

## **ADDENDUM TO FINAL STATEMENT OF REASONS**

### **Division of Workers' Compensation**

Subject Matter of Regulations: Independent Bill Review; Standardized Paper Billing and Payment; Electronic Billing and Payment

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

This rulemaking revises the emergency regulations. Changes have been made to the regulatory text since the emergency regulations became effective on January 1, 2013. It is important and necessary that these regulations are effective upon filing with the Secretary of State so that there is clarity and consistency for the public.

Independent Bill Review (IBR) was established by the Legislature in Senate Bill 863 (Statutes of 2012, Chapter 363). In creating this process, the Legislature found that that the then-existing system for resolving disputes over medical treatment billing and medical-legal billing, the filing of a lien with the Workers' Compensation Appeals Board, offered no avenue for resolution short of litigation. Section 1(h) of SB 863 declared that prior to the bill's enactment there was no requirement in the workers' compensation system that medical billing and payment experts, those with specialized knowledge regarding the application of complex fee schedules and billing standards, review and resolve billing disputes. Such disputes were instead submitted to workers' compensation administrative law judges without the benefit of independent and unbiased findings on such billing issues.

Since IBR became operational in January 2013, the number of applications has steadily grown, from 29 in April 2013, to 126 in September 2013, to 195 in December 2013. Currently, there have been over 1,100 applications submitted and 263 final determinations. There are approximately 474 applications awaiting eligibility determinations by the Division and over 330 cases with complete information that are ready to proceed to a final IBR determination. Of the cases that have reached final determination, almost 60% have found in favor of the health care providers.

The proposed regulations will greatly assist in streamlining the processing of IBR applications, allowing final determinations to be issued in a more expedient manner. The regulations clarify that hospitals and provider's billing agents are allowed to pursue IBR (section 9792.5.4(i); ambiguity over this issue may have prevented larger institutions from participating in the system. The requirement that the IBR documents submitted by the provider for review (section 9792.5.7(d)(2)) to be indexed and arranged will allow the staff of the Division of Workers' Compensation (DWC) to more efficiently review IBR applications for eligibility determination. As noted in the statistics cited above, almost half of the IBR applications are still pending review to determine if they are in fact eligible for IBR. Clarification regarding the eligibility of IBR applications, notably whether a second bill review was timely performed (section 9792.5.9(a)), will clarify for stakeholders that IBR cannot be pursued if a second bill review was not completed. (See Labor Code section 4603.6(a), which mandates such a review.) Allowing claims administrators to challenge the underlying reason for a provider's IBR request (section 9792.5.9(b)(3)) will ensure that those entities are afforded their due process rights to submit all relevant arguments supporting their earlier denial or reduction of a medical bill.

IBR is only means by which a provider can resolve a billing dispute for medical services provided under a fee schedule adopted by the Administrative Director of DWC. The proposed regulations will ensure that the process is conducted in a timely fashion and will give confidence to the public that the system is a substantial improvement over the litigious lien procedures.

#### **CHANGE TO REGULATORY TEXT: CONSISTENCY WITH STATUTORY MANDATE**

The final proposed regulations submitted to the Office of Administrative Law included proposed section 9792.5.5(b)(3), which provided that the 90-day time limit for a provider to request a second bill review could be extended by mutual written agreement between the provider and the claims administrator. This provision was also repeated on page 16 of the DWC Medical Billing & Payment Guide.

Subsequent to the submission of the proposed regulations, it was determined that section 9792.5.5(b)(3) was inconsistent with Labor Code section 4603(e)(1) and (2), which expressly allows a provider only 90 days in which to seek a second review. The Labor Code provision does not allow for an extension of this filing deadline. As such, section 9792.5.5(b)(3), and the corresponding DWC Medical Billing & Payment Guide reference, will be deleted from the proposed regulations. Since the regulation language is inconsistent with the authorizing statute, the language can be removed without need for a 15 day notice for public comment. .

#### **SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The comments of each organization or individual are addressed in the charts submitted in binders accompanying this rulemaking file. The comment charts are incorporated herein by reference.

The public comment period was as follows:

##### **Initial 45-day comment period on proposed regulations:**

February 24, 2013 through April 9, 2013

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

October 9, 2013 – October 23, 2013

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

December 12, 2013 – December 26, 2013