

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9780.1(e)	<p>Commenter recommends restoring the original language to this subdivision that reads as follows:</p> <p><u>(e) An employer who qualifies under (a)(2) of this section shall notify its employees of all of the requirements of this section and provide its employees with an optional form for predesignating a personal physician, in accordance with section 9880. The employer may use the predesignation form (DWC Form 9783) in section 9783 for this purpose.</u></p> <p>Commenter opines that it is necessary to restore this subdivision because Labor Code section 3551(b) requires the new hire notice to include an optional form for notifying the employer of the name of the employee's personal physician. Commenter notes that the subsequent subdivisions will need to be re-</p>	<p>Brenda Ramirez  Claims &amp; Medical Director  California Workers' Compensation Institute  October 7, 2013  Written Comment</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>As stated in the Initial Statement of Reasons, this language was deleted to avoid redundancy with California Code of Regulations, title 8, section 9880(c)(8). Section 9880 sets forth the required content of the new hire notice, and subdivision (c)(8) specifically requires the employer to provide 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 by Labor Code Section 4600, or "personal chiropractor," as defined by Labor Code Section 4601."</p>	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	alphabetized when this subdivision is restored.			
9783 DWC Form 9783 Predesignation of Personal Physician	<p>Commenter recommends adding language to the fifth bullet point of the DWC Form 9783 indicating that written notice of pre-designation must also include the name of the plan, policy or fund providing health care coverage for injuries and illnesses that are not work related.</p> <p>Commenter recommends verifying the effective date of the form to ensure that it is correct. Commenter notes that the date listed at the bottom of page indicates the effective date as July 1, 2013.</p>	Peggy Thill Claims Operations Manager, State Compensation Insurance Fund – Claims Regulatory Division October 7, 2013 Written Comment	<p>The Acting Administrative Director accepts these comments in part.</p> <p>The addition of the suggested language is unnecessary.</p> <p>The omission of space to provide this information was a formatting error on the proposed form. The final version of the form will have blank space to make it clear that this information must be provided.</p> <p>The revision date on the form is a placeholder. Upon its adoption, the final form will have the effective date of the regulations as its revision date.</p>	The spacing on the form will be corrected to provide space for entering this information, and upon its adoption, the final form will have the effective date of the regulations as its revision date
9783 DWC Form	Commenter recommends the	Brenda Ramirez	The commenter is correct.	The deviation from

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9783 Predesignation of Personal Physician	<p>following revised language:</p> <ul style="list-style-type: none"> <li>On the date of your work injury you have health care <del>insurance</del> <u>coverage</u> for injuries or illnesses that are not work related;</li> </ul> <p>The commenter states that Labor Code section 4600(d)(1) says "if the employee has health care coverage..." Commenter opines that coverage is not necessarily insurance.</p>	Claims & Medical Director California Workers' Compensation Institute October 7, 2013 Written Comment	The deviation from the statutory language was a typographical error.	the statutory language will be corrected as a section 100 change to conform the regulatory language to the statutory language.
9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist	Commenter states that these proposed regulations concerning the limitations on chiropractors serving as an injured employee's treating physician provide that a chiropractor shall not be a treating physician after the employee has received the 24 chiropractic visits allowed by the Labor Code, and define a "chiropractic visit" as any	Eric Mumbauer, D.C. Chief Financial Officer – Industrial Relations Department Chair California Chiropractic Association October 4, 2013	The Acting Administrative Director does not accept this comment.  If the legislature had intended the amendment to Labor Code section 4600(c) to only limit "chiropractic treatments", they would have used that term.	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to E&amp;M codes.</p> <p>Commenter opines that the intent of the proposed regulation appears to be to limit the “Free Choice of Physician” under LC 4600: <i>“A chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (d) of Section 4604.5.”</i></p> <p>Labor Code section 4604.5 states: <i>“(c) (1) Notwithstanding the medical treatment utilization schedule, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury.”</i></p>	<p>Written Comment</p> <p>Steven Pittson October 7, 2013 Written Comment</p> <p>Floyd Minana California Chiropractic Association October 7, 2013 Oral Comment</p>	<p>By using the broader term “chiropractic visits”, it appears that the legislature intended to address the cost driver of chiropractors providing and billing for evaluation and management reports on issues beyond their scope of practice and/or competence.</p>	

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	<p>Commenter opines that the Division has over stepped its authority as a regulatory body by altering the intent of Labor Code 4604.5 (c) (1), as promulgated under SB228 and SB899. Commenter states that the legislative intent at that time was to limit runaway <u>treatment</u> involving physical medicine providers, such as physical therapists (PTs), occupational therapists (OTs) and doctors of chiropractic (DC). Utilization studies, including those by CWCI and WCRI clearly demonstrate the goal of reducing utilization has been accomplished.</p> <p>Commenter states that physical therapists and occupational therapists are not considered physicians under LC 3209.3, cannot serve as the primary treating physician (PTP), nor can they serve as AMEs or QMEs.</p>			

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	<p>Doctors of chiropractic clearly are considered physicians under Labor Code 3209.3 and may serve as QMEs and AMEs. Commenter states that DCs have served as the PTP for injured workers for decades. The distinction in licensure between DC's as opposed to PT's and OT's underscores there are clear differences in the roles of these providers, and proper implementation of Labor Code 46000(c) requires appropriately defining the term "visit."</p> <p>Commenter states that there is a distinction between the provision of "treatment" versus those services otherwise ascribed to a PTP, in particular management of the patient. Nowhere does Labor Code 4604.5 (c) (1) state that a chiropractic VISIT means any time the patient enters the chiropractor's office, particularly for</p>			

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>distinct evaluation and management services. Commenter states that DCs have continued to serve as PTPs, directing and coordinating care between various specialists, requesting appropriate diagnostic testing and otherwise assisting in moving injured workers forward in the complex workers' compensation system since the adoption of SB228. Many peer reviewed studies have demonstrated higher patient satisfaction for chiropractic patients, and given the shortage of specialists and occupational medicine physicians, as well as demonstrated competence; there is simply no reason to eliminate a class of physician simply because a legislated treatment cap has been reached.</p> <p>Commenter states that this new definition also reduces the number of treatment visits the injured</p>			

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>worker is otherwise entitled to under Labor Code 4604.5.</p> <p>Commenter recommends that the Division of Workers' Compensation amend the proposed regulation so that the definition of "visit" under LC 4604.5 (c)(1) reflects its original legislative intent to mean "treatment" and not any time the patient visits the chiropractor, particularly if only for evaluation and management services. Commenter opines that the alternative is discriminatory, punitive and reflects a bias against one class of provider without any rational basis.</p> <p>Commenter opines that the Division has provided no logical, statutory or other rational basis for limiting the ability of injured workers to select a non-invasive, non-pharmacological alternative for treatment of their industrial</p>			

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	injury. The latter appears all the more relevant given the explosion in the use of narcotics and opioids since the initial reforms under SB 228 and SB 899. For example, CWCI has reported a 300% increase in the use of opioids and narcotics between 2002 and 2011, and a 321% increase in costs for those drugs, not to mention the cost in lives, increased disability, lost productivity and deaths.			
9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist	Commenter supports the proposed regulatory language revising the reporting duties of primary and secondary treating physicians to comport with SB 863 and prior law by stating that, for dates of injury 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 (24) unless the employer has authorized additional visits in	Julianne Broyles CAJPA  Jeremy Merz CalChamber  Jason Schmelzer CCWC October 7, 2013 Written Comment	The Acting Administrative Director thanks the commenter.	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>writing.</p> <p>Commenter also appreciates that the proposed regulatory language clarifies 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.</p>			
<p>9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist</p>	<p>Commenter recommends the following revised language:</p> <p>This prohibition shall not apply to visits for postsurgical physical medicine visits prescribed by the surgeon <u>who performed the operation, a nurse practitioner or physician assistant working with the surgeon</u>, or physician designated by the surgeon, under the postsurgical component of the Division of Workers’ Compensation’s Medical Treatment Utilization Schedule <u>that</u></p>	<p>Julianne Broyles CAJPA</p> <p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC October 7, 2013 Written Comment</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>Adding this language would be redundant as it is already part of the Medical Treatment Utilization Schedule.</p>	<p>None.</p>

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u><i>has been authorized by the Claims Administrator.</i></u></p> <p>Commenter notes that Chapter 4.5. Division of Workers' Compensation: Subchapter 1. Administrative Director-Administrative Rules: Article 5.5.2. Medical treatment utilization schedule: §9792.24.3. Postsurgical Treatment Guidelines, Subsection (c)(1) states: Only the surgeon who performed the operation, a nurse practitioner or physician assistant working with the surgeon, or a physician designated by the surgeon can make a determination of medical necessity and prescribe post-surgical treatment under this guideline. The suggested revised language incorporates § 9792.24.3(c)(1) for consistency. Verbiage has also been added to ensure that the employee is aware that treatments are authorized by the employer or the Claims Administrator.</p>			
9783.1 DWC Form 9783.1 Notice of Personal	Commenter states that as vice president of network management for Gallagher Bassett services, he is responsible for certified	Thomas Barnes Vice President Network Management	Commenter would like for the Division to provide them with time to implement all of the changes brought about	The regulations will have an effective date of July 1, 2014 to allow the

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Chiropractor or Personal Acupuncturist	<p>networks across that country and that while many states now have MPNs California is the only state that has a limitation to chiropractic treatment. Also, California is the only state that he has seen that actually include interpretive services, which is not what we've seen in other states.</p> <p>The commenter is concerned about the timing of the multiple rulemaking proceedings that the Division is currently conducting to implement SB 863. Gallagher Bassett has close to 300 MPNs for its clients in California – and is concerned that they will have a very short window to make sure all the necessary revisions required by changes in regulations are accomplished in time. The commenter gives examples of the revisions, which include the introduction of a medical access assistant in the MPN regulations,</p>	Gallagher Bassett Services October 7, 2013 Oral Comment	<p>by the regulatory changes brought about by SB 863.</p> <p>To the extent this comment addresses this rulemaking, the Acting Administrative Director intends to allow the regulated public time to make the required changes.</p> <p>To the extent this comment addresses other Division rulemakings under way to implement SB 863, the comment is outside the scope of this rulemaking.</p>	regulated public time to make the required changes.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>changes to the definition of the MPN contact, the process for petitions for hearings, the RAM reviews, among other issues.</p> <p>As the commenter recalls from the MPN regulations, material modifications will need to be done on all existing MPNs within four years of the last approval; and that will require Gallagher Bassett to make sure they get all of their applications modified well within the first quarter of 2014 to comply with regulatory changes.</p> <p>The commenter states that there will be a lag time to service their clients and, also, the injured workers who would actually be looking for assistance with medical care because the goal is to return the employee back to work.</p> <p>During the public hearing on the interpreter's fee schedule, one</p>			

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>commenter stated that at her company, as with other networks, they have to go through and obtain acknowledgment letters. Then they have to go back and do all the geocoding. And then for changes in material -- the modification to the existing MPN application and employment application, all those activities are sequential. One has to happen before the other. It just could not be accomplished by January 1st.</p> <p>The commenter suggests that a staggered implementation for the Division's multiple SB 863 rulemaking proceedings would be beneficial for all concerned, and asks that the Division consider implementing this course of action.</p>			
9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or	<p>Commenter recommends that the Physician section of the MD/DO pre-designation form be incorporated into this form. Commenter opines that making</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>The language the</p>	<p>None.</p>

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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Personal Acupuncturist	<p>sure that the personal chiropractor/acupuncturist is willing to treat a workers' compensation claim before an injury will serve to ensure that, if the employee does sustain an injury, there will not be a delay in treatment. Commenter recommends the following adaptation from the MD/DO form.</p> <p><b>Chiropractor/Acupuncturist: I agree to this Predesignation:</b></p> <p>Signature: _____ Date: _____</p> <p>(Chiropractor/Acupuncturist or Designated Employee of the Chiropractor/Acupuncturist or Medical Group)</p> <p>The Chiropractor/Acupuncturist is not required to sign this form, however, if the Chiropractor/Acupuncturist or designated employee of the Chiropractor/ Acupuncturist or</p>	Association October 7, 2013 Written Comment	commenter suggests is required for MDs and DOs by Labor Code section 4600(d)(2). It is not required for chiropractors or acupuncturists. If the legislature intended it to be required for chiropractors and acupuncturists, and they would have included a reference to chiropractors and acupuncturists in Labor Code section 4600(d)(2).	
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PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	medical group does not sign, other documentation of the Chiropractor's/Acupuncturist's agreement to be pre-designated will be required pursuant to Title 8, California Code of Regulations, section 9780.1(a)(3).			
9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist	Commenter recommends verifying the effective date of the form to ensure that it is correct. Commenter notes that the date listed at the bottom of page indicates the effective date as July 1, 2013.	Peggy Thill Claims Operations Manager State Compensation Fund – Claims Regulatory Division October 7, 2013 Written Comment	The Acting Administrative Director accepts this comment. The revision date on the form is a typographical error.	Upon its adoption, the final form will have the effective date of the regulations as its revision date.
9783.1 DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist	Commenter recommends the following revised language:  <b>NOTE:</b> <del>If your date of injury is January 1, 2004 or later, a</del> <u>A</u> chiropractor cannot be your treating physician after you have received 24 chiropractic visits unless your employer has authorized additional visits in	Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute October 7, 2013 Written Comment	The Acting Administrative Director does not accept these comments.  The language the commenter suggests should be deleted was included for purposes of clarity.  While uncodified section 84	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>writing. The term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation, <u>other goods or services</u>, or are limited to evaluation and management.</p> <p>Commenter opines that it is not necessary to include “If your date of injury is January 1, 2004 or later” as every employee who will subsequently receive and/or predesignate on this form will have a date of injury after 2004.</p> <p>Commenter states that adding “other goods or services” will clarify that the prohibition will apply to chiropractic visits for any goods or services, and is not limited only to visits for manipulation or evaluation and management.</p>		<p>of SB 863 provides that the bill shall apply to all pending matters, regardless of date of injury, the limitation on chiropractic visits in Labor Code section 4600(c) specifically refers to Labor Code section 4604.5, which only applies to cases with a date of injury on or after January 1, 2004. (See Uncodified section 47 of Stats. 2004, Ch 34 (SB 899).)</p> <p>With respect to the suggestion to include the phrase “other goods or services” to the definition of the term “chiropractic visit”, the addition of the suggested language is unnecessary.</p> <p>The provision of “goods or</p>	

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			services” would be included in the broad term “any chiropractic office visit”.	
9785(a)(1) and (2)	<p>Commenter recommends the following revised language:</p> <p>For injuries on or after January 1, 2004, a chiropractor shall not be a primary treating physician after the employee has received 24 chiropractic visits, unless the employer <u>or the claims administrator</u> has authorized additional visits in writing. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the employee’s surgeon <u>who performed the operation, a nurse practitioner or physician assistant working with the surgeon,</u> or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule adopted by the</p>	<p>Julianne Broyles CAJPA</p> <p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC October 7, 2013 Written Comment</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>Adding this language would be redundant as it is already part of the Medical Treatment Utilization Schedule.</p>	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Administrative Director pursuant to Labor Code section 5307.27.</p> <p>Commenter notes that Chapter 4.5. Division of Workers' Compensation: Subchapter 1. Administrative Director-Administrative Rules: Article 5.5.2. Medical treatment utilization schedule: §9792.24.3. Postsurgical Treatment Guidelines, Subsection (c)(1) states: Only the surgeon who performed the operation, a nurse practitioner or physician assistant working with the surgeon, or a physician designated by the surgeon can make a determination of medical necessity and prescribe post-surgical treatment under this guideline. The suggested revised language incorporates § 9792.24.3(c)(1) for consistency. Verbiage has also been added to ensure that the employee is aware that treatments are authorized by the employer or the Claims Administrator.</p>			
9785(a)(1) and (a)(2)	<p>Commenter recommends the following revised language:</p> <p>For purposes of this subdivision,</p>	Brenda Ramirez Claims & Medical Director California Workers'	The Acting Administrative Director does not accept this comment.	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation, <u>other goods or services</u> or are limited to evaluation and management.</p> <p>Commenter states that adding “other goods or services” will clarify that the prohibition will apply to chiropractic visits for any goods or services, and is not limited only to visits for manipulation or evaluation and management.</p>	<p>Compensation Institute October 7, 2013 Written Comment</p>	<p>The addition of the suggested language is unnecessary.</p> <p>The provision of “goods or services” would be included in the broad term “any chiropractic office visit”.</p>	
9785(b)(3)	<p>Commenter recommends the following revised language:</p> <p>(b) (3) If the 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</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association October 7, 2013 Written Comment</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>This issue is more appropriately addressed (and will be addressed), in another Division rulemaking concerning Independent Medical Review and Independent Billing Review.</p>	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>4060, 4061 and 4062, 4600.5, 4616.3, or 4616.4.</u></p> <p>Commenter opines that it is confusing to provide inconsistent language for Section 9785 in two different regulation packages that are moving concurrently through the formal rule adoption process. Commenter states that changes to this section should only be included in one of these packages to prevent uncertainty. Commenter opines that the language included in the UR/IMR rulemaking, as provided above, is better because it includes Labor Code citations that pertain to the IMR process.</p>			
9785(b)(3)	<p>Commenter recommends the following revised language:</p> <p>If the employee disputes a medical determination made by the primary treating physician, including a determination that the employee</p>	<p>Julianne Broyles CAJPA</p> <p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer</p>	<p>The Acting Administrative Director does not accept this comment.</p> <p>This issue is more appropriately addressed (and will be addressed), in</p>	None.

PREDESIGNATION OF PERSONAL TREATING PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>should be released from care, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061, and 4062, <u>4616.3 (c) and 4616.4(b)</u>.</p> <p>Commenter states that Labor Code Section 4616.3(c) details the employee's options regarding a second and third opinion with a physician in the Medical Provider Network (MPN) if they dispute either the diagnosis or treatment prescribed by the MPN treating physician, and Labor Code Section 4614.4(b) allows the employee to request independent medical review. Commenter opines that these sections should be added to this regulation, at the very least by reference.</p>	<p>CCWC October 7, 2013 Written Comment</p>	<p>another Division rulemaking concerning Independent Medical Review and Independent Billing Review.</p>	
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