

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

AMENDED FINAL STATEMENT OF REASONS

Subject Matter:

Workers' Compensation – Vocational Rehabilitation Regulations
Title 8, California Code of Regulations Sections 10122 et seq.

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:

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| Amended Section 10122 | Definitions |
| Proposed Section 10122.1 | Weekend or Holiday Deadlines |
| Proposed Section 10127.3 | Qualified Rehabilitation Representative |
| Amended Section 10131 | Termination of Vocational Rehabilitation Services |
| Proposed Section 10131.2 | Settlement of Prospective Vocational Rehabilitation |
| Amended Section 10133 | Forms, Form Filing Instructions & Notices |
| Proposed Section 10133.10 | Form RU-90 "Treating Physician's Report of Disability Status" and Form Filing Instructions |
| Proposed Section 10133.11 | Form RU-91 "Description of Employee's Job Duties" and Form Filing Instructions |
| Proposed Section 10133.12 | Form RU-94 "Notice of Offer of Modified or Alternative Work" and Form Filing Instructions |
| Proposed Section 10133.13 | Form RU-102 "Vocational Rehabilitation Plan" and Form Filing Instructions |
| Proposed Section 10133.14 | Form RU-103 "Request for Dispute Resolution" and Form Filing Instructions |
| Proposed Section 10133.15 | Form RB-105 "Request for Conclusion of Rehabilitation Benefits" and Form Filing Instructions |
| Proposed Section 10133.16 | Form RU-105 "Notice of Termination of Vocational Rehabilitation Services" and Form Filing Instructions |
| Proposed Section 10133.17 | Form RB-107 "Statement of Decline of Vocational Rehabilitation Benefits" and Form Filing Instructions |
| Proposed Section 10133.18 | Form RU-107 "Employee Statement of Declination of Vocational Rehabilitation Services" and Form Filing Instructions |
| Proposed Section 10133.19 | Form RU-107A "Statement of Declination of Vocational Rehabilitation Services" and Form Filing Instructions |
| Proposed Section 10133.20 | Form RU-120 "Initial Evaluation Summary" and Form Filing Instructions |
| Proposed Section 10133.21 | Form RU-121 "Vocational Rehabilitation Progress Report" and Form Filing Instructions |
| Proposed Section 10133.22 | Form RU-122 "Settlement of Prospective Vocational Rehabilitation Services" and Form Filing Instructions |

A. 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.

A.

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

Modifications to Section 10122.1 Weekend or Holiday Deadlines

Section 10122.1 was modified in response to comments requesting clarification that the holidays referred to are the state holidays as defined by Government Code Section 6700 and Section 6701. The section's typographical error was corrected to note that it is 10122.1 not 10122.2.

Modifications to section 10127.3 Qualified Rehabilitation Representative (QRR)

Section 10127.3 was first modified in response to comments that the term "immediately" should be defined as "within ten days." In addition, as suggested by comments, the words "and narrative" were deleted so that the referral to a QRR only requires "pertinent medical and vocational reports."

Following the second 15 day comment period, Section 10127.3 was again revised in response to comments that the modified regulation contained conflicting timeframes – ten days and fifteen days for the same time period. In order to be consistent with other regulations, "immediately" was defined as "within fifteen days." The regulation now provides that the employee shall be referred to an agreed upon Qualified Rehabilitation Representative (QRR) within 15 of the date he is determined to be medically eligible and chooses to participate in a vocational rehabilitation program. When the employee is referred to the QRR, the employer shall send the pertinent medical and vocational reports to the QRR. The words "claims administrator" have been changed to "employer" in order to be consistent with the Labor Code. The sentences have been rearranged in order to make the section more logical and references to Labor Code Sections have been inserted to add clarification.

Modifications to section 10131.1 Settlement of Prospective Vocational Rehabilitation

Section 10131.1 has been modified in response to comments. It has been modified to state that if disapproval is not made by the Rehabilitation Unit within ten days of receipt of a fully executed settlement agreement, it shall be deemed approved. This modification will promote the prompt conclusion of settlements.

Modifications to section 10133.12**Form RU-94 “Notice of Offer of Modified or Alternative Work” and Form Filing Instructions**

The Form RU-94 was first modified as follows: Under the heading “Alternative Work,” section “C.” was clarified by including the words “and compensation” in order to be consistent with the Labor Code. In response to comments regarding this Section and Section 10131 concerning undocumented workers, the following statement was added to the block entitled “Notice to the Parties”: “All employees must present documents required for completion of *INS Form I-9* prior to starting modified or alternative work.” Finally, the last sentence in the “Notice to the Parties” block was modified to state the correct place for filing. If no WCAB case exists, the parties are advised to file with a Rehabilitation Unit “at the appropriate district office.”

Following the first 15 day comment period, the Form RU-94 was again modified. The following statement was deleted: “All employees must present documents required for completion of *INS Form I-9* prior to starting modified or alternative work.” The statement was deleted in response to comments which indicated that this requirement would violate federal law, specifically the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324a(b), which limits an employer’s obligation to verify an employee’s employment eligibility to “hiring, recruiting, or referring an individual for employment.” Additionally, the language conflicts with 8 C.F.R. 274a.2(b)(1)(viii) which defines continuing employment as including situations where an individual takes approved paid or unpaid leave on account of illness or other temporary leave approved by the employer.

Following the second 15 day comment period, the Form Filing Instructions for Form RU-94 was modified. In response to comments regarding, the language following “Note” has been changed so that it is now consistent with the language found on the form itself. Specifically, the word “assumed” has been replaced by the word “deemed.”

Modifications to section 10133.22**Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions**

The Form RU-122 has been modified in response to comments. At the bottom of page two, the following statement has been added: “The Rehabilitation Unit shall approve or disapprove the settlement of vocational rehabilitation. If disapproval is not made within ten (10) days of receipt of a fully executed agreement, the agreement shall be deemed approved.” This modification will promote the prompt conclusion of settlements. Additionally, in response to comments suggesting that the parties be notified of their right to appeal, the following language has been added: “This Agreement is Final. Any aggrieved party must file with the Workers’ Compensation Appeals Board within twenty days (20) days from the date this Agreement is approved, deemed approved or disapproved.”

Modifications to section 10133.2

Pamphlets

In response to comments, the following clarifying language has been added: (1) on the first page, “doctor’s final report” has been modified to state “doctor’s report regarding medical eligibility;” (2) on the first page, in the heading, the word “vocational” has been added before the word “rehabilitation;” (3) on the first page, “vocational rehabilitation benefits” has been modified to “vocational rehabilitation services;” (3) on the third page, the question mark following the heading “You may or may not be entitled to other rights” has been deleted; (4) on the third page, readers are advised to refer to the “Department of Industrial Relations” when using the white pages in the phone book; and (4) on the fifth page, the grammar in the sentence in the “filing of a false claim” warning box has been corrected.

B.

Following the Third 15-day comment period, the no changes were made to the regulations.

C.

On January 27, 2003, the following modifications were made:

Modifications to Section 10122 Definitions

The proposed definition for “extenuating circumstances” was deleted, as neither the regulations nor the pertinent sections of the Labor Code referred to “extenuating circumstances.” The section was renumbered so that the definitions will be in alphabetical order.

Modifications to Section 10122.1 Weekend or Holiday Deadlines

The references to the Civil Code and Government Codes were deleted.

Modifications to Section 10127.3 Qualified Rehabilitation Representative (QRR)

The version proposed in July 2002 is adopted, with the addition of lettering of the sections for clarity.

Modifications to Section 10131.2 Settlement of Prospective Vocational Rehabilitation

This regulation’s sections have been renumbered for clarity.

Modifications to Section 10133.10 Form RU-90 “Treating Physician’s Report of Disability Status” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.11 Form RU-91 “Description of Employee’s Job Duties” and Form Filing Instructions

The footer which showed the date was removed from the instructions page. The original form date was corrected from 2/95 to 1/95. The formatting problem was corrected so that boxes appear instead of the letter “r.”

Modifications to Section 10133.12 Form RU-94 “Notice of Offer of Modified or Alternative Work” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.13 Form RU-102 “Vocational Rehabilitation Plan” and Form Filing Instructions

The footer which showed the date was removed from the instructions page. The grammar in first sentence in Section F on page 4 of the form was corrected by adding the words “and employee” and changing “in” to “an.”

Modifications to Section 10133.14 Form RU-103 “Request for Dispute Resolution” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.15 Form RB-105 “Request for Conclusion of Rehabilitation Benefits” and Form Filing Instructions

The footer which showed the date was removed from the instructions page. The form format was corrected so that the bottom section on the first page did not break over to the second page.

Modifications to Section 10133.16 Form RU-105 “Notice of Termination of Vocational Rehabilitation Services” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.17 Form RB-107 “Statement of Decline of Vocational Rehabilitation Benefits” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.18 Form RU-107 “Employee Statement of Declination of Vocational Rehabilitation Services” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.19 Form RU-107A “Statement of Declination of Vocational Rehabilitation Services” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.20 Form RU-120 “Initial Evaluation Summary” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.21 Form RU-121 “Vocational Rehabilitation Progress Report” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.22 Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions

The footer which showed the date was removed from the instructions page.

Modifications to Section 10133.2 Pamphlets

A typographical error was corrected on page one, middle column. The word “report” was shown as stricken, whereas the phrase should read: “a copy of the doctor’s report regarding medical eligibility.” On the fifth page, a duplicate reference to Labor Code §139.5 was deleted.

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 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 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.

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 through September 13, 2002.

First 15-day comment period on modifications to proposed text:

October 7 through October 23, 2002.

Amended First 15-day comment period on modifications to proposed text to extend close of comment period:

October 9 through October 25, 2002

Second 15-day comment period on modifications to proposed text:

October 31 through November 15, 2002.

Third 15-day comment period on modifications to proposed text:

November 22 through December 9, 2002.

Additional responses dated January 27, 2003 concerning regulation sections 10127.3, 10131.2 and 10133.22 are found on the charts entitled “Comments - 45 Day Comment Period (With Additional Response)” and “Comments First 15 Day Period (With Additional Responses).”

| VOCATIONAL REHABILITATION | COMMENTS FIRST 15 DAY PERIOD (With Additional Responses) | NAME OF PERSON/ AFFILIATION | ADDITIONAL RESPONSE (JANUARY 27, 2003) | ACTION |
|----------------------------------|--|---|---|---|
| §10127.3 | The language “within ten days” creates a conflict with the remainder of the paragraph which refers to a 15-day period to agree on the QRR. | John Robeson State Comp. Ins. Fund (Letter dated Oct. 23, 2002) | We agree that as proposed the regulation has conflicting time frames. Additional Response: Labor Code §4637 requires that the employer “immediately” assign a QRR. The wording of the proposed July 2002 version of this regulation is consistent with the statute. | The July 2002 proposed version will be adopted in order to comply with the Labor Code. |
| §10127.3 | Last sentence: The first “and” seems ambiguous. Shouldn’t the requirement be to submit all pertinent, narrative medicals, and all vocational reports (regardless of pertinence)? | Blair Megowan PPET Disability Evaluation, DWC (Email dated Oct. 8, 2002) | We disagree. The concern was to limit the requirement to submitting only pertinent medical reports, as opposed to voluminous reports that would not be useful. Additional response: The regulation will require all pertinent and narrative reports. | The July 2002 proposed version will be adopted. |
| §10127.3 | The amended proposal for change is convoluted and confusing. Recommended language is provided. | Rea Crane California Workers’ Compensation Institute (Letter dated Oct. 24, 2002) | We agree that the regulation needs to be revised to state the same time period for the various requirements. Additional Response: Labor Code §4637 requires that the employer “immediately” assign a QRR. | The July 2002 proposed version will be adopted in order to comply with the Labor Code. |

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| | | | The wording of the July 2002 version of this regulation is consistent with the statute. | |
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| VOCATIONAL REHABILITATION | COMMENTS 45 DAY COMMENT PERIOD (WITH ADDITIONAL RESPONSES) | NAME OF PERSON/ AFFILIATION | ADDITIONAL RESPONSES TO COMMENTS MADE DURING 45 DAY COMMENT PERIOD (JANUARY 27, 2003) | ACTION |
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| §10127.3 | WCS suggest that the word “immediately” be deleted so that it is clear that the time frames in LC 4637 apply, i.e. 10 days. | Workers’ Compensation Section The State Bar of California (September 12, 2002) | First Response: We agree. Additional Response: Labor Code §4637 requires that the employer “immediately” assign a QRR. The wording of the regulation is consistent with the statute. | None. The proposed July 2002 version will be adopted. |
| §10131.2 | OBRA contends: The proposed RU 122 form does not require information that would allow the rehab unit to make a determination regarding an injured employee. Therefore, the regulation is inadequate to meet Legislative intent. | Organization of Bilingual Rehabilitation Associates (September 10, 2002) | First response: We disagree. The employer does not have to settle if it has alternative or modified work available. The regulation reflects the requirements set forth in Labor Code §4646. The intent of Labor Code §4646 is to allow a represented injured worker to have more of a choice regarding his or her vocational future. Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee’s attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself. Secondly, there is no prerequisite to determine whether | None |

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|---------------------------|--|--|--|--|
| | | | <p>or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |
| §10127.3 | <p>The proposed section states that a qualified injured worker is to be referred to qualified rehabilitation representative within 10 days after the employee has been determined to be medically eligible absent extenuating circumstances.</p> <p>Does this mean that the employee will be</p> | Travelers/Constitutional States Services (August 13, 2002) | <p>First response: An employee must request referral to a QRR after receiving notice of eligibility. Therefore, Travelers is not in disagreement with the regulation.</p> <p>Additional Response: Labor Code</p> | None. The proposed July 2002 version of this regulation will be adopted. |

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| | <p>referred to a QRR, before he raises his hand and requests vocational rehabilitation services? If so, Travelers/CSS are in disagreement with this proposed section. We believe the employee should first send in a written request before receiving vocational rehabilitation services. Upon receiving the employee's request for services, the carrier should refer the file within 15 days to an agreed QRR.</p> | | <p>§4637 requires that the employer "immediately" assign a QRR. The wording of the regulation is consistent with the statute.</p> | |
| §10127.3 | <p>The proposed revision required the insurer/employer to send the QRR "all pertinent and narrative medical reports." It should require "All pertinent medical report" only.</p> | <p>Leno & Associates (August 29, 2002)</p> | <p>First Response: We agree. Additional Response: The narrative reports are comprehensive and will aid the QRR.</p> | <p>None. The proposed July 2002 version of this regulation will be adopted.</p> |
| §10131.2 | <p>The proposed regulation is inadequate to meet Legislative intent.</p> | <p>Leno & Associates (August 29, 2002)</p> | <p>First response: We disagree. The employer does not have to settle if it has alternative or modified work available. The regulation reflects the requirements set forth in Labor Code §4646. The intent of Labor Code §4646 is to allow an injured worker to have more of a choice regarding his or her vocational future. We disagree. The regulation follows the statutory obligations. Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee's attorney has the duty</p> | <p>None</p> |

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|---------------------------|--|--------------------------------|--|--------|
| | | | <p>to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational</p> | |

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| | | | rehabilitation unit has questions it can issue a request for information or it may schedule a hearing. | |
| §10131.2 | The current proposed regulations do not provide a mechanism for the rehabilitation unit to be able to make an assessment. It will leave the Rehabilitation Unit liable for an individual's subsequent failure to be able to return to the labor market as they have relinquished their benefits when perhaps they really needed them. (The Form RU-122 should require an evaluation. The counselors' fees should be increased and travel costs should be increased.) | Ciddio-Morris Associates, Inc. (September 10, 2002) | <p>First response: We disagree. Requiring an evaluation prior to settlement goes beyond the authority of Labor Code §4646.</p> <p>Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee's attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding,</p> | None |

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| | | | <p>when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |
| §10131.2 | <p>Will a settlement be vulnerable to recession if the rehabilitation unit did not have adequate information to make a decision as to whether the injured employee needed vocational rehabilitation services to return to suitable gainful employment?</p> | <p>California Workers’ Compensation Institute (September 3, 2002)</p> | <p>First Response: We disagree. The regulation follows the statutory obligations of Labor Code §4646.</p> <p>Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee’s attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring</p> | <p>None.</p> |

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|---------------------------|--|--------------------------------|--|--------|
| | | | <p>that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |

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|---|--|---|--|--|
| §10127.3 | We would recommend the regulation simply state that all <u>pertinent</u> medical and vocational reports be forwarded. | California Workers' Compensation Institute (September 3, 2002) | First Response: We agree. Additional Response: The narrative reports are comprehensive and will aid the QRR. | The July 2002 proposed version will be adopted. |
| ORAL COMMENTS AT PUBLIC HEARING SEPTEMBER 13, 2002 | | | | |
| §10131.2, §10133.22 (Form RU 122) | The settlement should require documentation of the self-directed rehab. goal, the worker's educational background, the worker's employment history, how the funds are going to be used, and medical reports should be attached to the settlement form, and submitted to the rehabilitation unit. | Stewart Soto Vocational Rehabilitation Counselor (Oral Comment, September 13, 2002) | First response: We disagree. This requirement would not comply with Labor Code §4646. Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee's attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself. Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. | None. |

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| | | | <p>Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |
| <p>§10131.2, §10133.22 (Form RU 122)</p> | <p>Questions whether settlement will be vulnerable since Rehab. Unit does not have any information to determine if person can self direct a plan to obtain suitable gainful employment.</p> | <p>Rea Crane CWCI (Oral Comment, September 13, 2002)</p> | <p>First response: We disagree. The regulation follows the statutory obligations of Labor Code §4646.</p> <p>Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his</p> | <p>None</p> |

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|---------------------------|--|--------------------------------|---|--------|
| | | | <p>or her rehabilitation rights. The employee's attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is "walked-through," the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee's rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that</p> | |

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|---|--|--|---|--------|
| | | | information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing. | |
| §10131.2, §10133.22 (Form RU 122) | Recommends that the form be increased to provide information on the injured worker's work history, education, skills, abilities, medical limitations, physical capacities, the goal and the resources necessary to implement it. | Rea Crane CWCI (Oral Comment, September 13, 2002) | <p>First response: We disagree. This requirement would not comply with Labor Code §4646.</p> <p>Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee's attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is "walked-</p> | None |

| VOCATIONAL REHABILITATION | COMMENTS 45 DAY COMMENT PERIOD (WITH ADDITIONAL RESPONSES) | NAME OF PERSON/ AFFILIATION | ADDITIONAL RESPONSES TO COMMENTS MADE DURING 45 DAY COMMENT PERIOD (JANUARY 27, 2003) | ACTION |
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| | | | <p>through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |
| <p>§10131.2, §10133.22 (Form RU 122)</p> | <p>There is no information provided that will allow the Rehab Unit to make a determination. There is also nothing that authorizes the DWC to require that any information be made available for review.</p> | <p>Willie Washington California Manufacturer’s Technology Association (Oral Comment, September 13, 2002)</p> | <p>First response: We agree that Labor Code §4646 does not authorize the Rehab. Unit to require an evaluation.</p> <p>Additional response: The primary finding required by Labor Code §4646 is that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The employee’s attorney has the duty to fully disclose and explain to the employee the nature and quality of the rights being waived. The rehabilitation unit will determine that this has occurred by ensuring that the employee, the attorney and</p> | <p>None</p> |

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|---------------------------|--|--------------------------------|--|--------|
| | | | <p>the interpreter (if needed) have signed the disclosure section of the form and the agreement itself.</p> <p>Secondly, there is no prerequisite to determine whether or not the employee would benefit from rehabilitation services. Instead, the statute restricts disapproval of the settlement to a finding that the receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.</p> <p>With regard to such a finding, when the form is “walked-through,” the rehabilitation unit will have the opportunity to answer questions regarding whether or not rehabilitation services are necessary in order for the employee to return to suitable gainful employment. If the form is delivered by mail, the parties may include information concerning the employee’s rehabilitation. If an employee has already been involved in vocational rehabilitation, the parties are expected to disclose that information on the third page of the form. Finally, if the vocational rehabilitation unit has questions it can issue a request for information or it may schedule a hearing.</p> | |