

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

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations: Workers' Compensation – Predesignation of Personal Physician;  
Request for Change of Physician**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 9780 et seq.**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4603.5, proposes to adopt, amend and repeal sections in Article 5, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9780, relating to Predesignation of Personal Physician and Request for Change of Physician.

**PROPOSED REGULATORY ACTION**

<b>Amend Section 9780</b>	<b>Definitions.</b>
<b>Amend Section 9780.1</b>	<b>Employee's Predesignation of Personal Physician.</b>
<b>Repeal Section 9780.2</b>	<b>Employer's Duty to Provide First Aid and Emergency Treatment.</b>
<b>Amend Section 9781</b>	<b>Employee's Request for Change of Physician.</b>
<b>Amend Section 9782</b>	<b>Notice to Employee of Right to Choose Physician.</b>
<b>Amend Section 9783</b>	<b>DWC Form 9783 Predesignation of Personal Physician.</b>
<b>Propose Section 9783.1</b>	<b>DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.</b>
<b>Repeal Section 9784</b>	<b>Duties of the Employer.</b>

**PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** December 15, 2005  
**Time:** 10:00 am to 5:00 pm or conclusion of business  
**Place:** Elihu Harris State Building, Auditorium  
1515 Clay Street,  
Oakland, CA 94612

**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. Please contact the State Wide Disability Accommodation Coordinator, Stephanie Leach, 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. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings 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 December 15, 2005**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

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  
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 December 15, 2005.

## **AUTHORITY AND REFERENCE**

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

Reference is to Labor Code sections 3550, 3551, 4600, 4601, and 4616.

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

These regulations are required by a legislative enactment - Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included Labor Code section 4600 which addresses medical treatment provided by an employer; liability for reasonable expenses; predesignation of a personal physician; expenses incurred in submitting to an examination; and the right to a qualified interpreter.

Labor Code section 4600(c) provides that unless the employer or the employer's insurer has established 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 of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

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 either of the following conditions exist: the employer provides nonoccupational group health 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 the employer provides nonoccupational health coverage in a group health plan or a group health insurance policy as described in Section 4616.7.

Labor Code section 4600(d)(2) provides that for purposes of paragraph (1), a personal physician must be the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and must be the employee's primary care physician who has previously directed the medical treatment of the employee, and retains the employee's medical history and medical records. The physician must also agree to be predesignated.

Labor Code section 4600(d)(3) provides that if the employer provides nonoccupational health care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (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.

The Administrative Director now adopts administrative regulations governing the Predesignation of Personal Physician; Request for Change of Physician; and Treatment Reporting Requirements. These regulations implement, interpret, and make specific section 4600 of the Labor Code as follows:

## **1. Amended Section 9780. Definitions.**

This section is amended to provide definitions for several key terms. New definitions added to section 9780 are: “Emergency health care services,” “Claims Administrator,” “Nonoccupational group health coverage,” and “Primary Care Physician.” The definition which has been retained unchanged is “Facility.” The definitions of “First aid,” “Personal physician,” and “Reasonable geographic area” have been changed in the amended definitions. Definitions which have been deleted in the amended section are “Employer,” “Employee,” “Physician,” “Emergency treatment,” and “Employee-selected physician.”

These definitions are provided to ensure that their meaning, as used in the regulations, will be clear to the workers’ compensation community.

## **2. Amended Section 9780.1 Employee’s Predesignation of Personal Physician.**

This section [subdivisions (a)(1) and (a)(2)] is amended to provide that an employee may be treated for an injury by a personal physician that the employee predesignates in writing prior to the industrial injury if the employer provides nonoccupational group health 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 nonoccupational health coverage in a group health plan or a group health insurance policy as described in Labor Code section 4616.7. The fact that the employer provides such coverage is sufficient to meet this requirement regardless of whether the employee accepts or participates in this health coverage.

Subdivision (a)(3) provides that the employee’s predesignated physician must agree to be predesignated prior to the injury. The personal physician may sign the optional predesignation form provided for in section 9783 of the regulations as documentation of the agreement and may authorize a designated employee of the physician to sign the optional predesignation form. If the personal physician or his or her designee does not sign a predesignation form, there must be other documentation that the physician agreed to be predesignated prior to the injury in order to satisfy this requirement.

Subdivisions (b), (c) and (d) provide that if an employee has predesignated a personal physician prior to the effective date of these regulations, the prior predesignation is valid if the conditions above have been met. If the employer or employer’s insurer has a Medical Provider Network, an employee’s predesignation made in accordance with the provisions above shall be valid and the employee shall not be subject to the employer’s Medical Provider Network transfer of care policy. The predesignated physician is also not required to make referrals to physicians in the employer’s Medical Provider Network.

Subdivision (e) provides that the employer shall notify the employees of the requirements of this section and provide the employees with an optional form for predesignating a personal physician.

Subdivision (f) provides that unless the employee agrees, neither the employer nor the claims administrator shall contact the predesignated personal physician to confirm predesignation status or contact the personal physician regarding the employee’s medical information or medical history prior to the personal physician’s commencement of treatment for the industrial injury.

Subdivision (g) provides that once the employer knows of an employee's predesignation of a personal physician and where the employer becomes liable for an employee's treatment, the claims administrator shall (1) authorize the predesignated physician to provide all medical treatment reasonably required to cure or relieve the injured employee from the effects of his or her injury; (2) provide the name and address of the person to whom billing for treatment should be sent; (3) where there has been treatment of an injury prior to commencement of treatment by the predesignated physician, arrange for delivery to the predesignated physician of all medical information relating to the claim, all x-rays, the results of laboratory studies done in relation to the injured employee's treatment; and (4) provide the physician with the fax number, if available, to be used to request authorization of treatment plans, the complete requirements of section 9785 and the forms set forth in sections 9785.2 and 9785.4. In lieu of providing the complete requirements of section 9785 and the forms set forth in sections 9785.2 and 9785.4, the claims administrator may refer the physician to the Division of Workers' Compensation's website where the applicable information and forms can be found.

Subdivision (h) provides that the employer shall provide first aid and appropriate emergency health care services reasonably required by the nature of the injury or illness, and if afterwards further medical treatment is reasonably required to cure or relieve the injured employee from the effects of his or her injury, the claims administrator shall authorize treatment with the employee's predesignated personal physician.

Subdivision (i) provides that if documentation of a physician's agreement to be predesignated has not been provided to the employer at the time of injury, treatment shall be provided in accordance with Labor Code section 4600 or 4616, if the employer or insurer has established a Medical Provider Network, as though no predesignation had occurred. However, upon provision of the documented agreement prior to injury that meets the conditions of predesignating a physician, the employer or claims administrator shall authorize treatment with the predesignated physician.

### **3. Repealed Section 9780.2. Employer's Duty to Provide First Aid and Emergency Treatment.**

This section is repealed; however, the definitions of "First aid" and "Emergency health care services" are addressed in the definitions contained in amended section 9780.

### **4. Amended Section 9781. Employee's Request for Change of Physician.**

This section [subdivisions (a) and (b)(1)] is amended to provide that after 30 days from the date the injury is reported, the employee may request a one time change of physician. After requesting the change of physician, the employer shall respond to this request no later than 5 working days after the request is made and shall provide the employee with an alternative physician or if the employee requests, with a chiropractor or acupuncturist. An employee's request for a change of physician need not be in writing. This section, however, does not apply to self-insured and insured employers who offer a Medical Provider Network.

Subdivisions (b)(2) and (b)(3) provide that if an employee requesting a change of physician has notified his or her employer in writing prior to the date of injury that he or she has either a personal chiropractor or a personal acupuncturist, and where the employee so requests, the alternative physician tendered by the claims administrator to the employee shall be the employee's personal chiropractor or personal acupuncturist. The notification to the employer must include the name and business address of the chiropractor or acupuncturist. The employer shall notify its employees of the requirements for

requesting a change of physician and provide the employee with an optional form for notification of a personal chiropractor or acupuncturist. In addition, the employer shall advise the employee of the name and address of the alternative physician or chiropractor or acupuncturist if requested, the date and time of an initial scheduled appointment, and any other pertinent information.

Subdivision (c) provides that after 30 days from the date the injury is reported, the employee shall have the right to be treated by a physician or at a facility of his or her own choice within a reasonable geographic area. The employee shall also notify the claims administrator of the name and address of the physician or facility selected. But the notice requirement is deemed satisfied if the selected physician or facility gives notice to the employer of the commencement of treatment or if the employer receives this information promptly from any source. If the selected physician or facility requests, the employee shall sign a release permitting the selected physician or facility to report to the claims administrator as required by section 9785.

Subdivision (d) provides that when the claims administrator is notified of the name and address of an employee-selected physician or facility, or of a personal chiropractor or acupuncturist, the claims administrator shall (1) authorize the physician or facility or personal chiropractor or acupuncturist to provide all medical treatment reasonably required pursuant to section 4600 of the Labor Code; (2) furnish the name and address of the person to whom billing for treatment should be sent; (3) arrange for the delivery to the selected physician or facility of all medical information relating to the claim, all x-rays and the results of all laboratory studies done in relation to the injured employee's treatment; and (4) provide the physician with the fax number, if available, to be used to request authorization of treatment plans, the complete requirements of section 9785, and the forms set forth in sections 9785.2 and 9785.4. In lieu of providing the materials mentioned above, the claims administrator may refer the physician to the Division of Workers' Compensation's website where the applicable information and forms can be found.

#### **5. Amended Section 9782. Notice to Employee of Right to Choose Physician.**

This section is amended to provide that, except for an employer who has established a Medical Provider Network, or an employer whose insurer has established a Medical Provider Network, every employer shall advise its employees in writing of an employee's right (1) to request a change of treating physician if the original treating physician is selected initially by the employer pursuant to Labor Code section 4601 and (2) to be treated by a physician of his or her own choice 30 days after reporting an injury pursuant to subdivision (c) of Labor Code section 4600.

This section also provides that every employer shall advise its employees in writing of an employee's right to predesignate a personal physician pursuant to subdivision (d) of Labor Code section 4600, and section 9780.1. The notices provided by this section shall be provided in accordance with section 9880 and posted in accordance with section 9881.

#### **6. Amended Section 9783. DWC Form 9783 Predesignation of Personal Physician.**

This section is an optional form entitled "Predesignation of Personal Physician." The employee fills out this form and returns the completed form to the employer. The form enumerates the requirements for predesignation and indicates that the employee may use this form to notify his or her employer if the employee wishes to have his or her personal medical doctor or doctor of osteopathy treat the employee for a work-related injury or illness. This form requests the name, address, and telephone number of the physician the employee intends to predesignate. This form also requests the employee's name, address,

and dated signature. This form has an optional signature line for the predesignated physician's signature or the signature of the designated employee of the predesignated physician. The form specifies that if this form is not signed by the predesignated physician or the designated employee of the predesignated physician, then other documentation of the physician's agreement to be predesignated will be required pursuant to Title 8, California Code of Regulations, section 9780.1(a)(3).

**7. Proposed Section 9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.**

This section is a form entitled "Notice of Personal Chiropractor or Personal Acupuncturist." The employee fills out this form and returns the completed form to the employer. The form enumerates the requirements that allow an employee to change his or her treating physician to the employee's personal chiropractor or acupuncturist following a work-related injury or illness. The form requests the chiropractor or acupuncturist's name, address, and telephone number. The form also requests the employee's name, address, and dated signature.

**8. Repealed Section 9784. Duties of the Employer.**

This section is repealed as the duties of the employer are now set forth in the sections 9780.1 and 9781.

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

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses.

## **EFFECT ON SMALL BUSINESS**

The Administrative Director has determined that the proposed regulations will not affect small business. Employers are already required to provide notice of workers' compensation benefits to their employees and to authorize medical treatment. These regulations only interpret amended Labor Code section 4600 requirements which mandate specific language regarding predesignating a personal physician.

## **FISCAL IMPACTS**

- Costs or savings to state agencies or costs/savings in federal funding to the State: None. State agencies in their capacity as employers are required to provide medical care in the workers' compensation system. Predesignation of a personal physician is not a new feature. These regulations implement new statutory conditions that must be satisfied in order to designate a personal physician.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed regulations do apply to a local agency or school district in its capacity as an employer required to provide medical care in the workers' compensation system.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the 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 than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums). Additionally, the proposed regulations were made available for discussion and comment to an advisory group made up of representatives from the workers' compensation community.

## **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, the proposed text of the regulations, pre-rulemaking comments, and the Form 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 current Workers' Compensation Information System 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, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. 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  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

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

### **BACKUP CONTACT/PERSON 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 persons:

Linda Pancho ([lpancho@dir.ca.gov](mailto:lpancho@dir.ca.gov))  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

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

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

If the 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 website: [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 Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 9780.