proposed regulations:

From October 27, 2017 to December 11, 2017.