

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations: Workers' Compensation – Predesignation of Personal Physicians and Reporting Duties of the Primary Treating Physician**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 9780.1 et seq.**

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3 proposes to revise sections 9780, 9780.1, 9783, 9783.1, and 9785 of Article 5 of Division 1, Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, relating to the predesignation of personal physicians; requests for change of physician; and, reporting duties of the primary treating physician.

**PROPOSED REGULATORY ACTION**

The Division of Workers' Compensation, proposes to amend Article 5 of Division 1, Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, by amending regulations commencing with section 9780

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|-----------|-----------------------------|---|
| <b>1.</b> | <b>Amend section 9780</b>   | <b>Definitions</b>  |
| <b>2.</b> | <b>Amend section 9780.1</b> | <b>Employee's Predesignation of Personal Physician.</b>                           |
| <b>3.</b> | <b>Amend section 9783</b>   | <b>DWC Form 9783 Predesignation of Personal Physician.</b>                        |
| <b>4.</b> | <b>Amend section 9783.1</b> | <b>DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.</b> |
| <b>5</b>  | <b>Amend section 9785</b>   | <b>Reporting Duties of the Primary Treating Physician.</b>                        |

**TIME AND PLACE OF PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date:** October 7, 2013  
**Time:** 10:00 a.m. to 5:00 p.m., or conclusion of business  
**Place:** 455 Golden Gate Avenue – Auditorium  
San Francisco, CA 94102-3688

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request.

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Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on October 7, 2013**. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5:00 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

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

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on October 7, 2013**.

### **AUTHORITY AND REFERENCE**

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3.

Reference is to Labor Code sections 4061, 4061.5, 4062, 4600, 4600.3, 4603.2, 4604.5, 4610.5, and 4658.7.

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## INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law establishes a workers' compensation system, administered by the Acting Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Labor Code section 4600 requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury.

The proposed amendments to existing regulations are required by a legislative enactment: Senate Bill 863 (Statutes of 2012, Chapter 363; effective January 1, 2013). Senate Bill 863 amended Labor Code section 4600 which addresses, inter alia, medical treatment provided by an employer, liability for reasonable expenses and predesignation of a personal physician.

Labor Code section 4600(c) provides that, unless the employer or the employer's insurer has established or contracted for a Medical Provider Network as provided for in section 4616, after 30 days from the date the injury is reported the employee may be treated by a physician or facility of his or her own choice within a reasonable geographic area. However, a chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits (24) allowed by Labor Code section 4604.5(d). This prohibition does not apply to the provision of postsurgical physical medicine prescribed by the surgeon or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule.

Labor Code section 4600(d)(1) provides that if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury if the employee has health care insurance coverage for nonoccupational injuries or illnesses on the date of injury.

Labor Code section 4600(d)(3) provides that if the employee has health care insurance coverage for nonoccupational injuries or illnesses on the date of injury and the employer is notified pursuant to paragraph (d)(1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

Labor Code section 4616 provides that an employer may establish a Medical Provider Network. An employee who predesignates a personal physician, however, may choose to be treated outside of the Medical Provider Network by his or her personal physician. Labor Code section 3551 provides that written notice to new employees shall include a form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician" as defined in section 4600, or "personal chiropractor" or "personal acupuncturist" as defined by section 4601.

Uncodified section 84 of Senate Bill 863 provides that: "This act shall apply to all pending matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits."

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The Acting Administrative Director now proposes to amend administrative regulations governing the predesignation of a personal physician; requests for change of physician; and primary treating physician reporting requirements. These regulations implement, interpret, and make specific section 4600 of the Labor Code as follows:

### **Section 9780: Definitions**

This section lists and defines the terms used in regulations relating to the predesignation of a personal physician, the request for a change of physician, the reporting duties of the primary treating physician, and the petition for change of the primary treating physician.

Subdivision (e), setting forth the definition of “nonoccupational group health coverage,” is deleted. The subsequent subdivisions have been re-lettered.

### **Section 9780.1: Employee's Predesignation of Personal Physician.**

This section sets forth the process for an employee to predesignate a personal physician to provide them with medical treatment in case of a work related injury or illness.

Subdivision (a)(1) is amended to provide that a written notice of the predesignation of a personal physician must include, in addition to the personal physician's name and business address, the name of the plan, policy, or fund providing the employee with health care coverage for nonoccupational injuries or illnesses as required by subdivision (a)(2).

Subdivision (a)(2) is amended to provide that, as one of the requirements for an employee to predesignate a personal physician, the employee must have health care coverage for nonoccupational injuries or illnesses on the date of injury in a plan, policy, or fund as described in subdivisions (b), (c), and (d) of Labor Code Section 4616.7. The requirement that the employer provide nonoccupational health care coverage is deleted.

Subdivision (e), which requires employers to notify their employees of the predesignation requirements in accordance with California Code of Regulations, title 8, section 9880, is deleted. The subsequent subdivisions have been re-lettered.

Subdivision (f) has been re-lettered as subdivision (e).

Subdivision (g) has been re-lettered as subdivision (f). Proposed subdivision (f)(4) is amended to include the form set forth at section 9785.5 (The DWC Form RFA) as one that must be provided to the predesignated personal physician.

Subdivision (h) has been re-lettered as subdivision (g).

Subdivision (i) has been re-lettered as subdivision (h). Proposed subdivision (h) is amended to provide that if documentation of the physician's agreement to be predesignated has not been provided to the employer as of the time of injury, treatment may be provided by an MPN that has either been established by the employer or insurer, or contracted for.

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### **Section 9783: DWC Form 9783 Predesignation of Personal Physician.**

This section contains the optional form for an employee to use to predesignate a personal physician to provide them with medical treatment in case of a work related injury or illness.

The form is being amended to state that an employee may predesignate a personal physician if, in addition to the other required preconditions, the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury.

The form is also being amended to provide space for the employer to provide the name of the insurer that covers them for nonoccupational injuries or illness.

### **Section 9783.1: DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.**

This section contains the optional form for an employee to use to predesignate a personal chiropractor or personal acupuncturist to provide them with medical treatment in case of a work related injury or illness if a request to change a physician is made under Labor Code section 4601.

The form is being amended to advise the employee that for dates of injury on or after January 1, 2004, a chiropractor cannot be a treating physician after the employee has received 24 chiropractic visits unless the employer has authorized additional visits in writing. The form will also advise the injured worker that:

- the term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management.
- once the employee has received 24 chiropractic visits, if the employee still requires medical treatment, the employee will have to select a new physician who cannot be a chiropractor. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the surgeon or physician designated by the surgeon pursuant to the postsurgical component of the Division of Workers’ Compensation’s Medical Treatment Utilization Schedule.

The form is also being amended to clarify that it is an optional form.

### **Section 9785: Reporting Duties of the Primary Treating Physician.**

This section sets forth the reporting duties of the Primary Treating Physician.

Subdivision (a)(1), which defines the term “primary treating physician,” and (a)(2), which defines the term “secondary physician” are being amended to state that:

- for dates of injury on or after January 1, 2004, a chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (c)(1) of Section 4604.5 (24) unless the employer has authorized additional visits in writing;

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- this prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the surgeon or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule; and,
- for purposes of each subdivision, the term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management.

## **OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

The objective of the regulations is to conform the existing regulations on medical treatment and physician reporting to the changes enacted by Senate Bill 863. In addition, minor grammatical and other textual revisions are being made.

## **DETERMINATION OF INCONSISTENCY AND/OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only valid regulations to implement the statutory mandates put in place by Senate Bill 863.

## **DUPLICATION OF LABOR CODE PROVISIONS:**

The proposed regulations repeat various provisions of Labor Code sections 3551, 4600, and 4616, as amended or added by Senate Bill 863. Duplication is necessary for the purpose of clarity so the regulations and forms provide notice to employees of the comprehensive and detailed procedures for medical treatment for injured workers.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None. No fiscal impact exists because this regulation changes a rule to conform to statute, where the cost of compliance is equivalent for both the existing and amended provisions.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None. This regulation only conforms regulations to statute and amends forms, whose use is optional.
- Other nondiscretionary cost or savings imposed on local agencies: No fiscal impact exists because this regulation changes a rule to conform to statute, where the cost of compliance is equivalent for both the existing and amended provisions.
- Cost or savings in federal funding to the state: None

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- Cost impacts on a representative private person or business: The division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, and individuals, the Acting Administrative Director concludes that the adverse economic impact, including the ability of California businesses to compete with business in the other states, will not be significant.
- Significant effect on housing costs: None.

### Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses with the State of California, (4) unlikely that the proposal will eliminate any existing businesses with the State of California, and (5) unlikely that the proposal would cause the expansion of the business currently doing business within the State of California.

The regulations affect all California employers and worker's compensation insurers, but it has no cost impact beyond the minor cost of replacing existing forms with updated forms in conformance with recently enacted statute. Senate Bill 863 expanded the eligibility of employees to designate their personal physicians to provide treatment in the event of occupational injury. Research has found no substantial cost difference between personal physicians and employer-assigned physicians. The regulations also interprets and clarifies the 24-visit cap on chiropractic visits that was enacted by SB 899 (Stats. of 2004, Ch. 34) for the purpose of implementing SB 863's prohibition on chiropractors serving as an injured worker's treating physician after 24 visits (for injuries on or after January 1, 2004). The clarification will produce minor cost savings by reducing disputes over claims for non-chiropractic treatment by chiropractors in excess of the statutory cap on visits. Some chiropractors will see reduction in their income by being barred from being paid for chiropractic visits in excess of the statutory cap.

Benefits of the Proposed Action: Workers whose injuries are treated by their personal physicians usually experience greater satisfaction with treatment than workers treated by employer-assigned physicians, while the medical outcomes and cost of treatment are equivalent.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations affect small business.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Acting Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons

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than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

A text of draft proposed regulations was made available for pre-regulatory public comment from November 6 - 16, 2012 through the Division's Internet message board (the DWC Forum). In addition, a pre-rulemaking stakeholder meeting was held to receive input on the development of the regulations.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Predesignation of Personal Physician rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18<sup>th</sup> Floor, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

## **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations

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Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

### **CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

James M. Robbins, Industrial Relations Counsel III  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: jrobbins@dir.ca.gov

The telephone number of the backup contact persons is (510) 286-7100.

### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Acting Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Acting Administrative Director's mailing list.

If adopted, the regulations as amended will appear in title 8, California Code of Regulations, commencing with section 9780. The text of the final regulations will also be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).