

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

INITIAL STATEMENT OF REASONS

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

**California Code of Regulations, Title 8, Article 5
Sections 9780, 9780.1, 9783, 9783.1, and 9785**

BACKGROUND TO REGULATORY PROCEEDING

This Initial Statement of Reasons ("ISOR") describes the purposes, rationales, and necessity of the Division of Workers' Compensation's (DWC) proposed regulations regarding Predesignation of Personal Physicians and the Reporting Duties of the Primary Treating Physician. This ISOR fulfills the requirements of California's Administrative Procedure Act. (See Government Code section 11340 et seq.)

Senate Bill (SB) 863 (Statutes of 2012, Chapter 363), a comprehensive workers' compensation reform bill, was signed into law by Governor Brown on September 18, 2012 to become effective January 1, 2013. SB 863 made substantive changes with respect to the way that medical treatment is provided and paid for when an employee sustains a work related injury. These changes have affected the process for an employee to predesignate a personal physician or chiropractor to provide medical treatment and the ability of a chiropractor to act as a primary treating physician following a specific number of visits by the injured employee.

PROBLEMS ADDRESSED BY THIS RULEMAKING

The regulations address the problem of providing notice to injured workers that there have been significant changes in the law concerning: (1) their right to predesignate a personal physician to provide treatment in the event of an industrial injury or illness; and (2) for injuries on or after January 1, 2004, their right to maintain a chiropractor as their primary treating physician after a specific number of visits.

Generally, an injured employee is required to treat with the employer's chosen physician for the first 30 days after the occupational injury is reported. Unless the employer has established or contracted with a Medical Provider Network (MPN) under Labor Code section 4616 to provide medical treatment for occupational injuries, the employee may, after the 30-day period, select their own physician within a reasonable geographic distance to render treatment for the injury.

However, Labor Code section 4600(d) allows an employee to predesignate a personal physician to render all medical treatment reasonably necessary to cure or relieve the employee from the effects of any subsequent occupational injury. The personal physician must be the employee's regular medical doctor (M.D.) or doctor of osteopathic medicine (D.O.), have previously directed

the medical treatment of the employee, and retains the employee's medical records. (The personal physician may be a medical group, if the medical group is a single corporation or partnership of licensed doctors operating an integrated multispecialty medical group primarily treating non-occupational injuries.)

Prior to SB 863, an employee was allowed to predesignate a personal physician if three conditions were met: (1) the notice of predesignation was in writing and provided to the employer prior to the date of injury; (2) the employer provided non-occupational health care coverage; and (3) the personal physician agreed to be predesignated prior to the injury. SB 863 replaced the second requirement so that now, instead of the employer simply providing non-occupational health care coverage to its employees, the employee must in fact have health care coverage for non-occupational injuries on the date of injury. The proposed amendments conform the predesignation regulations to reflect SB 863's mandate.

In addition to changing the predesignation process, SB 863 imposed a prohibition on a chiropractor continuing to act as a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (c)(1) of Section 4604.5 (currently 24 visits) unless the employer has authorized, in writing, additional visits (except for 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.) To correspond with section 4604.5(c)(1), the prohibition only applies to injuries that occur on or after January 1, 2004. For purposes of this prohibition, the proposed regulations define the term "chiropractic visit" to mean any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management. The proposed regulations advise employees of this prohibition on the optional form to predesignate a personal chiropractor or acupuncturist (section 9783.1) for the purpose of changing a physician as allowed under Labor Code section 4601. The proposed regulations also change the definition of "primary treating physician" and "secondary physician" in the regulation outlining the reporting duties of the primary treating physician (section 9785) to reflect the prohibition.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations concerning state workers' compensation benefits.

THE SPECIFIC PURPOSE, RATIONALE, AND NECESSITY OF EACH SECTION OF THE PROPOSED AMENDMENTS

Section 9780: Definitions.

Specific Purpose of Section: The purpose of this section is to list and define the terms that are commonly used in the regulations relating to the predesignation of personal physicians, requests for change of physician, and the reporting duties of the primary treating physician. The definitions implement, interpret, and make specific Labor Code section 4600 and are meant to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

This section is amended to delete subdivision (e), which set forth the definition of "nonoccupational group health coverage." The subsequent subdivisions have been re-lettered.

Necessity:

It is necessary to define each of the key terms used in the predesignation regulations to ensure that the content and meaning of the regulations are clearly understood by the workers' compensation community.

Prior to SB 863, an employee was allowed to predesignate a personal physician if three conditions were met: (1) the notice of predesignation was in writing and provided to the employer prior to the date of injury; (2) the employer provided non-occupational health care coverage; and (3) the personal physician agreed to be predesignated prior to the injury. As to the second requirement, the non-occupational health care coverage provided by the employer was specifically defined by statute as either: (1) group health care coverage in a health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340 of Division 2 of the Health and Safety Code; or (2) a group health plan or a group health insurance policy as described in Labor Code section 4616.7. SB 863 deleted the second requirement, and its specific definition of health care coverage, and replaced it with a requirement that an employee must have non-occupational health care coverage on the date of injury. This coverage, under Labor Code section 4600(d)(1) must be "in a plan, policy, or fund as described in subdivisions (b), (c), and (d) of section 4616.7." The specific language in the Labor Code describing this necessary coverage removes any need for additional regulatory interpretation.

Section 9780.1: Employee's Predesignation of Personal Physician.

Specific Purpose of Section: The purpose of this section is to set 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) of this section has been amended to inform employees and employers that an employee may only predesignate a personal physician if the employee actually has 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.

Additionally, subdivision (e), which requires employers to notify their employees of the predesignation requirements, is deleted to avoid redundancy with California Code of Regulations, title 8, section 9880. The remaining subdivisions have been re-lettered. Re-lettered subdivision (f)(4) is amended to include the DWC Form RFA, found at section 9785.5, as a form that must be provided to an employee's predesignated personal physician. The inclusion of "contracted" in re-lettered subdivision (h) conforms to the statutory language of Labor Code section 4600(c).

Necessity: It is necessary to clearly inform employees of their rights and the process necessary to predesignate a personal physician to provide them with medical treatment in case of a work related injury or illness.

Section 9783: DWC Form 9783 Predesignation of Personal Physician.

Specific Purpose of Section: The purpose of this section is to set forth 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 section is being amended to inform 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.

Necessity: It is necessary to clearly inform employees of their rights and the process necessary to predesignate a personal physician to provide them with medical treatment in case of a work related injury or illness.

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

Specific Purpose of Section: The purpose of this section is to set forth 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. Under Labor Code section 4601, an employee may request that their physician be changed to their predesignated personal chiropractor or personal acupuncturist. The form is being amended to advise the

employee that for injuries on or after January 1, 2004, a chiropractor cannot be a treating physician after the employee has received 24 chiropractic visits, unless additional visits are authorized in writing. The amendments 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, and that 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 medical treatment utilization schedule.) The amendments also clarify that the form is an optional form.

Necessity: It is necessary to clearly inform employees of their rights and the process necessary to predesignate a personal chiropractor or personal acupuncturist to provide them with medical treatment in case of a work related injury or illness.

Section 9785: Reporting Duties of the Primary Treating Physician.

Specific Purpose of Section: This section sets forth the reporting duties of the Primary Treating Physician. The amendments include placing chiropractors on notice that for injuries 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 unless the employer has authorized, in writing, additional visits, that 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 that for purposes of this section, 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.

Necessity: It is necessary to inform physicians of their obligations to evaluate and report on employees’ industrial injuries or illnesses.

ECONOMIC IMPACT ANALYSIS

Facts, Evidence, Documents, Testimony, or Other Evidence on Which the Agency Relies to Support an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business. (Government Code §11346.2(b)(6)(A)).

The Acting Administrative Director has made an initial determination pursuant to Government Code §11346.2(b)(6)(A) that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business.

Employers are already required to provide notice of workers’ compensation benefits to their employees and to authorize medical treatment. Labor Code §4600 previously allowed employees to predesignate a personal physician. These regulations only interpret amended Labor Code §4600 requirements regarding predesignating a personal physician or medical group.

The proposed regulations affect all California employers and worker's compensation insurers, but they have no cost impact beyond the minor cost of replacing existing forms with updated forms in conformance with recently enacted statute. SB 863 (De León 2012) expanded the eligibility of employees to designate their personal physicians to provide treatment in the event of occupational injury. Research by the Commission on Health and Safety and Workers' Compensation has found no substantial cost difference between personal physicians and employer-assigned physicians.

The proposed regulations also interpret and clarify the 24-visit cap on chiropractic visits that was enacted by SB 899 (Poochigian 2004). The clarification will produce minor cost savings to employers by reducing disputes over claims for non-chiropractic treatment by chiropractors in excess of the statutory cap on visits. While chiropractors may see a reduction in their income, this will be offset by equivalent savings to California employers whose employees see chiropractors for a work related injury.

Creation or Elimination of Jobs Within the State of California

None. The Acting Administrative Director has determined that the proposed regulations will not significantly create or eliminate any jobs within the state of California. The additional costs to businesses due to the need to distribute revised predesignation forms should be absorbable by existing businesses and should not result in either a substantial change in their existing business practices or their elimination.

Any reduction in income for chiropractors will not occur as result of the proposed regulations, but as a result of compliance with existing statutory provisions (Labor Code §4604.5(c)(1)).

The costs of providing workers' compensation benefits have consistently been identified in the press as a major factor in new businesses deciding not to locate in California, and for existing businesses to leave California for "more business friendly states". Any reduction in the costs of workers' compensation may promote economic activity, attract new businesses and promote expansion of employment generally.

Creation of New or Elimination of Existing Businesses Within the State of California

None. The Acting Administrative Director has determined that the proposed regulations will not significantly create or eliminate any existing businesses within the state of California.

The costs of providing workers' compensation benefits have consistently been identified in the press as a factor dissuading new businesses from opening in California, and for existing businesses to leave California for "more business friendly states". Any reduction in the costs of workers' compensation may promote economic activity, attract new businesses and promote the expansion of existing businesses.

Expansion of Businesses Doing Business Within the State of California

None. The Acting Administrative Director has determined that the proposed regulations will not significantly cause the expansion any existing businesses within the state of California.

The costs of providing workers' compensation benefits have consistently been identified in the press as a factor motivating existing businesses to refrain from hiring new employees or to even lay off existing employees. Any reduction in the costs of workers' compensation may promote overall economic activity and promote expansion of employment generally.

Benefits of the Regulations

The benefits are the result of specific statutory requirements. Senate Bill 863 changes in the process for an employee to predesignate a personal physician or chiropractor to provide medical treatment and places limitations on chiropractic visits for work related injuries.

While some chiropractors may experience slight decreases in income, the overall effect on workers' compensation costs for California business and employers is expected to be a slight net reduction in the cost of medical treatment in workers' compensation cases. Any reduction in the costs of workers' compensation coverage may promote economic activity and employment generally.

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