



## California Workers' Compensation Institute

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December 26, 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  
Post Office Box 420603  
San Francisco, CA 94142

**RE: 3<sup>rd</sup> 15-Day Comments on Modifications to Proposed Permanent Independent Medical Review (IMR) Regulations Sections 9785, 9785.5, and 9792.6.1 – 9792.12**

Dear Ms. Gray:

These comments on additional modifications to the regulations proposed for permanent adoption to implement Senate Bill 863 provisions regarding Independent Medical Review (IMR) and Utilization Review (UR) are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (27% 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, Chevron Corporation, 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.

## Introduction

The California Workers' Compensation Institute supports comments on the modifications to proposed permanent Independent Medical Review (IMR) regulations submitted by the California Chamber of Commerce and the California Coalition on Workers' Compensation (CCWC); and by the American Insurance Association (AIA). In addition, the Institute offers recommendations in an effort to create greater clarity, precision, and efficiency.

### § 9792.10.2. Application for Independent Medical Review, DWC Form IMR

#### INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR INDEPENDENT MEDICAL REVIEW FORM

**IF YOU DECIDE NOT TO PARTICIPATE IN THE IMR PROCESS YOU MAY LOSE YOUR RIGHT TO CHALLENGE THE DENIAL, DELAY, OR MODIFICATION OF MEDICAL TREATMENT REFERRED TO ON PAGE ONE OF THE APPLICATION FOR INDEPENDENT MEDICAL REVIEW.**

If you decide not to participate in the IMR process you may lose your right to challenge the denial, delay or modification of medical treatment referred to on page one of the application for independent medical review.

*The Institute recommends deleting the reference to “delay” to remain consistent with rest of the regulations.*

*It is easier to read and comprehend text that is in upper and lower case than text that is all in caps. It is not necessary for the text to be capitalized.*

### § 9792.10.6. Independent Medical Review – Standards and Timeframes

(a)(2) If a claims administrator fails to submit the documentation required under section 9792.10.5(a)(1), a medical reviewer may, if possible, issue a determination as to whether the disputed medical treatment is medically necessary based on both a summary of medical records listed in the utilization review determination issued under section 9792.9.1(e)(5), and any documents submitted by the employee or requesting physician under section 9792.10.5(b) or (c). No independent medical review determination shall issue based solely on the information provided by a utilization review determination.

*While it is always preferable for the independent medical reviewer to have medical records on which to base its decisions, there is nothing in statute or regulation that prohibit the reviewer from making a determination based on a summary of records listed in a utilization review determination, if any (a denial may be based on the failure of the requesting physician to provide necessary*

*medical documentation) and/or on medical treatment utilization guidelines. It is not necessary and not appropriate to deny the injured employee a determination on medical necessity if one is possible and appropriate.*

Thank you for all the effort put into these regulations and for considering our comments.

Sincerely,

Brenda Ramirez  
Claims and Medical Director

BR/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, DWC Acting Administrative Director  
Dr. Das Rupali, DWC Executive Medical Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members  
California Chamber of Commerce  
California Coalition on Workers' Compensation  
American Insurance Association