

California Workers' Compensation Institute

BULLETIN

1111 Broadway #2350, Oakland, CA 94607 (510) 251-9470 www.cwci.org

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The state continues to develop and approve new regulations to implement the legislative reforms of the past several years, with final regulations recently adopted in several key areas, and more expected in the next several months. The following is an update on recent California workers' compensation regulatory activity:

Adopted Regulations:

- **Physician Predesignation** (CCR §§ 9780–9783.1, effective 3/14/06.) Details to clarify the process for: 1) predesignating a personal physician, as allowed under LC 4600; and 2) notifying an employer of a personal chiropractor or acupuncturist who can be used for a change of physician request per LC 4601. Includes optional forms employees may use.
- **Claims Adjuster/Medical Bill Reviewer Certification** (Title 10 CCR §§ 2592.02–2592.05, final regs effective 2/22/06.) New Department of Insurance standards and training requirements for workers' compensation claims adjusters and medical bill reviewers, as required by Insurance Code § 11761, one of the 2003 reforms. Initial certifications are due to the Department of Insurance by July 1 (see CWCI Bulletin 06-02 for additional details).
- **Special Investigation Unit Regulations** (Title 10, CCR §§ 2698.30–2698.43, final regs effective 10/7/05.) Department of Insurance regs detailing insurer responsibilities regarding the establishment, operations and continuous existence of Special Investigations Units to fight fraud.
- **Utilization Review Standards** (CCR §§ 9792.6–9792.10, final regs effective 9/22/05). SB 228 required employers to establish and maintain a UR process for workers' comp medical treatment. These regs define: key terms; the applicability of the process; medical criteria for UR; timeframes, procedures and notice requirements; and a dispute resolution process.
- **Medical Provider Networks** (CCR §§ 9761.1–9761.15, final regs effective 9/15/05.) These regs define requirements for MPNs, as called for in SB 899. They include the application process, 2nd and 3rd opinion process, modification procedures, a process to transfer ongoing care to a network, notification requirements, and procedures for denying, suspending or revoking an MPN plan.
- **Supplemental Job Displacement Benefit Vouchers** (CCR §§ 10133.50–10133.60, final regs effective 8/1/05). AB 227 added LC § 4658.5-4658.6, establishing a Supplemental Job Displacement Benefit (vouchers) for injuries on or after 1/1/04. These regs define key terms, timelines, notice requirements, forms and instructions for workers and claims administrators, requirements for vocational counselors and eligible schools, and criteria for terminating liability for the benefit.
- **PD Rating Schedule** (CCR §§ 9725-9727, 9785-9785.4, 9805, 10150–10152, 10154, 10156, 10158, 10160, 10163, 10165.5), final regs effective 6/10/05. SB 899 amended LC §4660, overhauling the PD Rating Schedule by requiring that disability determinations be based on objective medical findings and wage loss rather than subjective factors of disability and work restrictions. SB 899 also repealed LC §§ 4663, 4750, and 4750.5, and added LC §§ 4663-4664, basing apportionment on the percentage of PD directly caused by work and capping PD for specified regions of the body at 100 percent. These regs include the new schedule incorporating the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed.; clarify statutory terms; specify when physicians must perform PD evaluations in accordance with the AMA Guides; revise reporting requirements (including new forms); define Disability Evaluation Unit procedures for issuing ratings consistent with the new schedule; clarify when a disability is considered permanent; and amend DEU forms.
- **Independent Medical Review** (CCR § 9768.1–9861.17, final regs effective 6/10/05). Regs governing independent medical reviews for MPN programs, required by LC §4616.4. They define statutory terms and independent medical reviewer ("IMR") qualifications; clarify contract application procedures (including a form); clarify the process for workers to request IMR (including a form); provide procedures for an in-person exam or record review; establish required elements for IMR reports; and set fees for IMR services and procedures for adopting an IMR determination.

Final Regulations Under Review by the Office of Administrative Law (OAL):

- **Workers' Compensation Information System** (CCR §§ 9701-9703, regs submitted to OAL for review and approval by 3/22/06). Regs to define statutory terms and clarify required data elements and procedures for reporting claims data to the state's information system. Claims administrators are already required to report data from first and subsequent reports of injury, DWC expects mandatory reporting of medical data by October 2006 if these regs are approved by OAL.

In the Regulatory Process:

- **Medical Legal Fee Schedule** (CCR §§ 9793 & 9795, 1/30/06 public hearing on proposed revisions, testimony now under review. Modified regs may be released for 15-day public comment.) Regs revise definitions used in applying the med-legal fee schedule and increase allowable fees for various types of med-legal evaluations.

- **15% PD Adjustment and Return to Work Accommodation** (CCR §§ 9780-9782, 10001-10005, 15-day public comment period on the most recent draft of these regs ended 2/22/06. Following DWC's review and response to those comments, an additional 15-day comment period is expected.) For employers with 50 or more employees SB 899 calls for a 15 percent increase or decrease in the weekly PD payment, based on whether the employer makes a suitable return-to-work offer. Employers with fewer than 50 employees may be reimbursed for workplace accommodations. These regs clarify which employers are subject to the PD adjustment and the return-to-work program and define the statutory terms.

In the Pre-Regulatory Process:

- **Benefit Notices** (CCR §§ 9810-9813.1, DWC Forum and advisory comment period ended 11/28/05). Regs that revise benefit notice general provisions and definitions; require new and additional information be sent at various points in the life of a claim; update vocational rehabilitation notice requirements and add notices for supplemental job displacement benefits and modified or alternate work for injuries on or after 1/1/04.

- **Pharmacy Fee Schedule** (CCR § 9789.40, advisory comments on proposed regs ended 1/24/06. Additional advisory/forum comments expected on the next draft.) Regs to provide a methodology for determining maximum prices for all pharmaceuticals dispensed to workers' comp patients, including repackaged drugs and others not covered by Medi-Cal.

- **Medical Treatment Utilization Schedule** (CCR §§ 9792.20-9792.22, advisory comments submitted 7/8/05 and a notice of public hearing on proposed regs is expected soon.) SB 228 required the AD to adopt and maintain a medical treatment utilization schedule based on evidence-based, peer-reviewed, nationally recognized guidelines. These regs are expected to be based on ACOEM guidelines and to establish a hierarchy of medical evidence. The schedule will be presumed correct as to the extent and scope of treatment.

- **Billing Standards/Electronic Billing** (CCR §§ 9784-9785, 9792.20-9792.5; advisory comments on first draft proposal were due 8/22/05, subsequent draft is under development.) Regs to: 1) ensure that medical providers and facilities submit complete paper or electronic bills in standard formats; 2) define what constitutes a "complete bill"; 3) specify requirements for submission and receipt of electronic bills; 4) address the confidentiality of medical data submitted, as required by LC §4603.4; 5) revise the subsequent reporting (PR-2) form; and 6) standardize Explanations of Review (EORs).

- **Utilization Review Penalty** (CCR §§ 9792.11-9792.15 advisory and Forum comments were due 11/28/05; 45-day notice of public hearing on the proposed regs is expected soon). Penalties for failing to meet UR requirements under LC §4610.

- **LC §5814.6 Penalty** (CCR §§ 10225-10225.2; Forum comments ended 12/12/05; 45-day notice of public hearing is expected soon) Details and procedures in regard to new general business practice penalties under LC §5814.6.

The AD also is developing a new Resource-Based Relative Value Scale physician fee schedule. CWCI continues to work with advisory groups and will monitor and testify on regulatory proposals. To track the regulations and CWCI comments, check the CWCI website at www.cwci.org, and the DWC's website, http://www.dir.ca.gov/DWC/dwc_home_page.htm.

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