

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

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS AND FORMS

**Subject Matter of Regulations:
Workers' Compensation –Utilization Review and Related Subjects**

TITLE 8, CALIFORNIA CODE OF REGULATIONS

**SECTIONS 9767.6, 9781, 9785, 9785.6, 9786, 9792.6, 9792.6.1, 9792.7, 9792.7.1, 9792.8,
9792.9, 9792.9.1, 9792.9.2, 9792.9.3, 9792.9.4, 9792.9.5, 9792.9.6, 9792.9.7, 9792.9.8,
9792.9.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.8, 9792.11,
9792.12, 9792.13, & 9792.15, 9792.27.1, & 9792.27.17**

NOTICE IS HEREBY GIVEN that, pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of title I of the California Code of Regulations, the Administrative Director of the Division of Workers' Compensation, Department of Industrial Relations (hereinafter "Administrative Director"), pursuant to the authority vested in him by Labor Code sections 59, 133, 4603.5, 4610, 5307.3, and 5307.27, proposes to amend the text of the following proposed regulations and forms, which were the subject of a regulatory hearing held on July 25, 2024:

Amend section 9767.6 Treatment and Change of Physicians Within MPN.
Amend section 9781 Employee's Request for Change of Physician.
Amend section 9785 Reporting Duties of the Primary Treating Physician.
Amend section 9785.6 DWC Form PR-1: "Treating Physician's Report" – Optional for Services On or After (EFFECTIVE DATE OF REGULATION).
Amend section 9792.6.1. Utilization Review Standards—Definitions.
Amend section 9792.7. Utilization Review Standards—Applicability.
Amend section 9792.7.1. DWC Form UR-01: "Utilization Review Plan Application or Modification"
Amend section 9792.9.1. Utilization Review -- Receipt of Request for Authorization; Acceptance of Defective Request.
Amend section 9792.9.2. Utilization Review — Dispute of Liability; Deferral.
Amend section 9792.9.3. Utilization Review — Timeframes.
Amend section 9792.9.4. Utilization Review — Decisions to Approve a Request for Authorization.
Amend section 9792.9.5. Utilization Review — Decisions to Modify or Deny a Request for Authorization.
Amend section 9792.9.8. Utilization Review — MTUS Drug Formulary.
Amend section 9792.10.1. Utilization Review — Dispute Resolution.

Amend section 9792.10.2. Application for Independent Medical Review, DWC Form IMR.

Amend section 9792.10.5. Independent Medical Review – Medical Records.

Amend section 9792.10.8. Independent Medical Review – Payment for Review.

Amend section 9792.11. Investigation Procedures: Labor Code § 4610 Utilization Review Violations.

Amend section 9792.12. Administrative Penalty Schedule for Utilization Review and Independent Medical Review Violations.

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification to the rulemaking file. **Only comments concerning these proposed modifications to the text of the regulations and forms will be considered and responded to in the Final Statement of Reasons.** The text of the regulations and proposed modifications can be viewed via the web at:

https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html

All written comments concerning the proposed modifications to the regulations must be received by the Regulations Coordinator no later than **11:59 P.M. on March 14, 2025.**

Written comments may be submitted as follows:

By Mail addressed as follows:

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

By Hand Delivery addressed as follows:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
1515 Clay Street 18th Floor
Oakland, CA 94612

By FAX addressed to Maureen Gray, Regulations Coordinator, Department of Industrial Relations, Division of Workers' Compensation at the following number:

(510) 286-0687

By e-mail to the following e-mail address:

dwcrules@dir.ca.gov

Comments sent to other e-mail addresses or facsimile numbers will not be accepted. All comments, including comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 18th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-0676 or (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by underlining: added language. Deletions are indicated by strikeout: ~~deleted language~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text was indicated by double underlining: added language. Deletions are indicated by double strikeout: ~~~~deleted language~~~~.

SUMMARY OF PROPOSED CHANGES

Section 9767.6 Treatment and Change of Physicians Within MPN.

(f) - Amend section 9767.6(f) to remove any suggestion that the claims administrator is educating physicians with respect to the requirement that claims administrator provide specified information to treating physicians in the medical provider network.

Section 9781 Employee's Request for Change of Physician.

***For the first (i.e., 45-day comment period) publication, there was an oversight in the text representing (d)(7). Published text appeared as follows:

~~(4)-(7)~~ provide the physician or facility with (1) ~~the fax number, if available to be used to request authorization of treatment plans;~~ (2) the complete requirements

of section 9785; and ~~(2) (3)~~ the required reporting forms under that section 0. In lieu of providing the materials required in ~~(1) and (2) and (3)~~ immediately above, the claims administrator shall ~~may~~ refer the physician or facility to the Division of Workers' Compensation's website where the applicable information and forms can be found at http://www.dir.ca.gov/DWC/dwc_home_page.htm.

However, published text should have appeared as the following (with bold indicating what had inadvertently been left out; and deletion of a stricken "0" ("0") as that was a typo and should not have appeared at all):

~~(4) (7)~~ provide the physician or facility with (1) ~~the fax number, if available to be used to request authorization of treatment plans;~~ (2) the complete requirements of section 9785; and ~~(2) (3)~~ the **forms set forth in section 9785.2 and 9785.4** required reporting forms under that section. In lieu of providing the materials required in ~~(1) and (2) and (3)~~ immediately above, the claims administrator shall ~~may~~ refer the physician or facility to the Division of Workers' Compensation's website where the applicable information and forms can be found at http://www.dir.ca.gov/DWC/dwc_home_page.htm.

(d)(7) - Amend section 9781(d)(7) to delete "shall" and revert back to "may."

Section 9785. Reporting Duties of the Primary Treating Physician.

(e) - Amend subsection (1) to align with statutory requirement that each new primary treating physician submit a Form 5021 following an initial examination. Add back subsection (2), which was initially deleted. Renumber subsections (2) and (3) to reflect (3) and (4), respectively.

***For first publication, in regulatory text, there was an oversight in the text representing subdivision (g). Published text appeared as follows:

(g) (1) Prior to (SIX MONTHS AFTER EFFECTIVE DATE OF REGULATION), except ~~Except~~ for a response to a request for information made pursuant to subdivision (f)(7), reports required under this subdivision ~~(f) shall~~ may be submitted on the "Primary Treating Physician's Progress Report" form (Form PR-2) contained in ~~Section 9785.2.1; the "Treating Physician's Report" form (DWC Form PR-1) contained in section 9785.6;~~ or in the form of a narrative report. If a narrative report is used in lieu of a Form PR-2, it must be entitled, "Primary Treating Physician's Progress Report," or, if a narrative report is used in lieu of a Form PR-1, It must be entitled, "Treating Physician's Report" in bold-faced type, must indicate clearly the reason the report is being submitted, and must contain the same information using the same subject headings in the same order as Form PR-2 or Form PR-1. A response to a request for information made pursuant to subdivision (f)(7) may be made in letter format. A narrative report and a letter format response to a request for information must contain the same declaration under penalty of perjury that is set forth in the Form PR-2: "I declare under

penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3.”

However, published text should have appeared as the following (with bolded text showing what should’ve been underlined in the first publication as it was being added to the existing regulation):

(g) (1) Prior to (SIX MONTHS AFTER EFFECTIVE DATE OF REGULATION), except ~~Except~~ for a response to a request for information made pursuant to subdivision (f)(7), reports required under ~~this~~ subdivision ~~(f)~~ shall ~~may~~ be submitted on the “Primary Treating Physician’s Progress Report” form (Form PR-2) contained in §section 9785.2.1; the “Treating Physician’s Report” form (DWC Form PR-1) contained in section 9785.6; or in the form of a narrative report. If a narrative report is used, in lieu of a Form PR-2, it must be entitled, “Primary Treating Physician’s Progress Report,” or, if a narrative report is used in lieu of a Form PR-1, it must be entitled, “Treating Physician’s Report” in bold-faced type, must indicate clearly the reason the report is being submitted, and must contain the same information using the same subject headings in the same order as Form PR-2 or Form PR-1. A response to a request for information made pursuant to subdivision (f)(7) may be made in letter format. A narrative report and a letter format response to a request for information must contain the same declaration under penalty of perjury that is set forth in the Form PR-2: “I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3.”

(g)(1) – Amend effective date to be “on or after (EFFECTIVE DATE OF REGULATION)” rather than “(SIX MONTHS AFTER EFFECTIVE DATE OF REGULATION).”

Amend to indicate that a primary treating physician’s progress report shall (not may) be reported on either a PR-2, a PR-1, or as a narrative report.

Amend to indicate that, for a narrative report and letter format response to a request for information, it must contain the same declaration under penalty of perjury that is set forth in the Form PR-2 or PR-1.

(g)(2) - Delete.

(g)(3) – renumbered to (g)(2).

Section 9785.6 DWC Form PR-1: "Treating Physician's Report" – Optional for Services On or After (EFFECTIVE DATE OF REGULATION).

Amend title to indicate use as “Optional for Services On or After (EFFECTIVE DATE OF REGULATION).”

Add indication to include date the form is adopted by the Office of Administrative Law.

On the Form PR-1, edits to Section A (i.e., Request For Authorization or “RFA” section)

- Split section A into A-1 and A-2 to differentiate between an RFA for drug and an RFA for non-drug treatment.
- Consolidate details for drug and non-drug treatments in table.
 - For non-drug, add, in parentheses, a reminder for frequency and/or duration
 - For drug, add, in parentheses, a reminder for strength, form, quantity, etc.
- Add column in Section A-1 and A-2 treatment tables to indicate if the treatment is exempt or non-exempt.
- For listing requested treatments in tables, include numbers for the purpose indicated in next bullet point.
- For (second) table allowing a physician to identify a guideline that is supportive of each treatment request, add instruction in first column (below heading) to list number corresponding with treatment listed in previous table, thus reducing the need for the physician to rewrite the treatment from the first table.
- In RFA for Drug treatment (Section A-2), fix typo in text next to checkbox such that “Check if requested drugs are related to requested on-drug treatment” is amended to be “Check if requested drugs are related to requested *non*-drug treatment.”
- Add line of text with checkbox options in Section A-1 and A-2 to allow physicians to indicate how they want to be informed of the claims administrator’s response to their request for authorization of treatment.
- For non-drug Section A (i.e., A-1), fix typo by changing “rx” to “treatment.”

On the Form PR-1, changes to Section B (Evaluation and Management Worksheet):

- Add checkbox for use when patient’s condition has not changed since prior exam.
- Add field to allow the physician input the date of the last report.

On the Form PR-1, changes to PR-1 Form Instructions

- In “Overview,” add that all fields in physician information fields must be completed.
- In “Overview,” add sentence clarifying that physician need only submit applicable sections of the report as they indicate using checkboxes at the top of the report’s first page.
- Replace “Section A” to “Section A-1/A-2: Request for Authorization,” and add note highlighting this difference.
- Minor organization changes
- Add instruction: “If the request is for treatment which requires separate but related associated treatments, all treatment should be listed.”
- Add instruction to indicate that use of fields allowing for specific reference to applicable guidelines should be included but is not mandatory.

- Add line: “Physician Notification: If applicable, the physician may indicate how they want to receive the claims administrator’s response to a request for authorization of treatment by marking the appropriate checkbox in the line just above the “Claims Administrator/URO Response” section.”
- Within “CA/URO Response” section, add instruction: “Responses should address all requested treatments, including those that are separate from but related to a primary treatment request.”
- Minor edit to “CA/URO Response” instructions: replace “fax” with “send” to accord with addition of section in RFA allowing physicians to indicate how they want to receive a response to their treatment requests.
- Change “Section B:” section title to “Section B: Evaluation and Management Worksheet:”
- Amend text for better phrasing (non substantive).
- Change “Section C:” section title to “Section C: Work Status:”

Section 9792.6.1. Utilization Review Standards—Definitions.

(d) - Delete reference to “14006 or.”

(u)(3) - Add “or via electronic data interchange” to allow a request for authorization of treatment (“RFA”) to be sent in such a way by agreement of the parties.

(dd) - Add “business day” as being the same as “working day” or “normal business day.”

Section 9792.7. Utilization Review Standards—Applicability.

(c)(2) - Add text to allow submission of a UR plan via electronic format as agreed to by the administrative Director and the UR plan applicant. Also add reference to California Labor Code section 110.5 or 3206.5 as being the standard for acceptance of an electronic signature.

(c)(4) - Add text to require a UR plan material modification to be submitted using the DWC UR-01 form set forth at section 9792.7.1; allow submission in compact discs or flash drives or other agreed upon electronic format in word searchable PDF format; and allow for the use of electronic signatures in compliance with California Labor Code section 110.5 or 3206.5.

(d) - Amend text to include applicability of subdivision to submissions of UR plan modifications. Add text indicating that notice of completion of UR plan filing does not preclude the Administrative Director from later requesting additional documentation as necessary for review.

(e)(1) - Amend text to include applicability of subsection to UR plan modification filings. Amend text to indicate that the 60 days allotted for the Administrative Director to approve or deny a UR plan runs following the issuance of notice that a UR plan filing is complete.

Section 9792.7.1. DWC Form UR-01: “Utilization Review Plan Application or Modification”

Amend title of section to “DWC Form UR-01: “Utilization Review Plan Application or Modification”

Add indication to include date the form is adopted by the Office of Administrative Law.

For the form UR-01:

- Amend to include checkboxes at the top of the form’s first page to indicate whether the form is being submitted with a new UR plan or because of a material modification.
- Add section six and a text box to the form to allow the sender to describe the material modification that was made to the UR plan.
- Add sentence to end of signature statement indicating Medical Director’s understanding that any approval of the UR plan by the Division is not equivalent to approval of policies and procedures that are contrary to law, and that any such approval is unintentional.

Section 9792.9.1. Utilization Review -- Receipt of Request for Authorization; Acceptance of Defective Request.

Title – Deleted “Incomplete” and replaced with “Defective.”

(b)(1) – Add subsection number due to addition of subsection (2).

(b)(2) - Add subsection instructing on how to handle receipt of a request for authorization of treatment at a non-designated number or address.

Section 9792.9.2. Utilization Review – Dispute of Liability; Deferral.

(a)(2)(B) - Add provision that a physician expressly and unequivocally indicates in an RFA that there has been a change in facts material to the basis of the prior denial if the checkbox associated with “Resubmission – Change in Material Fact” at the top of the Form RFA or the Form PR-1 is marked, or, if the request is in narrative form, the indication is on the first page of the report.

Section 9792.9.3. Utilization Review – Timeframes.

(d) - Amend text to fix awkward wording with respect to timeframe for retrospective UR.

Section 9792.9.4. Utilization Review — Decisions to Approve a Request for Authorization.

(a)(4) - Add requirement that written approvals of non-drug treatment that are exempt under 9792.9.7 (i.e., the 30-day exemption) will identify such treatment as “30-day exemption” or words to that effect.

Section 9792.9.5. Utilization Review – Decisions to Modify or Deny a Request for Authorization.

(d) - Amend text to fix awkward wording with respect to a modification or denial of a retrospective request for authorization.

(e)(7) - Clarify that the use of plain language in a UR decision that modifies or denies a treatment request should be used “where possible.”

Section 9792.9.8. Utilization Review — MTUS Drug Formulary.

(b)(1)(A) - Amend text to state that information shall be requested within no less than four business days, instead of two business days, from the date of receipt of the request for authorization.

(d) - Amend text to state that the timeframes set forth in sections 9792.9.3 and 9792.9.6 and the requirements in sections 9792.9.4 and 9792.9.5 will apply to a request for authorization that requests both drugs and non-pharmaceutical treatment related to the same “injury or illness” instead of “condition.”

Section 9792.10.1. Utilization Review – Dispute Resolution.

Title - Delete irrelevant date references.

Delete opening paragraph containing irrelevant date references.

Section 9792.10.2. Application for Independent Medical Review, DWC Form IMR.

Amend date of form revision from “06/2024” to “DATE ADOPTED BY OAL.”

For the DWC Form IMR: Add Physician Specialty field in the physician information section.

Section 9792.10.5. Independent Medical Review – Medical Records.

(b)(3) – Regarding an employee’s ability to submit newly developed or discovered relevant medical records in their possession, replace “shall” with “may” such that it does not sound like a requirement.

Section 9792.10.8. Independent Medical Review – Payment for Review.

(a)(2)(B) – Amend text to indicate that the cost will be the same as if review was complete if the case is terminated after the beginning of the record-gathering process under section 9792.10.5.

(a)(3) - Delete.

Section 9792.11. Investigation Procedures: Labor Code § 4610 Utilization Review Violations.

(g)(1) - Delete reference to section 9792.6(q).

(n) - Correct subdivision reference from section 9792.11(c) to section 9792.11(g).

(v) - Add “calendar” to clarify reference to twenty-one (21) days.

Section 9792.12. Administrative Penalty Schedule for Utilization Review and Independent Medical Review Violations.

(b)(1)(C) - Amend text to clarify penalty as being failure to comply with requirement prohibiting a non-physician reviewer from denying or modifying (rather than simply reviewing) a treatment request under section 9792.9.2(a)(2)(B) that would otherwise be subject to Labor Code section 4610(k).

(b)(12) - Amend text for better wording of the penalty and add reference to section 9792.9.5(e)(2).