

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

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation
Description of Disabilities, Primary Treating Physician Reporting Requirements,
Schedule for Rating Permanent Disabilities**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9725 et seq.**

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| Section 9725 | Method of Measurement |
| Section 9726 | Method of Measurement (Psychiatric) |
| Section 9727 | Subjective Disability |
| Section 9785 | Reporting Duties of the Primary Treating Physician |
| Section 9785.2 | Form PR-2 "Primary Treating Physician's Progress Report" |
| Section 9785.3 | Form PR-3 "Primary Treating Physician's Permanent and Stationary Report" |
| Section 9785.4 | Form PR-4 "Primary Treating Physician's Permanent and Stationary Report" |
| Section 9805 | Schedule for Rating Permanent Disabilities, Adoption, Amendment |
| Section 10150 | Disability Evaluation Unit |
| Section 10151 | Schedule for Rating Permanent Disabilities [Repealed] |
| Section 10152 | Disability, When Considered Permanent |
| Section 10154 | Permanent Disability Rating Determinations, Kinds [Repealed] |
| Section 10156 | Formal Rating Determinations |
| Section 10158 | Formal Rating Determinations as Evidence |
| Section 10160 | Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee |
| Section 10163 | Apportionment Referral (DEU Form 101) |
| Section 10165.5 | Notice of Options Following Permanent Disability Rating (DEU Form 110) |

BACKGROUND TO REGULATORY PROCEEDING

In response to the state of California's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included several provisions designated to control workers' compensation costs, including the amendment of Labor Code section 4660, which provides for substantive revisions that change the permanent disability rating schedule by eliminating subjective factors of disability and work restrictions and using objective medical conditions and wage loss data to determine disability. Senate Bill 899 further

repealed Labor Code sections 4663, 4750, and 4750.5, and added a new Labor Code section 4663 and section 4664, addressing apportionment of permanent disability and establishing 100% cap on permanent disability for specified regions of the body.

In the workers' compensation system, workers who are permanently disabled by industrial injuries or illnesses are entitled to indemnity, the amount of which is based on percentages of permanent disability as set forth in a permanent disability rating schedule. Based on this schedule, more serious levels of permanent disability correspond with higher percentages and greater compensation. (See generally, Labor Code sections 4650-4664.) Generally, a rating is determined for an injured worker by the Disability Evaluation Unit of the Division of Workers' Compensation, or by a Workers' Compensation Administrative Law Judge, or by agreement of the parties. A disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity while 100% represents *total* permanent disability. Total permanent disability generally describes that level at which an employee has sustained a total loss of earning capacity. Permanent partial disability is represented by ratings between 0% and 100%. Some impairments are conclusively presumed to be totally disabling. (Labor Code section 4662.) The amount of compensation is then determined by Labor Code sections 4658 and 4659, see also, Labor Code sections 4451-4458.

These regulations clarify that the method for determining percentages of permanent disability is set forth in the Schedule for Rating Permanent Disabilities effective January 1, 2005, incorporate by reference the permanent disability rating schedule which incorporates the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 5th Edition (hereinafter AMA Guides to the Evaluation of Permanent Impairment); define applicable terms related to the statutes; clarify when the permanent disability evaluations conducted by the physicians must be performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment; and amend the forms used by the primary treating physician to comply with reporting duties as they are impacted by the requirements of the section 4660, including the form used by the primary treating physician to report on the permanent and stationary status of the injured worker's condition.

The aforementioned treating physician forms clarify which form is to be used with the 2005 permanent disability rating schedule and which is to be used with the 1997 permanent disability rating schedule. The forms are also amended to include requirements pertaining to the rating of impairments under the AMA Guides to the Evaluation of Permanent Impairment under section 4660, and apportionment sections 4663 and 4664.

The proposed regulations further clarify the manner in which the Disability Evaluation Unit (DEU), under the authority of the Administrative Director, will issue permanent disability ratings consistent with the 2005 permanent disability rating schedule; clarify when a disability is considered permanent; and amend DEU's apportionment referral form (DEU Form 105), and DEU's Notice form after a permanent disability rating (DEU

Form 110).

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

The Division relied upon:

(1) *Commission on Health and Safety and Workers' Compensation, Workers' Compensation Medical Care in California: Costs*, Fact Sheet Number 2, August 2003, http://www.dir.ca.gov/chswc/WC_factSheets/WorkersCompFSCost.pdf;

(2) *Evaluation of California's Permanent Disability Rating Schedule*, Interim Report, December 2003, RAND Institute for Civil Justice, Reville, Robert T., Seabury Seth, Neuhauser, Frank, <http://www.rand.org/publications/DB/DB443/DB443.pdf>;

(3) *Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899*, December 2004, RAND Institute for Civil Justice, Seabury, Reville, Neuhauser, <http://www.rand.org/publications/WR/WR214/>;

(4) *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment*, 5th Edition, Cocchiarella, Linda, Andersson, Gunnar B.J.; and

(5) *Dictionary of Occupational Titles*, Volume 1 and II, 4th Edition, Revised 1991, U.S. Department of Labor Employment and Training Administration, 1991 and DOT Revised Dictionary of Occupational Titles, 2005 CD.

(6) California Department of Insurance. Pure Premium Decision, File No. RH-04039178, (November 17, 2004).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None of the proposed regulations mandates the use of specific technologies or equipment.

FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business. All employers in the state of California that are governed by the California workers' compensation statute, including the State itself and every local agency, are required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability. There will be some small costs related to training insurers and physicians to use the AMA Guides to Evaluation of Permanent Impairment, updating computer systems to incorporate the changes of the revised permanent disability rating schedule, and purchasing the AMA Guides to Evaluation of Permanent Impairment, at the cost of \$128.00 each. These costs, however, will be offset by savings resulting from the regulations. Generally, benefits will accrue to

all businesses and other entities that employ individuals in the State of California because the permanent disability rating schedule is being revised in a manner intended to promote consistency, uniformity, and objectivity based on the AMA Guides to the Evaluation of Permanent Impairment, and taking into account the occupation, age and diminished earning capacity of the injured worker. Further, benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.

Section 9725 Method of Measurement.

Specific Purpose of Section 9725:

The purpose of this section is to set forth the method which should be followed for measuring physical elements of a disability, and to clarify that this section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

Necessity:

It is necessary to: (1) set forth the method which should be followed for measuring physical elements of disability for permanent disability evaluations performed pursuant to pre-2005 permanent disability rating schedules; and (2) clarify that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9726 Method of Measurement (Psychiatric).

Specific Purpose of Section 9726:

The purpose of this section is to set forth the method for measuring the psychiatric elements of a disability and to clarify that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

Necessity:

It is necessary to: (1) set forth the method which should be followed for measuring the psychiatric elements of a disability for permanent disability evaluations performed pursuant to pre-2005 permanent disability rating schedules; and (2) clarify that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9727 Subjective Disability.

Specific Purpose of Section 9727:

This section sets forth a method for identifying subjective disability and provides definitions for terms used in connection with this type of disability. The section clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

Necessity:

It is necessary to set forth the method for identifying subjective disability and to ensure that the meaning of the terms are clearly understood by the workers' compensation community. It is necessary to clarify that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005. Because there is more than one schedule, this section is necessary to ensure that the workers' compensation community understands which schedule applies to the section.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9785 Reporting Duties of the Primary Treating Physician.

The purpose of this section is to define who the primary treating physician is, and to set forth the reporting duties of the primary treating physician. The proposed amendments to specific subdivisions of section 9785 are set forth below:

Specific Purpose of Amendments to Section 9785:

Subdivision 9785(a)(1) identifies the primary treating physician and clarifies that the primary treating physician may also be selected in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616.

Subdivision 9785(a)(8) defines permanent and stationary status as the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without

medical treatment. This definition is consistent with the AMA Guides to the Evaluation of Permanent Impairment.

Subdivision 9785(b)(3) sets forth the requirement that if an employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. It further provides that no other primary treating physician shall be designated by the employee unless and until the dispute is resolved. The amendments to the section clarify that if the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay, or deny a treatment recommendation, the dispute shall also be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062.

Subdivision 9785(b)(4) sets forth the requirement that if the claims administrator disputes a medical determination made by the primary treating physician, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. The amendments to the section clarify that the claims administrator is also required to resolve medical determinations disputes under the applicable procedures set forth in Labor Code section 4610 when applicable.

Subdivision 9785(g) sets forth the requirement that when the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall report any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (Form PR-3) contained in section 9785.3. The amendments to the section clarify that for permanent disability evaluations performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment, and may be reported in the new DWC Form PR-4 pursuant to Section 9785.4. The subdivision further sets forth the requirement that the Qualified Medical Evaluators and Agreed Medical Evaluators may not use DWC Form PR-3 or DWC Form PR-4 to report medical-legal evaluations.

Necessity:

This section is necessary to inform the public of the duties of the primary treating physician, including the required format and timeframes for reporting. The proposed amendments revise the specific subdivisions set forth above to conform to the recently adopted and/or amended workers' compensation statutes.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9785.2 Primary Treating Physician's Progress Report (PR-2).

Specific Purpose of Section 9785.2:

Section 9785.2 sets forth the form which may be used by the primary treating physician to submit treatment reports (DWC Form PR-2). The amendment to section 9785.2 clarifies that the DWC Form PR-2 may also be used to submit a request for authorization pursuant to the requirements of Labor Code section 4610.

Necessity:

This section is necessary to facilitate the reporting of the primary treating physicians. The amendment was necessary to allow the primary treating physician to also use the DWC Form PR-2 to submit requests for authorization of medical treatment pursuant to Labor Code section 4610.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9785.3 Primary Treating Physician's Permanent and Stationary Report (PR-3).

Specific Purpose of Section 9785.3:

Primary treating physicians may submit their permanent and stationary reports using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in section 9785.3. The amendments to section 9785.3 clarify that the DWC Form PR-3 is to be used for ratings prepared pursuant to the 1997 Permanent Disability Rating Schedule. DWC Form PR-3 further sets forth the requirements on apportionment consistent with Labor Code sections 4663 and 4664.

Necessity:

This section is necessary to facilitate the permanent and stationary reports of the primary treating physicians. The amendment was necessary to clarify that the DWC Form PR-3 may only be used for ratings prepared pursuant to the 1997 Permanent Disability Rating Schedule, and to set forth the requirements on apportionment consistent with Labor Code sections 4663 and 4664.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9785.4 Primary Treating Physician's Permanent and Stationary Report (PR-4).

Specific Purpose of Section 9785.4:

Section 9785.4 sets forth the DWC Form PR-4, which like the DWC Form PR-3, may be used by the primary treating physicians to submit their permanent and stationary reports. The amendments to section 9785.4 clarify that the DWC Form PR-4 is to be used for ratings prepared pursuant to the 2005 Permanent Disability Rating Schedule and the AMA Guides to the Evaluation of Permanent Impairment. DWC Form PR-4 further requires the reporting physician to set forth the assessment of pain pursuant to the AMA Guides to the Evaluation of Permanent Impairment, and requires the reporting physician to set forth Functional Capacity Assessment, which is to be prepared by the treating physician, solely for the purpose of determining a claimant's ability to return to his or her usual and customary occupation. DWC Form PR-4 further sets forth the requirements on apportionment consistent with Labor Code sections 4663 and 4664

Necessity:

This section is necessary to facilitate the permanent and stationary reports of the primary treating physicians. The newly adopted form is necessary to make the permanent and stationary reports consistent with the AMA Guides to the Evaluation of Permanent Impairment, and to set forth the requirements on apportionment consistent with Labor Code sections 4663 and 4664.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9805 Schedule for Rating Permanent Disabilities, Adoption, Amendment.

Specific Purpose of Section 9805:

The purpose of this section is to adopt and incorporate by reference the Schedule for Rating Permanent Disabilities. The schedule provides the method for the determination of percentages of permanent disabilities. The schedule is effective January 1, 2005, and must be amended at least once every five years. The purpose of this section is also to state that the schedule adopts and incorporates by reference the AMA Guides to the Evaluation of Permanent Impairment, and to list the website from where the schedule may be downloaded.

Necessity:

This section is necessary to conform to the requirements of the amended Labor Code

section 4660, and the adopted Labor Code sections 4663 and 4664. It informs the public that there is a new Permanent Disability Rating Schedule effective January 1, 2005. The revisions made to the schedule: (1) incorporate the AMA Guides to the Evaluation of Permanent Impairment to describe the nature of a physical injury or disfigurement, (2) give consideration to an employee's diminished future earning capacity by formulating an adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies, and (3) promote consistency, uniformity, and objectivity.

Section 10150 Disability Evaluation Unit.

Specific Purpose of Section 9785.4:

The purpose of this section is to state that the Disability Evaluation Unit, under the direction and authority of the Administrative Director, is the entity responsible for issuing permanent disability ratings utilizing the Schedule for Rating Permanent Disabilities adopted by the Administrative Director. The section further sets forth the kinds of rating determinations which will be issued by the Disability Evaluation Unit.

Necessity:

This section is necessary to inform the public that the Disability Evaluation Unit, under the direction and authority of the Administrative Director, is the entity responsible for issuing permanent disability ratings utilizing the Schedule for Rating Permanent Disabilities adopted by the Administrative Director, and to inform the public of the kinds of rating determinations which will be issued by the Disability Evaluation Unit.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10151 Schedule for Rating Permanent Disabilities. [Repealed]

Specific Purpose of Section 10151:

This section provided for the adoption of the permanent disability rating schedule.

Necessity:

The section was duplicative of section 9805, and was repealed as redundant.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10152 Disability, When Considered Permanent.

Specific Purpose of Section 10152:

The purpose of this section is the state when a disability is considered permanent. The section provides that a disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

Necessity:

It is necessary to revise the definition of when a disability is considered permanent to conform to the definition of the same term in the AMA Guides to the Evaluation of Permanent Impairment.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 10154 Permanent Disability Rating Determinations, Kinds.
[Repealed]**

Specific Purpose of Section 10154:

This section provided a list of the kinds of permanent disability rating determinations.

Necessity:

The text of the section was moved into section 10150 for organizational purposes, and the section was repealed as redundant.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10156 Formal Rating Determinations.

Specific Purpose of Section 10156:

The purpose of this section is to set forth the procedures for obtaining formal rating determination from the Disability Evaluation Unit.

Necessity:

It is necessary to inform the public of the procedures set for obtaining formal rating determination from the Disability Evaluation Unit to ensure that the public understands the procedures.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10158 Formal Rating Determinations As Evidence.

Specific Purpose of Section 10158:

The purpose of this section is to provide that formal rating determinations prepared by disability evaluators shall be deemed to constitute evidence only as to the relation between the disability or impairment standard(s) described and the percentage of permanent disability. The amendment to this section adds the term “or impairment standards” that is used in the 2005 PDRS so the evidentiary value of the formal rating determination is consistent for evaluation under the 1997 and 2005 Permanent Disability Rating Schedules.

Necessity:

It is necessary to inform the public that formal rating determinations constitute only evidence as to the relation between the disability as that term is used in the 1997 PDRS or impairment standard(s) as that term is used in the 2005 PDRS and the percentage of permanent disability to ensure that the public understands the proper evidentiary value of formal rating determinations.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10160 Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

Specific Purpose of Section 10160:

The purpose of this section is to set forth the procedures for summary rating determinations and comprehensive medical evaluations of unrepresented employees. The amendments to this section are corrections for clarification purposes, and set forth a time limit for a request for a rating of a supplemental comprehensive medical evaluation report.

Necessity:

It is necessary to inform the public of the procedures for summary rating determinations and comprehensive medical evaluations of unrepresented employees. The amendments to this section are necessary for clarification purposes. The time limit of twenty days for a request for a rating of a supplemental comprehensive medical evaluation report is necessary in order to allow for expeditious resolution of injured workers' cases.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 10163 Apportionment Referral (DEU Form 105).

Specific Purpose of Section 10163:

The purpose of this section is to set forth DEU Form 105, which is an apportionment referral form letter. The form letter provides that the formal medical evaluation report attached to the form indicates that part or all of the permanent disability may be subject to apportionment pursuant to Labor Code section 4663 and/or Labor Code section 4664, and requests that the workers' compensation administrative law judge determine whether the apportionment is inconsistent with the law. This section further requires that after checking the appropriate space as to whether the apportionment is consistent with the law or not, the Workers' Compensation Administrative Law Judge is required to sign and date the bottom of this form and return it with the medical report to the DEU office listed on the form.

Necessity:

This section is necessary in order to insure accurate and complete permanent disability rating determinations. The amendments to this section clarify that apportionment has to be consistent with the requirements of Labor Code sections 4663 and 4664.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Section 10165.5. Notice of Options Following
Permanent Disability Rating (DEU Form 110).**

Specific Purpose of Section 10163:

The purpose of DEU Form 110 is to notify the injured worker of his or her options following a permanent disability rating determination. The amendments to the form clarify that unrepresented injured worker may seek administrative review from the Administrative Director of the Division of Workers' Compensation of the rating within 30 days of receipt of the rating.

Necessity:

This section is necessary to notify the injured worker of his or her options following a permanent disability rating determination. The amendments to the form clarify that unrepresented injured worker may seek administrative review from the Administrative Director of the Division of Workers' Compensation of the rating within 30 days of receipt of the rating. The term "reconsideration" was removed from the section because it was confused with the term "reconsideration" as used in Labor Code section 5900.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.