

**California Coalition on Workers'
Compensation
California Chamber of Commerce
California Association of Joint Powers
Authorities
California State Association of Counties
Association of California Insurance
Companies
State Compensation Insurance Fund
League of California Cities
California Trucking Association
California Grocers Association
Marriott International, Inc.
Metro Risk Management
Schools Insurance Authority
Small Business California
Michael Sullivan & Associates**

**Southern California Edison
Athens Administrators
University of California
Republic Indemnity
Healthcare Solutions
Seyfarth Shaw, LLP.
Employers Group
Grimmway Farms
Nordstrom
Sedgwick
Safeway, Inc.
MEDVAL, LLC.
CompPartners
TRISTAR
ALPHA Fund
EK Health**

October 22, 2013

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

RE: Independent Bill Review Regulations

Dear Ms. Gray,

The above organizations thank you for the opportunity to provide comments on the proposed regulations for Independent Bill Review (IBR). Combined, our organizations represent tens of thousands of insured and self-insured public and private California employers, as well as companies that provide workers' compensation insurance coverage in the state.

While there have been several estimates of the savings associated with SB 863 (De Leon, 2012), it is clear that the ultimate impact on employers (large and small, insured and self-insured) will depend largely on the implementation work that takes place over the next several months at the Department of Industrial Relations, the Division of Workers' Compensation (DWC), the Office of Self Insurance Plans, and the Workers' Compensation Appeals Board. As we did during emergency rulemaking for the IBR regulations, the above-listed organizations remain dedicated to working collaboratively with regulators during the formal rulemaking process to ensure that employers across California receive the relief anticipated during the passage of SB 863 (De Leon, 2012).

Our coalition is pleased to support the general direction taken in the draft regulations to implement SB 863 (De Leon, 2012), but would also offer several suggestions that would provide clarity for claims administrators and reduce friction in the administration of the IBR process.

Thank you once again for the opportunity to provide commentary on the proposed regulations.

GENERAL COMMENTS

The organizations listed above support the direction taken by the DWC with the draft proposed regulations for the Independent Bill Review (IBR). However, we do offer the following comments. Recommended changes are indicated by *italics*, underline and ~~striketrough~~.

§ 9792.5.5 Second Review of Medical Treatment Bill or Medical-Legal Bill

Under this section there are two methods for requesting a second bill review on a non-electronic medical treatment bill: (1) submitting the initially reviewed bill on a CMS 1500 or UB04; or (2) submitting a Request for Second Bill Review form (DWC Form SBR-1). Our coalitions urge the DWC to adopt a single method. Specifically, the DWC should require the Second Bill Review form (DWC Form SBR-1) to be attached to either the modified CMS 1500 or UB04 forms. This would provide both the necessary billing information and prominently distinguish request for second bill reviews. One of the underlying principles of SB 863 was to reduce system friction by streamlining processes. Having one standard one standard process will promote uniformity and efficiency within the IBR process.

§ 9792.5.6 Provider's Request for Second Bill Review – Form

Our coalition suggests that anywhere the word “goods” was stricken from the DWC Form SBR-1 and Instructions that it be retained for consistency with the definition in §9792.5.4(a)(1).

§ 9792.5.7(a)(1) Requesting Independent Bill Review

Our coalition would like to thank the DWC for accepting the language modification proposed (in our April 9, 2013 letter) to this portion of the proposed regulations. Our concern, that the term “one billing code” would limit reviews to one billing code and open IBR to abuse and manipulation has been addressed by this change in the language.

§ 9792.5.11 Withdrawal of Independent Bill Review

Our coalition's April 9, 2013 written comment on this section has been partially resolved in that the revised language allows a provider to withdraw their request at any time prior to a final determination being made. We are supportive of the language added to § 9792.5.11 to accomplish this result.

However, we also suggested that a claims administrator be allowed to unilaterally withdraw in a situation where the disputed amount is paid in full prior to a final determination. This recommendation was not accepted, and we'd like to offer a more complete explanation of why it makes sense to do so. § 9792.5.11 (a) provides for the reimbursement of \$270 to the requesting provider. In a situation where the disputed amount is paid in full prior to a final determination the requesting provider has no incentive to withdraw the IBR request because they would receive an additional \$65 if the process is completed and the claims administrator

has to reimburse the IBR fee. The incentives are aligned in a way that perpetuates disputes that have already been resolved. By allowing a claims administrator to unilaterally withdraw an IBR request under these limited circumstances, we will help resolve disputes more quickly.

§ 9792.5.12 Independent Bill Review – Consolidation or Separation of Requests

As our coalitions previously stated in our emergency regulatory comments, this entire section should be struck. An initial authority issue exists insofar as SB 863 makes no reference to “consolidation” within the context of IBR. Even assuming authority exists; however, consolidation should still not be permitted within IBR. While there is a process to consolidate matters at the WCAB level, it is a rare and extraordinary procedure. This WCAB procedure requires numerous hearings to demonstrate that a common issue exists. An Independent Bill Review Organization (IBRO) is not equipped to determine this type of threshold issue and perform audits. As a result, providers may assert numerous different claims that have a common issue, when in actuality each case is factually distinct.

While our coalition reiterates that consolidation should not be permitted and this entire section should be stricken, if consolidation is permitted then the misconduct of both payers and providers should be captured by these regulations. Presently, this section only addresses payer misconduct as consolidation is permitted where a “pattern and practice of underpayment by a claims administrator” is shown. “Pattern and practice” is defined in this section as “ongoing conduct by a claims administrator that is reasonably distinguishable from an isolated event.” This definition should be loosened and an additional paragraph should be added to capture misconduct by providers. We urge the following changes:

(b)(3) “Pattern and practice” means ongoing conduct by a claims administrator and/or a provider that is reasonably distinguishable from an isolated event.

(c)(4) Upon a showing of good cause the Administrative Director may allow the consolidation of requests for independent bill review by a single provider or medical group showing a possible pattern and practice of provider upcoding or unbundling or other billing irregularities.

§ 9792.5.15 Independent Bill Review – Implementation of Determination and Appeal

Two issues exist with this section. First, under the emergency regulations, to appeal an IBR determination a party was required to file a “verified petition.” The term “verified” was removed from § 9792.5.15(b) in the current draft regulations. This creates a conflict between this section and Labor Code § 4603.6 which requires a “verified appeal” when appealing IBR decisions to the Workers’ Compensation Appeals Board (WCAB). The DWC should cure this inconsistency so parties have a clear understanding of the appeals process. The regulation should also reference Labor Code § 4603.6(f) and its requirements for filing a verified appeal.

Second, the draft regulations remove the requirement that all interested parties be served with the petition. All interested parties should have notice of an appeal – this is a fundamental concept within both California’s workers’ compensation system and, more broadly, within American jurisprudence. If the DWC intends for there to be a specific procedure before the WCAB to address these fundamental issues of fairness and due process, it needs to articulate that. Our coalition urges the DWC to reinstate this requirement.

Mailing Address for IMR Application

Clarification is needed on the mailing address for Maximus to use for an IMR App. The form instructions state to mail it to: DWC-IBR c/o Maximus Federal Services, Inc., 625 Coolidge Drive, Suite 100, Folsom, CA 95630. The instructions further state, "Forms that are not sent to this address will be returned by DWC and not considered filed." However, the IMR section of the DWC website states the IMR App should be mailed to a PO Box address in Sacramento for Maximus. See below text from website itself. If the IMR App is mailed to the PO Box in Sacramento will it be considered filed? Further, the suite address for Maximus' physical address on the website is listed as Suite 150, not 100.

Additional Information

We look forward to continuing to engage with the Division as the regulations progress through the regulatory process. If you have any questions, please feel free to contact Jeremy Merz with the California Chamber of Commerce (916-930-1227) or Jason Schmelzer with the California Coalition on Workers' Compensation (916-441-4111).

Sincerely,



Jeremy Merz
California Chamber of Commerce



Jason Schmelzer
California Coalition on Workers' Compensation

cc: David Lanier, Chief Deputy Legislative Secretary, Office of Governor Edmund G. Brown
Christine Baker, Director, Department of Industrial Relations
Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation