



California Workers' Compensation Institute

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October 7, 2013

[VIA E-MAIL to dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

**RE: Predesignation & Chiropractor Treating Physician – Written Testimony on CCR
Sections 9780, 9780.1, 9783, 9783.1 and 9785**

Dear Ms. Gray:

This written testimony on the proposed revisions to regulations regarding predesignation & chiropractor treating physician requirements is presented on behalf of members of the California Workers' Compensation Institute. Institute members include insurers writing 70% of California's workers' compensation premium, and self-insured employers with \$42B of annual payroll (24% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Farmers Insurance Group, Fireman's Fund Insurance Company, The Hartford, Insurance Company of the West, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance Company, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

The Institute thanks the Division for its work on revising its regulations to conform to the changes to standards for predesignation and chiropractic treatment made by Senate Bill 863. We note that the Division is accepting written comment until October 11, 2013 on modifications to regulations regarding Independent Medical Review and Utilization Review, including to section 9785. We have commented here on the specific revisions proposed for section 9785 to comply with the predesignation and chiropractic treating physician requirements in Senate Bill 863. We suggest incorporating the proposed revisions and the modifications the Institute recommends for section 9785 into the version under consideration during the 15-day comment period that ends on October 11.

The following specific modifications recommended by the Institute are indicated by underline and ~~striketrough~~, and discussion by *italics*.

§ 9780.1. Employee Predesignation of Personal Physician

(e) An employer who qualifies under (a)(2) of this section shall notify its employees of all of the requirements of this section and provide its employees with an optional form for predesignating a personal physician, in accordance with section 9880. The employer may use the predesignation form (DWC Form 9783) in section 9783 for this purpose.

It is necessary to restore this subdivision because Labor Code section 3551(b) requires the new hire notice to include an optional form for notifying the employer of the name of the employee's personal physician. The subsequent subdivisions will need to be re-alphabetized when this subdivision is restored.

§ 9783. DWC Form 9783 Predesignation of Personal Physician.

In the event you sustain an injury or illness related to your employment, you may be treated for such injury or illness by your personal medical doctor (M.D.), doctor of osteopathic medicine (D.O.) or medical group if:

- On the date of your work injury you have health care insurance coverage for injuries or illnesses that are not work related;

*Labor Code section 4600(d)(1) says "if the employee has health care coverage..."
That coverage is not necessarily insurance.*

§ 9783.1. DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.

NOTE: If your date of injury is January 1, 2004 or later, a A chiropractor cannot be your treating physician after you have received 24 chiropractic visits unless your employer has authorized additional visits in writing. The term "chiropractic visit" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation, other goods or services, or are limited to evaluation and management. Once you have received 24 chiropractic visits, if you still require medical treatment, you will have to select a new physician who is not a

chiropractor. This prohibition shall not apply to visits for postsurgical physical medicine visits prescribed by the surgeon, or physician designated by the surgeon, under the postsurgical component of the Division of Workers' Compensation's Medical Treatment Utilization Schedule.

It is not necessary to include "If your date of injury is January 1, 2004 or later" as every employee who will subsequently receive and/or predesignate on this form will have a date of injury after 2004.

Adding "other goods or services" will clarify that the prohibition will apply to chiropractic visits for any goods or services, and is not limited only to visits for manipulation or evaluation and management.

§9785. Reporting Duties of the Primary Treating Physician.

(a) For the purposes of this section, the following definitions apply:

(1) The "primary treating physician" is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. The primary treating physician is the physician selected by the employer, the employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code, or under the contract or procedures applicable to a Health Care Organization certified under section 4600.5 of the Labor Code, or in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616. For injuries on or after January 1, 2004, a chiropractor shall not be a primary treating physician after the employee has received 24 chiropractic visits, unless the employer has authorized additional visits in writing. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the employee's surgeon, or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule adopted by the Administrative Director pursuant to Labor Code section 5307.27. For purposes of this subdivision, the term "chiropractic visit" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation, **other goods or services** or are limited to evaluation and management.

Adding "other goods or services" will clarify that the prohibition will apply to chiropractic visits for any goods or services, and is not limited only to visits for manipulation or evaluation and management.

(2) A "secondary physician" is any physician other than the primary treating physician who examines or provides treatment to the employee, but is not primarily responsible for continuing management of the care of the employee. For injuries on or after January 1, 2004, a chiropractor shall not be a secondary treating physician after the employee has received 24 chiropractic visits, unless the employer has authorized, in writing, additional visits. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the employee's surgeon, or physician designated by the surgeon pursuant to the postsurgical component of the medical

treatment utilization schedule adopted by the Administrative Director pursuant to Labor Code section 5307.27. For purposes of this subdivision, the term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation, **other goods or services**, or are limited to evaluation and management.

Adding “other goods or services” will clarify that the prohibition will apply to chiropractic visits for any goods or services, and is not limited only to visits for manipulation or evaluation and management.

Thank you for considering the Institute’s recommendations. Please contact me if I can provide any clarification.

Sincerely,

Brenda Ramirez, Claims & Medical Director
California Workers' Compensation Institute

BR/me

cc: Destie Overpeck, DWC Acting Administrative Director
Jim Robbins, DWC Attorney
CWCI Claims Committee
CWCI Medical Care Committee
CWCI RTW Group
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members