

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
None Specified	05/08/06	Dennis Knotts	Writer, an experienced claims adjuster and instructor for IEA, comments that the regulations will be difficult for claims adjusters to comply with and suggests instead they will leave the field. Writer states that either maximum case loads and minimum support staff standards must be adopted by the Insurance Commissioner to apply to all insurance companies and third party administrators (TPAs), or the burden on claims adjusters will be too great and they will leave or avoid this field.	Disagree. Writer objects to requirements in the statute, Labor Code section 4610, which are included in the regulations and otherwise does not suggest or request any particular wording change.	None.
None Specified	05/09/06	Harvey L. Edmonds, M.D.	Writer is concerned that if the regulations only address failures to decide or pay timely, many other abuses will be missed, and therefore will be. Writer gives examples of denying treatment requests using reports or meta analyses 'from only one source'. Writer complains this forces	Disagree. The text of the proposed regulations shows the regulations cover a range of violations that go beyond failures to act timely. The writer's reference to overuse of certain medical authorities (meta	None

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>treating physician to write more letters of appeal and leads more cases to expedited hearings. Writer also complains that new PD schedule is reducing benefits, that utilization review is causing ‘too few evidence based treatments to be authorized’ and asks what the Administrative Director is doing about abuses like these.</p>	<p>analyses, etc.) is too general to suggest the need for a change in any regulation. The writer’s allegations about the PD schedule are not a subject of this rulemaking. The allegation that too few evidence-based treatment requests are approved is inconsistent with the regulation since it allows for a treating physician to submit information about evidence based guidelines that support the treatment being recommended. No change is required by this comment.</p>	
None Specified	5/31/06	Chris Dichtel Written & Oral	<p>Writer submits record of notes from conversations with his treating physician’s office and his attorney’s office. Notes summarize his efforts to resolve denial by claims adjuster of request for diagnostic testing of both knees requested by treating physician in course of treating</p>	<p>Comment noted. Since no particular section was cited in these written notes no further comment is needed. Attorney appears to have advised treating physician’s office to respond to claims adjuster’s</p>	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>left knee. After two weeks, writer’s attorney tells writer he explained to treating physician’s office that physician needs to explain in request why testing on both knees is needed since only left knee is part of injury claim and if testing both is the medical standard he needs to explain that in the request. Writer presented these notes at the public hearing on June 29, 2006.</p>	<p>questions by explaining need for testing on both the injured and uninjured knee.</p>	
None Specified	6/28/06	<p>Diane Przepiorski, Executive Director California Orthopaedic Association Written & Oral</p>	<p>Written letter presented at public hearing on June 29, 2006. Writer supports the Division’s proposed penalty schedule in an effort to rein in inappropriate utilization review activities with the following recommendations:</p> <ol style="list-style-type: none"> 1. At least a portion of the monies collected be used by the Division to expand their audit capabilities. 	<p>Comment noted. Comment accepted; no wording change needed.</p> <ol style="list-style-type: none"> 1. As required in Labor Code section 4610(i), the penalties collected are deposited into the Workers’ Compensation Administration Revolving Fund which funds all of the activities of the Division of Workers’ Compensation (DWC), including audit enforcement activities and the newly developed utilization review 	<ol style="list-style-type: none"> 1. None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>2. Penalty structure be clarified to reflect that the “maximum” penalties assessed are per audit for such entities who are routinely audited and has offenses.</p> <p>3. Entities assessed fines and/or penalties should be required to report these assessments as UR fines and/or penalties, since many administrative costs are reported as medical treatment costs, blurring the actual payments to providers for medical treatment.</p>	<p>investigation and enforcement activities.</p> <p>2. Comment accepted in part. Due to restructuring of penalty system in revised version of regulations released for public comment on 11/21/06, certain violations will result in maximum penalties per instance of violation.</p> <p>3. Agree, except DWC does not have jurisdiction over insurer reporting requirements to WCIRB.</p>	<p>2. Section 9792.12(a) will be amended to state that the penalties listed in (a) are mandatory. Section 9792.12(b) is amended to explain how the additional penalties will be calculated per investigation.</p> <p>3. Section 9792.11(i) will be amended to require the investigation subject to notify the affected employer of the findings and the AD to post the final investigation reports on the DWC website.</p>
None Specified	6/29/06	Jim Klett Phoenix Medical Devices	Writer proposes that the Interferential Stimulation Therapy in the ACOEM guidelines be updated, requiring a more extensive study and	Disagree. The existing proposed wording of 8 Cal. Code Regs. 9792.12(a)(5) will allow a penalty where the	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			research on the subject and asks that denials be subject to the same sanctions considered under 9797.12(a)(5).	requesting physician has submitted the supporting documentation regarding Interferential Stimulation Therapy if the utilization reviewer fails to consider and respond to such evidence and scientifically based literature or guidelines. DWC has no authority to update the ACOEM.	
None Specified	6/29/06	Peggy Sugarman VotersInjuredatWork.org Written & Oral	Written comments submitted at time of oral comments at hearing on June 29, 2006. Writer states, in summary: Resist insurer pleas to lower penalty amounts and find incentives to get compliance to prevent continuation of these current practices: -Workers' compensation insurer profits in 2004 and 2005 exceeded the total amount paid in WC benefits in those years, without consideration of investment income earned on those profits; -Defense attorney fee payments	Comment noted and accepted in part. The penalty regulations were restructured to create incentives for compliance and disincentives for specified abuses. The revised wording was released for public comment on November 21, 2006.	The regulations are amended. The penalties specifically are set forth in section 9792.12.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>have risen by 31.6% in 2005 but applicants’ attorneys are not entitled to legal fees for work pertaining to medical treatment disputes so the system unfairly allows payors and defense firms to profit from such disputes;</p> <p>-The combined effect of the limit on temporary disability indemnity under Labor Code § 4656(c) and defense tactics that force every medical treatment request dispute to expedited hearing at the WCAB is that an injured worker, like Ernest Medeiros, does without appropriate treatment which the defendant eventually approves for months, during which time his is using temporary disability indemnity which is limited to 2 years by section 4656(c), such that he then is without disability indemnity income during recovery from surgery even though he is still unable to work;</p> <p>-Severe penalties are needed to address abuses as in the case of Theodore Kozenko v. SCIF in</p>		

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>which diagnostic tests were improperly denied in violation of the utilization review regulations -In the utilization review process, as in the case of Alan Wechsler, some medical reviewers decide legal questions outside of the scope of their medical review, such as whether a given body part was part of the industrial claim rather than giving an opinion regarding whether that body part needed the requested treatment; medical reviewer decisions are inconsistent, such saying both that facet joint injections in the lumbar spine have no proven long-term value but later denying a requested implantable spinal cord stimulator on the ground that no facet joint epidural injections have been tried; and otherwise denying or partially ignoring referrals for treatment for the sequela of treatment and recovery delays; -As in the case of Robert Sedam, the dispute resolution and</p>		

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>expedited hearing process is too late in resolving disputes over liability for providing treatment for the effects of industrial injury. Mr. Sedam died of a blood clot a few weeks before his scheduled expedited hearing on the insurer, AIG's, denial of treatment requests for management of his risk of blood clots due to the medications he was receiving for treatment of his industrial injuries. Moreover the judge at the hearing told his dependents that due to Lab. Code § 4656(c) limit on temporary disability indemnity they were not entitled to any death benefits.</p> <p>Commenter provided multiple examples of improper treatment denials.</p>		
9792.11-9792.15	6/15/06	Sherry Smith	<p>Writer comments that the regulations should be retroactive, allowing workers to file complaints against insurance companies for bad faith practices that occurred on or after SB 899</p>	<p>Disagree in part and agree in part.</p> <ul style="list-style-type: none"> • Assessing penalties for conduct that occurred prior to the date of the 	<ul style="list-style-type: none"> • None

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>and SB 228 were enacted. DWC never implemented regulations concerning conflict of interests and QME’s pursuant to Labor Code § 139.2(o). The proposed regulations appear to allow doctors who are being investigated by state licensing boards as well as doctors who have been convicted by the courts to act as utilization review doctors. Writer believes that the new proposed regulation should allow an injured worker and/or attorney to testify in proceedings against employers and insurers and receive copies of decisions.</p>	<p>regulations would constitute a violation of due process rights.</p> <ul style="list-style-type: none"> • Regulations for QMEs are beyond the scope of this rulemaking. • Section 9792.15(q) allows the parties at a hearing re the Order to Show Cause to call witnesses. The witnesses could include the injured worker or his or her attorney. • Section 9792.11 will be amended to require the AD to post the final investigation reports on the DWC website. 	<ul style="list-style-type: none"> • None • None • Section 9792.11 will be amended to require the AD to post the final investigation reports on the DWC website
9792.11 et seq.	6/26/06	<p><u>FORM LETTER</u></p> <p>Harry Monroe, Jr. Concentra, Inc.</p>	<p>Writer is concerned that the burdens associated with the proposed rules will discourage participation in the California workers’ compensation system</p>	<p>Disagree. Labor Code section 4610(i) directs the Administrative Director to assess penalties.</p>	<p>The regulations will be revised. Specifically, the penalties are listed in section 9792.12.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
	6/28/06	Lori Kammerer Kammerer & Company Written & Oral	by quality providers of services. Additionally, it could potentially result in approvals of care that are not medically necessary, as utilization review entities approve care rather than face complaints and potential penalties due to alleged or inadvertent noncompliance.		
9792.11(a)	6/28/06	Stephen J. Cattolica Advocal Written & Oral	<p>Writer suggests a new paragraph be added to section 9792.11 as follows:</p> <p>“ny employer, insurer or other entity subject to the provisions of Labor Code Section 4610 which, based on a complaint filed with the Administrative Director in accordance with this Section, was, in the opinion of the Administrative Director, in violation of CCR Section 9792.6, during the time period from the effective date of Section 9792.6 through the effective date of this Section, shall be subject to targeted audits at the discretion of the</p>	Agree.	Section 9792.11(c)(2) will be added to state that a non-routine investigation may be conducted at any time based on a complaint containing facts indicating the possible existence of a violation of Labor Code section 4610.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			Administrative Director without any other formal complaint being filed, for a period of one year from the date of the Division’s finding of violation.”		
9792.11	6/29/06	David N. Rockwell California Applicants’ Attorneys Association Written & Oral	<p>Writer comments that the proposed regulations lack procedures to conduct any proactive surveillance and enforcement. They appear to be passive, relying on information that somehow may launch an “investigation” by the Administrative Director or as part of an audit. This is insufficient. To be effective, there must be systematic oversight of the process.</p> <p>The other problem is the lack of instruction as to how claims</p>	<p>We agree to clarify.</p> <p>We disagree. The current audit</p>	<p>Section 9792.11 (c) will set forth when the Administrative Director will conduct investigations. The routine investigations will occur once every three years for utilization review organizations and once every five years for claims administrators. Additionally, the AD may conduct non-routine investigations based on factual information or complaints that indicate the possible existence of a violation of Labor Code section 4610.</p> <p>We will add section 9792.11(j) which will list</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			administrators should keep their files in such a manner that will allow an auditor or investigator from the medical unit to determine whether there has been a violation.	regulations require claims administrators to maintain their claims files. (See 8 CCR §§ 10101.1, 10102. 10103, 10103.1, 10103.2) However, we will add section 9792.11 (j) which will list the information and records that may be requested by the AD for the investigation.	the information and records that may be requested by the AD for the investigation.
9792.11(a)	6/16/06	Dave Mitchell Republic Indemnity Company of America	Writer comments that the phrase ‘employer, insurer or other entity subject to the provisions of section 4610’ is inconsistent with use of the phrase ‘claims administrator and any other person responsible for utilization review processes’ in 9792.11(a), ‘claims administrator or other person performing utilization review services’ in 9792.11(i), ‘claims administrator or employer, or third party administrator, or other person performing utilization review services for an employer’ in 9792.11(j), and therefore is	Disagree. The use of both phrases ‘employer, insurer or other entity subject to the provisions of section 4610’ and ‘claims administrator and any other person responsible for utilization review processes’ in section 9792.11(a) is intentional in order to clarify who is subject to the Administrative Director’s investigation procedures. The first phrase, ‘employer, insurer or other entity	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>unclear.</p> <p>Writer also comments that use of the term ‘claims administrator’ in these regulations without a definition of ‘claims administrator’ lacks the required consistency and clarity.</p>	<p>subject to the provisions of section 4610’, is a re-statement of the statutory mandate given to the Administrative Director by Labor Code section 4610(i). The second phrase provides further clarity to the regulated public by not only using the phrase ‘claims administrator’, which is defined in section 9792.6(c) of the same Article 5.5.1 of this subchapter of Title 8, but it adds further clarity with the phrase ‘or other person performing utilization review services for an employer.’ This clarification is necessary to address the variety of mechanisms an employer in California may use to meet the employer’s duties in Labor Code section 4610. Section</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				4610(b) provides, “Every <i>employer</i> shall establish a utilization review process in compliance with this section, <i>either directly or through its insurer or an entity with which an employer or insurer contracts for these services.</i> ” (emphasis added). The utilization review duties will be performed by persons who perform part or all of the duties set out in Labor Code section 4610. To clearly state the Administrative Director’s responsibility and intention to investigate the utilization review services performed by any such person for an employer, regardless of the entity employing that person, both phrases are needed in 8 Cal. Code Regs. § 9792.11(a). The writer’s comments	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				<p>pertaining to the phrases used in other subsections of 9792.11 will be addressed in those subsections.</p> <p>Comment regarding the need for a definition is rejected.</p> <p>As stated on the first page of the proposed regulations, sections 9792.11 through 9792.15 are being adopted in Article 5.5.1 (“Utilization Review Standards”) of Subchapter 1 (Administrative Director – Administrative Rules) of Chapter 4.5 (Division of Workers’ Compensation) of Division 1 (Department of Industrial Relations) of Title 8 of the California Code of Regulations. Therefore, these regulations will be interpreted in light of the</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD
TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				<p>definitions within Article 5.5.1 found at section 9792.6, which in pertinent part, provides “As used in <i>this Article</i>” (emphasis added). Section 9792.6(c) provides: “ ‘Claims Administrator’ is a self-administered workers’ compensation insurer, an insured employer, a self-administered self-insured employer, a self-administered legally uninsured employer, a self-administered joint powers authority, a third-party claims administrator or other entity subject to Labor Code section 4610. The claims administrator may utilize an entity contracted to conduct its utilization review responsibilities.”</p>	
9792.12(a) and	6/28/06	Stephen J. Cattolica	Writer comments that the	Disagree. Although the	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
(b)		Advocal Written & Oral	<p>penalty is relatively inconsequential amount. It also allows the Division to impose a penalty of as little as one dollar. Writer suggests that wherever the regulation calls for a maximum, the Division must institute a policy that requires a minimum to also be indicated. Minimum should be less than \$40,000. Writer suggests a lower limit of no less than 80% of the maximum be placed on the range.</p> <p>Writer is concern about the penalties in (b) that appear to allow for amounts as little as \$10 per occurrence, to no more than approximately \$150 per occurrence. The range for violations of expedited review- presumably the most immediately life threatening situations-run as little as \$20 per occurrence to no more than \$160.</p>	<p>penalties may adjust a penalty amount, the adjustments may only be based on one of the factors set forth in section 9792.13.</p> <p>We agree. The entire penalty structure of (b) will be revised. Every penalty will be for \$100 or \$50 for the first investigation and will increase for each follow-up return investigation.</p>	<p>Section 9792.12 (b) will be revised. Every penalty will be for \$100 or \$50 for the first investigation and will increase for each follow-up return investigation.</p>
9792.11(a)	6/29/06	Steven Suchil	Writer comments that this	Disagree. The phrase ‘or	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		American Insurance Association	<p>section fails to comply with the Government Code section 11349.1 standard of clarity. What “other person” will the Administrative Director or her designee investigate? Was there anyone in particular the Division had in mind when drafting the subdivision? It should be clear who is subject to investigation.</p>	<p>other person performing utilization review services for an employer’ as used in section 9792.11(a) clear describes who would be subject to investigation and is necessary to address the variety of mechanisms an employer in California may use to meet the employer’s duties in Labor Code section 4610. Section 4610(b) provides, “Every <i>employer</i> shall establish a utilization review process in compliance with this section, <i>either directly or through its insurer or an entity with which an employer or insurer contracts for these services.</i>” (emphasis added). The utilization review duties will be performed by persons who perform part or all of the duties set out in</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD
TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				Labor Code section 4610. To clearly state the Administrative Director’s responsibility and intention to investigate the utilization review services performed by any such person for an employer, regardless of the entity employing that person, both phrases are needed in 8 Cal. Code Regs. § 9792.11(a).	
9792.11(a) and (b)	6/29/06	Nina Bartholomew Oral Testimony	Commenter states that the only requirement in terms of the investigation is the review of insurer’s documents. That imports into the regulation a presumption in favor of the privacy of insurers’ records, and commenter doesn’t believe there is any reason to import those into the records. Commenter opines that insurers notoriously falsify records, make records disappear, withhold records and carefully arrange what records they do produce.	We disagree that there is a presumption in favor of the privacy of insurer’s records. The purpose of the investigation is to review the records.	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>Commenter suggests that as far as the insurer’s records are concerned, every document submitted should be signed under penalty of perjury, and the person who’s gathering up the records and submitting them should sign a statement under penalty of perjury describing themselves as the custodian of records, and certifying not only that these are accurate copies, and a complete copy of the file – and all that should be done under penalty of perjury.</p>	<p>We agree.</p>	<p>Section 9792(k) will be added to require the investigation subject to deliver the records with a statement signed under penalty of perjury that the records produced are true and complete copies.</p>
9792.11(b)	6/29/06	Steven Suchil American Insurance Association	<p>Writer comments that this section fails to comply with the Government Code section 11349.1 standard of clarity. If not files and records, what should a person subject to Labor Code section 4610 expect to be included in the scope of an investigation? If the Administrative Director decides not to rely on the cited existing rules, which standards, if any, will be applied in their place and</p>	<p>We agree to clarify the investigation procedures.</p>	<p>Section 9792.11 (c) will set forth the types of investigations that will be conducted and the records that will be reviewed. Section 9792.11(j) will set forth the type of information and records that will be requested. Section 9792.11(k) and (l) will set forth the procedure regarding providing the</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>will the number of files and records selected be on a random basis and if not, what procedures will be used in the investigation? Does the Administrative Director intend to impose claim file retention rules different from those in section 10102, or none at all?</p> <p>The regulation fails the clarity standard because of the lack of specific information about the procedures which the Administrative Director will follow during an investigation.</p>		<p>documents to the AD and making the records available to the AD. Section 9792.11(p) will set forth the file retention requirement.</p>
9792.11(c)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer agrees that, pursuant to CCR §9792.11(g)(1), where factual information or a complaint has triggered a UR investigation, the investigation may be conducted independently <i>or</i> concurrently with a LC §129 audit. However, an audit of UR programs pursuant to CCR §9792.11(g)(2) should only be conducted concurrently with the Profile Audit Review/Full Compliance Audit process in</p>	<p>We agree to clarify. However, the non-routine investigation may be initiated at any time based on factual information or a complaint containing facts indicating the possible existence of a violation of Labor Code section 4610. This is necessary to address issues immediately.</p>	<p>Section 9792.11(c) will provide that the routine investigation at a claims administrator’s location will be initiated with a routine, target or full audit pursuant to Labor Code section 129 and 129.5. The non-routine investigation may be conducted at any time.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			order to ensure efficiency of the auditing process and alleviate disruptions for the claims administrator.		
9792.11(f)	6/29/06	David N. Rockwell California Applicants' Attorneys Association Written and Oral	Writer comments that investigation conducted on or after August 1, 2006 is not soon enough. As with the proposed §5814.6 regulations, the penalties for violation of the utilization review process should, at minimum, be applied to conduct occurring on or after the adoption of the emergency when claims administrators were clearly advised of the utilization review standards.	We disagree. Labor Code section 4610 was enacted as part of SB 228. Labor Code section 5814.6 was enacted as part of SB 899. Unlike SB 899, SB 228 did not have specific language stating that it applies prospectively from the date of enactment, regardless of the date of injury. Applying Labor Code section 4610 penalties retroactively would constitute of denial of due process.	Section 9792.11 will be revised to state: <i>“Sections 9792.11 through 9792.15 of Title 8 of the California Code of Regulations shall apply to any Labor Code section 4610 utilization review investigation conducted on or after August 1, 2006 the effective date of these regulations and to actions conduct which occurred on or after August 1, 2006 the effective date of these regulations.”</i>
9792.11(f)	6/29/06	Steven Suchil American Insurance Association	Writer comments that the wording might be subject to varying interpretations. For greater clarity, and to avoid the possibility that the rule would be impermissibly applied	We agree to clarify the section.	Section 9792.11 will be revised to state: <i>“Sections 9792.11 through 9792.15 of Title 8 of the California Code of Regulations shall</i>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			retroactively, writer proposes rewording the subdivision as follows” “This section shall apply to any Labor Code Section 4610 utilization review investigation of actions occurring on or after August 1, 2006.”		apply to any Labor Code section 4610 utilization review investigation conducted on or after August 1, 2006 <i>the effective date of these regulations</i> and to actions conduct which occurred on or after August 1, 2006 <i>the effective date of these regulations.</i> ”
9792.11(f)	6/29/06	Peggy Sugarman Votersinjuredatwork.org Oral Testimony	Commenter states that this subsection applies to conduct as of August 1, 2006. Commenter assumes that this is the Division’s target date to have these regulations in place. Similarly, the prior regulatory proposal to make the 5814.6 penalties applicable to the effective date of the new 5814 statute, these regulations should also be applicable to conduct that has been required in regulations since December 1, 2004, when the utilization review standards were adopted on an emergency basis.	We disagree. Labor Code section 4610 was enacted as part of SB 228. Labor Code section 5814.6 was enacted as part of SB 899. Unlike SB 899, SB 228 did not have specific language stating that it applies prospectively from the date of enactment, regardless of the date of injury. Applying Labor Code section 4610 penalties retroactively would constitute of denial of due process.	Section 9792.11 will be revised to state: <i>“Sections 9792.11 through 9792.15 of Title 8 of the California Code of Regulations</i> shall apply to any Labor Code section 4610 utilization review investigation conducted on or after August 1, 2006 <i>the effective date of these regulations</i> and to actions conduct which occurred on or after August 1, 2006 <i>the effective date of these</i>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			Commenter requests that we make these regulations retroactive to December 1, 2004.		<i>regulations.”</i>
9792.11(g)	6/26/06 6/28/06	<u>FORM LETTER</u> Harry Monroe, Jr. Concentra, Inc. Lori Kammerer Kammerer & Company Written & Oral	Writer comments that the audit authority gives the Division overly broad power to investigate and audit review entities, and subjects entities to burdensome audits on a minimal basis. It does not adequately establish reasons for conducting a utilization review investigation.	We agree to clarify the investigation procedures. We disagree that the audit authority gives the DWC overly broad power. Labor Code section 4610(i) provides authority to the Administrative Director to assess penalties when the Administrative Director has determined that the employer, insurer or other entity subject to Labor Code section 4610 failed to meet any requirement of the section. Labor Code section 133 provides authority upon the Administrative Director to have the power and jurisdiction to do all things necessary or convenient in the	Section 9792.11 will be revised to clarify the types of investigations and the procedures. Section 9792.11 (c) will set forth the types of investigations that will be conducted and the records that will be reviewed. Section 9792.11(j) will set forth the type of information and records that will be requested. Section 9792.11(k) and (l) will set forth the procedure regarding providing the documents to the AD and making the records available to the AD. Section 9792.11(p) will set forth the file retention requirement.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				exercise of any power or jurisdiction conferred upon it under the Labor Code. In order to determine if the employer, insurer, or other entity has failed to meet the requirements of Labor Code section 4610, it is necessary to investigate by reviewing the UR files.	
9792.11(g)	6/29/06	Steven Suchil American Insurance Association	Writer comments that while Labor Code section 4610 authorizes the Administrative Director to assess penalties for non-compliance with its requirements, it does not require nor authorize her to identify problem claims administrators based on complaints which may be biased, may be selectively reported, and may not be justified. In fact, in its only expression to date of the way in which the Division must use its resources to identify compliance problems, the legislature emphasized the importance of	We agree to revise the regulations to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.	Section 9792.11 (c) will be revised to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			regular, periodic audits of all claims administrators. In place of the proposed selection criteria, the regulation should rely on the selection criteria established in Section 10106.		
9792.11(g)	6/29/06	Michael McClain, General Counsel and Vice President California Workers’ Compensation Institute	Writer is concerned that the Division’s proposed regulation allowing complaint audits is open to abuse because a UR audit could be triggered based on any complaint by anyone for anything. Such an open-ended condition invites misunderstanding, confusion, and harassment, at worst. If a claims organization refused to provide medical care that is patently deleterious, and the injured worker complains to the Division, an unwarranted audit can be triggered. If an applicant’s attorney, who believes that the utilization review process is grossly unfair, decided to file a complaint on every single utilization review he encountered, the regulation	We agree to revise the regulations to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12. We disagree with requiring a complaint to be filed “under penalty of perjury.” Doing so would be overly restrictive, as a complainant may not have first hand information, but the information may nonetheless be valid. However, we will add language to the non-	Section 9792.11 (c) will be revised to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>would allow that and an audit could be initiated for every single complaint. The reference to “factual” information adds nothing to counter the potential abuse, so long as the Division takes no responsibility for verifying the basic allegations.</p> <p>When dealing with complaint related reviews, it is always a delicate balance between encouraging legitimate objections and preventing harassment by individuals acting in bad faith. The triggering of an audit is a serious and costly concern in terms of data gathering and lost production time for audit subjects and a significant use of resources for the Division. No one wants to chase specious complaints but the regulation includes no consequence to the filing of false or fraudulent objections. The regulation should clearly preclude unverified or specious complaints, even if the</p>	<p>mandatory compliant form that is posted on the DWC web page that advises the public that it may be a felony to make or cause to be made any knowingly false or fraudulent material statements in support of, or in opposition to, any claim for workers’ compensation benefits.</p> <p>Further, section 9792.11(o) provides that the complaint may be provided to the investigation subject, which shall have ten days to respond. After reviewing the response, the AD will either close the investigation without assessing a penalty or conduct a further investigation.</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>complaint contains some factual material.</p> <p>Audits are a costly exercise, therefore, the “information” must be verified, the “complaints” must be in a sufficient number to indicate a problem, and the evidence must lead to “the <u>probable</u> existence of” a statutory violation before the Division considers an investigation or an audit. The regulation must also include some stated consequence for providing false information and making fabricated complaints or the provision is beyond the authority of the enabling statute.</p> <p>Writer recommendations are as follows:</p> <p>The Administrative Director, or his or her designee, may conduct an <u>a</u> utilization review investigation based on:</p>		

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>1) Factual <u>Verified</u> information or a complaint containing facts <u>confirmed factual information</u>, indicating the possible <u>probable</u> existence of a <u>sufficient frequency</u> of utilization review <u>regulatory violations to justify a further investigation</u>; or ...</p>		
9792.11(g)	6/30/06	Nileen Verbeten California Medical Association	<p>Writer is in agreement of this language if it interprets that a physician or other entity could make a complaint regarding a failure to comply with the regulations and that complaint, if accompanied with facts, could trigger an investigation. However, writer asks for more detail regarding to whom the complaint should be made and a process for both making the complaint and for determining what action, if any, is undertaken related to it.</p>	<p>We agree to clarify the investigation procedures. In response to the question, a physician or any person may make a complaint to the division. Based on the revised language, if the complaint contains facts indicating the possible existence of a violation of Labor Code section 4610 or regulations sections 9792.6 through 9792.12, a non routine audit may be conducted.</p>	<p>Section 9792.11 will be revised to clarify the types of investigations and the procedures. Section 9792.11 (c) will be revised to state that the complaint must be contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.</p>
9792.11(g)(1)	6/28/06	Andrew Dhadwal, Esq. CA-ICA	<p>It is the Writer’s contention that documentation obtained through the UR process regarding a</p>	<p>We agree to revise the regulations to state that the complaint must</p>	<p>Section 9792.11 (c) will be revised to state that the complaint must</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Administrators, Inc.	<p>possible UR violation(s) should be required from the complainant provider with the initial UR Complaint submission. If a UR complaint can be brought simply upon “factual information or a complaint containing facts, indicating the possible with responding to complaints and investigations based upon mere assertions that may not be factually supported, the AD will be similarly burdened by investigating complaints that are based on mere assertions without documentary foundation. Furthermore, it gives complainants the ability to portray the facts of their case in a light favorable to their complainant without having to support those factual assertion with any objective documentation from the UR process. Further, applicants, providers, and other parties involved in the UR process may construe their subjectively</p>	<p>contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12. This is similar to the standard used in the audit regulations. Further, section 9792.11(o) provides that the complaint may be provided to the investigation subject, which shall have ten days to respond. After reviewing the response, the AD will either close the investigation without assessing a penalty or conduct a further investigation.</p>	<p>contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			negative interpretations of UR situations as “facts” constituting the basis for a complaint. Objective documentation from the UR process can filter out complaints based upon mere suspicions.		
9792.11(g)(1)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer believes that a more defined process should be outlined in the regulations with regards to how complaints can trigger an investigation. Many times, a complaint from an injured worker or medical provider, however credible is based on a factual misunderstanding of the process. It would be an incredible burden for claims administrators to be subject to constant investigation based on such a questionable foundation. Writer believes that the word “possible” should be changed to “probable” to create a more appropriate threshold for investigation.	We agree to revise the regulations to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12. Further, section 9792.11(o) provides that the complaint may be provided to the investigation subject, which shall have ten days to respond. After reviewing the response, the AD will either close the investigation without assessing a penalty or conduct a further	Section 9792.11 (c) will be revised to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				investigation.	
9792.11(g)(1)	6/29/06	Steven Suchil American Insurance Association	Writer comments that while this section allows an investigation to be initiated based on “factual information” derived from what sources, it does not say, or on a “complaint containing facts” there is no assurance that the complaint, whether or not based on facts will be justified nor does the Division propose a method for determining whether a complaint is justified before incurring expense for itself and imposing expenses on the regulated community. The Initial Statement of Reasons fails to demonstrate by substantial evidence the need for the substantive investigatory provisions as required by Gov. Code section 11349.1	We agree to revise the regulations to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12. Further, section 9792.11(o) provides that the complaint may be provided to the investigation subject, which shall have ten days to respond. After reviewing the response, the AD will either close the investigation without assessing a penalty or conduct a further investigation.	Section 9792.11 (c) will be revised to state that the complaint must contain facts indicating the possible existence of a violation of Labor Code section 4610 or sections 9792.6 through 9792.12.
9792.11(h)	6/29/06	Tina Coakley The Boeing Company	Writer comments that the proposed 8 CCR § 9792.11(h) sets forth regulations that “may” apply to investigations pursuant to Labor Code § 4610. These	We disagree.	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>are:</p> <ul style="list-style-type: none"> ○ 8 CCR § 10100.2 relating to the claim log. There is no requirement that UR documentation be included in the claim log in § 4610, and there is no requirement under current DWC regulations for this either. ○ How does the AD intend to enforce this if the audit subject does not know until the time of audit that its record keeping is in violation of the regulations? ○ 8 CCR § 10101 relating to contents of a claim file relating to dates of injury prior to 1/1/1994. How can this be implemented if the regulations do not require it to be followed? ○ 8 CCR § 10101.1, relating to contents of a claim file relating to dates of injury after 1/1/1994. How can this be 	<p>This section contains definitions, not the claim log requirements. We agree there is no UR claims log requirement.</p> <p>Section 10101.1 requires the claim file to contain (e) the original or copy of every medical report pertaining to the claim; (k) notes and documentation related to the provision, delay, or denial of benefits...; (l) notes and documentation evidencing the legal, factual, or medical basis for non-payment or delay in payment of compensation benefits or expenses; and (m) notes describing telephone conversation related to the claim...</p> <p>Therefore, a claims</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>implemented if the regulations do not require it to be followed?</p> <ul style="list-style-type: none"> ○ 8 CCR § 10102, relating to retention of claim files. How can this be implemented if the regulations do not require it to be followed? ○ 8 CCR § 10103.2, relating to claim log maintenance after January 1, 2003. How can this be implemented if the regulations do not require it to be followed? ○ 8 CCR § 10104, relating to annual report of inventory. How can this be implemented if the regulations do not require it to be followed? 	<p>administrator is required to have documentation in the claim file at all times, whether or not it is subject to an UR investigation.</p> <p>The audit regulations requiring the documentation is a current and on-going requirement. Claims administrators are subject to audit penalties if they do not have the required documentation.</p> <p>The regulations use the word “may” with regard to these audit regulations (§§10101 – 10109) because these regulations will apply when the routine investigation of a claims administrator is done concurrent with an audit. The audit</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>o 8 CCR § 10109 relating to duty to investigate and actions taken in good faith. There is no authority for engrafting this standard into § 4610 and it is unclear how the duty to investigate a claim relates to the obligation to meet the timeframes and other requirements in § 4610.</p>	<p>regulations do not apply to utilization review organizations.</p> <p>The claims administrator has a duty to act in good faith in determining whether to accept a request for authorization or when requesting additional information.</p>	
9792.11(h)	6/29/06	Mark Webb, Vice-President Governmental Relations Employers Direct Insurance	Writer comments that this regulation “may” apply to investigations under Labor Code Section 4610. Yet the DWC does not explain what information is supposed to be contained in the claim file regarding UR or what the purpose of imposing this regulation – unamended – would serve. Apparently, this, as well as other requirements in this proposed regulation, will only be	We disagree. The regulations use the word “may” with regard to these audit regulations (§§10101 – 10109) because these regulations will apply when the routine investigation of a claims administrator is done concurrent with an audit. The items listed in 10101.1 must be in a claims administrators	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>clarified upon audit. Writer also comments that this regulation makes claim log (8 CCR § 10103.2) applicable to 4610 audits. Again, the question is what does this accomplish? If the Division wants to amend the audit regulations – which we agree need to be amended to facilitate a reconciliation of investigations under Labor Code § 4610 and audits under § 129, then it should do so. Instead, the above reference proposed regulations lack the clarity necessary of regulations as required by Government Code § 11349.1.</p>	<p>claims file. The claim file will be reviewed at the UR investigation. The audit regulations do not apply to utilization review organizations.</p>	
9792.11(h)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer recommends defining the process in which UR audits will be conducted to ensure that each audit subject is held to the same standard and is informed of the audit process. CCR §10107 is the only section that attempts to define the scope and process of the UR audit, and yet the application of this section is left</p>	<p>We agree to revise the regulations to clarify the investigation procedures.</p>	<p>Section 9792.11 will be revised to clarify the types of investigations and the procedures. Section 9792.11 (c) will set forth the types of investigations that will be conducted and the records that will be reviewed. Section</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			to the discretion of the AD. An audit process is needed to establish the parameters of the audit and determine the claims selection process, sample size, and duration of the audit. By establishing a clear and consistent audit process, the DWC will ensure that limited auditing resources are not spent conducting a protracted audit of a relatively good performer.		9792.11(j) will set forth the type of information and records that will be requested. Section 9792.11(k) and (l) will set forth the procedure regarding providing the documents to the AD and making the records available to the AD. Section 9792.11(p) will set forth the file retention requirement.
9792.11(j)	6/26/06 6/28/06	<u>FORM LETTER</u> Harry Monroe, Jr. Concentra, Inc. Lori Kammerer Kammerer & Company Written & Oral	Writer comments that the proposed regulations leave open the potential scope of an investigation, this could involve a requirement to gather thousands of files and make them available in a manner acceptable to the Administrative Director and consistent with requirements regarding the protection of the personal information of injured workers. Both the time frame and the scope of such a requirement for compliance with an investigation as a part of a random audit or the	We agree to revise the regulations to clarify the investigation procedures. Specifically, section 9792.11 will specify that 32 utilization review files will be reviewed.	Section 9792.11 will be revised to clarify the types of investigations and the procedures. Section 9792.11 (c) will set forth the types of investigations that will be conducted and the records that will be reviewed. Section 9792.11(j) will set forth the type of information and records that will be requested. Section 9792.11(k) and (l) will set forth the procedure

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			indication of a “possible utilization review investigation” are not reasonable.		regarding providing the documents to the AD and making the records available to the AD. Section 9792.11(p) will set forth the file retention requirement.
9792.11(j)	6/28/06	Steven W. Rosen, M.D. CompPartners	Writer suggests changing the 5 calendar days to 10 business days to produce records, for instances wherein records may be in storage or such time limit falls over a holiday weekend.	We agree to revise the procedure and time limit.	Section 9792.11(j) will be revised to require production or records with 7 calendar days.
9792.11(j)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’	Writer believes that this section is poorly worded and should be revised for clarity. Writer is not clear on what information a claims administrator would be required to provide under this section because the term “all source locations all records” is not defined. Without definition, this could apply to a massive amount of records. If this is the case, the 5 calendar day timeframe for providing the records should be changed to 20 days in order to allow for proper	We agree.	Section 9792.11(j) will be revised to require production or records with 7 calendar days.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Compensation	collection and service of the records.		
9792.11(j)	6/29/06	Steven Cardinale Comprehensive Industrial Disability Management	Writer believes that the 5 calendar days are sufficient to produce records if the UR company is organized and has the appropriate processes and systems in place to respond. Consequently it does not seem appropriate to modify the regulations due to the inefficiency of SOME vendors. Writer recommends retaining the current timeframe of 5 calendar days.	Disagree. We are deleting former subdivision (j) because it was difficult to understand. New subdivision allows seven calendar days to produce the records.	Section 9792.11(j) will be revised to require production or records with 7 calendar days.
9792.11(j)	6/29/06	Michael McClain, General Counsel and Vice President California Workers' Compensation Institute	Writer comments that proposed regulations contain 4 other references timelines based on "business days", as opposed to "calendar days". The Division offers no explanation as to why this timeline should be different. The provisions should be harmonized. Regardless, the time to comply is insufficient. The document for some reviews will be simple	We disagree. The investigation subject will have seven calendar days to produce the records. Based on the DWC's experience conducting audits, this is a reasonable period of time. "Business days" are used when it is not reasonable to expect an act to be done over a	Section 9792.11(j) will be revised to require production or records with 7 calendar days.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>to put together, while in the more complex cases, it might take as long as 20 business days. The regulation could provide “a reasonable time” to respond, set by the auditors in consultation with the claims administrator. Writer recommends changing the word “calendar” to “business”.</p>	<p>weekend or holiday, whereas calendar days are used whenever possible because there is less confusion regarding the due date.</p>	
9792.11(j)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer recommends defining the term ‘records’ in order to determine the length of time reasonably necessary to gather such records. If the AD requires all documentation pertaining to UR from all sources, including agents of the claims administrator, five calendar days is not sufficient. Often, the claims administrator is only provided with the UR decision and rationale. The agent may have other internal documentation that may need to be gathered and sent to the claims administrator.</p>	<p>We agree. Subdivision 9792.11(j)(7) will request the list of records received at the investigation site. The claims administrator will only be required to produce the records they have on site.</p>	<p>Former subdivision (j) is deleted. New subdivision (j) sets out in detail the information requested. Subdivision 9792.11(j)(7) will request the list of records received at the investigation site.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.11(l)	6/29/06	Steven Suchil American Insurance Association	Writer comments that this section fails to comply with Gov. Code section 11349.1 standard of consistency. It establishes a deemer date in those instances in which the claims administrator has not recorded the received date of a document which requires action on the claims administrator’s part. The subdivision conflicts with the deemer date provision in Section 9792.9, subdivisions (a)(1) and (a)(2). Writer recommends conforming 9792.11 with the cited provisions of 9792.9 regarding fax transmission and deemer dates for those sent by U.S. mail.	We agree.	Former subdivision (l), new subdivision (n) is amended to harmonize with section 9792.9(a)(2) with added clarification.
9792.11(m)	6/26/06 6/28/06	<u>FORM LETTER</u> Harry Monroe, Jr. Concentra, Inc. Lori Kammerer Kammerer & Company	Writer comments on the language of this section, as the permissive “may” does not appropriately provide for the due process rights of the subject of the investigation to know and respond to the allegations that precipitated the audit.	We disagree, however we will also amend this subdivision. The subdivision uses the word “may” because sometimes the complainant requests anonymity and the investigative unit has	Former subdivision (m), new subdivision (o) will include the new sentence “The Administrative Director, as his or her designee, may refuse to provide such a written description, whenever the Administrative Director

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Written & Oral		determined that the complaint is valid, but if disclosed, the investigation subject might either cause detrimental results to the complainant (i.e. fire a whistleblower) or destroy the records that evidence the violation. However, notice of the investigation will be provided and the investigation subject will therefore have an opportunity to challenge the investigation.	or his or her designee determines that providing the information would make the investigation less useful.”
9792.11(m)	6/28/06	Jerrold (Jay) Garrard, V.P., Business Development GSG Associates, Inc.	Writer requests to change the word “may” to “will” where it states, “the AD or their designee MAY provide the claims admin...” Writer believes that the organization has the right to know why they are being audited.	Disagree. See above.	See above.
9792.11(m)	6/28/06	Jason Schmelzer California Manufacturers and	Writer believes that the word “may” should be changed to “shall” because a claims	Disagree. See above. Additionally, we disagree that additional time is	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers' Compensation	administrator should be aware that an investigation is under way, and should be given the opportunity to examine the evidence that was presented against them. Because there is a considerable importance associated with the claims administrator's written response, the timeframe should be extended to provide ample time for a thorough response to be prepared. Writer believes that there should, at minimum, be a 20 day timeframe allowed for the response to the Administrative Director's written description. Writer believes that there should be some timeline included in this section for the Administrative Director to determine whether to proceed with the investigation. Similarly, there should be a portion of the regulations that requires the Administrative Director to notify the claims administrators in writing of the decision to proceed with or close	required to respond to the complaint. The purpose of this section is to allow the investigation subject the opportunity to present its explanation regarding the complaint and possibly prevent an unnecessary review of the files. If the response cannot be made within ten days, the investigators will proceed with the investigation. Based on the pilot investigation, it is anticipated that the investigation will only take three to five days. We disagree that it is necessary to state that the investigation subject will be notified of the result. This will occur and is implicit in the statement: "After reviewing the written response, the Administrative Director , or his or her designee, shall either close the	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			the investigation.	investigation without the assessment of administrative penalties or conduct further investigation to determine whether a violation exists and whether to impose penalty assessments.”	
9792.11(m)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	Writer comments that the word “factual information or of the complaint containing factual information that has triggered the utilization review investigation” creates a scenario that the information of the complaint is based on “facts,” yet these are not as yet Verified or Confirmed. Should be replaced with “submitted information” or “filed information” or “information of concern.	We disagree. The information is factual whether verified or not.	None.
9792.11(m)	6/29/06	Michael McClain, General Counsel and Vice President California Workers’ Compensation	Writer comments that investigations that are initiated by complaints, the 10-day notice to the claims organization is one way to confirm the validity of	We disagree, however we will also amend this subdivision. The subdivision uses the word “may” because	Former subdivision (m), new subdivision (o) will include the new sentence “The Administrative Director, or his or her

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Institute	the allegations and allow the claims administrator to respond to the allegations. Therefore, the notice from the Division should be mandatory, not discretionary, for all complaint-based audits. Writer recommends changing the word “may” to “shall provide....”.	sometimes the complainant requests anonymity and the investigative unit has determined that the complaint is valid, but if disclosed, the investigation subject might either cause detrimental results to the complainant (i.e. fire a whistleblower) or destroy the records that evidence the violation. However, notice of the investigation will be provided and the investigation subject will therefore have an opportunity to challenge the investigation.	designee, may refuse to provide such a written description, whenever the Administrative Director or his or her designee determines that providing the information would make the investigation less useful.”
9792.11(m)	6/29/06	Steven Suchil American Insurance Association	Writer comments that the simple requirements of due process and fairness require that the claims administrator be offered an opportunity to respond to complaints before a full-blown and costly investigation is launched, and to do so is not	Disagree. See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			consistent with due process requirements.		
9792.11(m)	6/29/06	Jose Ruiz State Compensation Insurance Fund	Writer recommends that the furnishing of the written description of the factual information or complaint be made mandatory, except when the individual has specifically requested that the complaint or information remain confidential. Since a single complaint could trigger an investigation, the written response from the claims administrator will help determine the validity of the complaint and possibly prevent unnecessary and costly investigations.	Disagree. See above.	See above.
9792.11(m)	6/29/06	Peggy Sugarman Votersinjuredatwork.org Oral Comment	This section allows the claims administrator to respond upon receipt of a written description to the Administrative Director, basically responding to the complaint. Commenter suggests that the Division add language in the section that they should respond under penalty of perjury	Disagree. The complaint is not verified. The Administrative Director will review the response and any supporting documentation. If there are questions regarding accuracy or reliability, the Administrative	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			and, in addition, the Division consider that when certain things have not occurred properly, with the worker perhaps not attending a medical appointment or some such argument, that the Division require insurers to show proof that they have submitted – or they are reimbursed for medical mileage or finding that there simply is an underlying complaint that medical mileage is not being paid either in advance or being reimbursed. Commenter states that this is necessary to ensure that the worker was able to cooperate.	Director will not close the investigation	
9792.12	06/19/06	Dave Mitchell Republic Indemnity Company of America	Writer comments that the proposed regulation does not indicate <i>against whom</i> the single instance administrative penalty may be assessed. Is it the (a) employer, (b) insurer, (c) claims administrator, (d) third party administrator, (e) the other person performing utilization review services, or (f) the other person responsible for the utilization review process? Nor	Disagree in part and agree in part. Section 9792.14 (b) provides that the claims administrator or other entity subject to Labor Code section 4610 is liable for all penalty assessments made against it. Section 9792.15 explains how the Order to Show Cause will issue. Nonetheless, these	Sections 9792.12, .13 and .14 will be significantly revised to clarify that the penalties may be assessed against a claims administrator or utilization review organization or other entity subject to Labor Code section 4610 and state when each entity is liable.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			does the regulation indicate the criteria or circumstances for determining against whom the administrative penalty may be assessed. As such the regulation violates fundamental principles of due process of law, and further lacks the required clarity to be approved by OAL.	sections are amended.	
9792.12	6/26/06 6/28/06	<u>FORM LETTER</u> Harry Monroe, Jr. Concentra, Inc. Lori Kammerer	Writer comments that the penalties are punitive toward all entities that fall short of such perfection, particularly since the penalties are so disproportionate to the revenue that a utilization review entity receives for the	Disagree that the penalties listed under .12(a) are too high and penalize for “falling short of perfection.” These penalties are for serious and clear violations of	Section 9792.12(b) will be revised for these penalties so that the penalties are only \$100 or \$50 and the investigation subject may avoid the penalties by

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Kammerer & Company Written & Oral	provision of these services. The result is avoiding penalties by approving care on modalities that are of questionable value but involves expenditures that do not justify the risks associated with a potential complaint.	Labor Code section 4610, such as failure to establish a UR plan, have a medical director, denying a request that is outside the physician’s scope of practice, etc. However, we agree to include adjustment factors in section 9792.13 to address the concern that the penalties are disproportionate. Agree with regard to the .12(b) penalties. The regulations will be revised for these penalties so that the penalties are only \$100 or \$50 and the investigation subject may avoid the penalties by entering into an abatement agreement.	entering into an abatement agreement. Also, section 9792.13 will be revised to add penalty adjustment factors which include the rate of the violation found during the investigation and the impact of the penalties assessed in relation to the business revenues.
9792.12	6/29/06	Nina Bartholomew Oral Testimony	Commenter believes that there is a penalty here that is omitted that ought to be considered by the Division – and that is the penalty that by operation of law the treatment request is granted.	We disagree. We are modeling these penalties after the audit penalties and imposing monetary penalties only. Labor Code section 5703.27,	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>If there is, for example, no response within “X” number of days. A subsection should be set up to that effect.</p> <p>Commenter believes that there should be criminal penalties for cases where improper denials result in suicide and death.</p>	<p>4600 and 4610 require that the medical decisions are based on the medical necessity to cure and relieve and the medical services provided are consistent with the schedule for medical treatment utilization adopted pursuant to section 5307.27, or before the adoption of the schedule, with the ACOEM standards. Imposing a default penalty that the treatment must be provided if a time limit is not met could result in medical treatment that does not meet these standards and possibly detrimental medical treatment to injured workers.</p> <p>Disagree. The Administrative Director does not have authority to impose criminal</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>Commenter also believes that the \$50,000 penalty should not be reduced under any circumstance.</p>	<p>penalties.</p> <p>Agree.</p>	
9792.12(a)	6/29/06	David N. Rockwell California Applicants' Attorneys Association Written and Oral	<p>Writer comments that the "Single Instance Penalty" of a maximum \$50,000 for failure to establish, to file a utilization review plan and to maintain a utilization review process is more a reflection of cost savings than interest in insuring that proper treatment is promptly provided to injured workers. Writer believes that the primary goal of these regulations should focus on insuring that injured workers get prompt and appropriate treatment.</p>	<p>Disagree. The establishment and maintenance of the UR plan is the foundation for the process to work in a timely and appropriate manner. The statute has required the establishment and filing of a UR plan since 2003.</p>	None.
9792.12(a)	6/29/06	Steven Suchil American Insurance Association	<p>Writer comments that Labor Code section 4610 does not require the Administrative Director to conduct compliance audits separate and apart from the regular audit process. If the Division is determined to do so,</p>	<p>Disagree. The regular PAR audit process only involves looking at indemnity files (8CCR 10107.1(c)) and only penalizes for unpaid or late paid indemnity</p>	<p>None with regard to the penalty structure of section 9792.12(a).</p> <p>Re: section 979212(b): The penalties listed in .12(b) will be revised to</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>the wise public policy principles underlying legislative adoption of a revised audit process embodied in Labor Code section 129 should be followed. Target performance benchmarks should be established; those who fail to meet the gravity of the violations. Particularly when measured against the maximum administrative penalty assessable for failure to pass a full compliance audit under Labor Code section 129. Writer comments that the proposed penalties are unjustifiably and unnecessary high.</p>	<p>(8CCR 10107). Thus, following the PAR audit system will not result in a review of requests for authorization. Additionally, the Division will be investigating the utilization review organizations which are not subject to Labor Code §129 audits and do not have claim files at all. The penalties listed in .12(a) are for single acts, such as failure to have a medical director or failure to have a UR plan. There is no pass rate acceptable for such failure. The penalties listed in .12(b) will be revised to limit the penalties to an initial amount of \$50 or \$100 and the penalties may be waived if the investigation subject agree to abate the</p>	<p>limit the penalties to an initial amount of \$50 or \$100 and the penalties may be waived if the investigation subject agrees to abate the violations.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				violations.	
9792.12(a)(1) (A)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer recommends deleting “current areas of certified specialty and practice” as this is not a requirement of the UR regulation. Subsection 9792.7(a)(1) of the UR regulations states:</p> <p>“(1) The name, address, phone number, and medical license number of the employed or designated medical director, who holds an unrestricted license to practice medicine in the state of California issued pursuant to section 2050 or section 2450 of the Business and Professions Code.”</p>	Agree.	The phrase will be deleted.
9792.12(a)(1)(C)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer comments that the term “non-routine review” is undefined and subject to interpretation. LC §4610 and the UR regulations do not distinguish between routine versus non-routine reviews. Writer suggests the following revisions which would make this</p>	Agree to clarify. Section 9792.11(c) will describe routine and non-routine investigations.	Section 9792.11(c) will be revised to describe routine and non-routine investigations.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>subsection consistent with CCR §9792.7(a)(3):</p> <p>“(C) A description of the specific criteria utilized <u>routinely</u> in the review and throughout the decision-making process, including treatment protocols or standards used in the process for both routine and non-routine reviews, and as otherwise required by section 9792.7 of Title 8 of the CCR.”</p>		
9792.12(a)(1)(A-D)	6/28/06	<p>Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’</p>	<p>Writer believes that there should not be the possibility for a \$50,000 penalty if a claim administrator simply forgets to file the medical license number for their medical director. The proposed penalties for the violations are far too high. The regulation is clear that the administrative director would have discretion in applying the penalty, writer believes that the regulations provide the potential for the application of inappropriately harsh penalties.</p>	<p>We disagree. The division is in the process of reviewing all filed UR plans and alerting the entities of any deficiencies prior to the effective date of these regulations. Therefore, the failure to provide a license number will not be due to mere oversight. Additionally, having a licensed medical director is a major component of the UR process.</p>	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD
TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Compensation			
9792.12(a)(1) (E)	6/28/06	Jerrold (Jay) Garrard, V.P., Business Development GSG Associates, Inc.	Writer comments that this section should be much more clearly delineated emphasizing the \$50,000 fine on the line.	Disagree. Labor Code section 4610 sets forth the UR plan requirements. The requirement for a description of any prior authorization process is based on Labor Code section 4610(g)'s requirement that the plan must set forth the requirements for prior authorizations.	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.12(a)(2)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer is concerned about what would happen if the medical director position was empty for a brief period of time, there could be a time where a medical director would quit, was terminated, or was incapacitated. Situation like this should not lead to a \$10,000 penalty. There are unanticipated consequences to the regulations as they are written. Although writer believes that the administrative director would have discretion in applying the penalties, regulations could be applied in a very subjective manner.	Agree and Disagree. The subdivision is revised to allow a physician to be employed in a permanent or acting capacity, which will allow for an immediate replacement is a medical director quit, was terminated or was incapacitated.	The subdivision is revised to state: “(2) A maximum of \$ 50,000 for failing to employ a physician as a medical director in section 9792.6(l) of Title 8 of the California Code of Regulations, whether employed in a permanent or acting capacity, who has the express authority and responsibility for all utilization review decisions issued on the employer’s behalf, as required by sections 9792.6(l) and 9792.7(b) of Title 8.”
9792.12(a)(2)	6/29/06	Steven Suchil American Insurance Association	Writer comments on what circumstances a lesser penalty for this single, non-complying omission would be levied? Or what justification is there for assessing the maximum and what standard would be used in making the choice between the maximum and some other level	This comment is a question. The adjustment factors are listed in .13 (a). The maximum will be imposed unless one of the adjustment factors apply.	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			of penalty?		
9792.12(a)(2)	6/30/06	Nileen Verbeten California Medical Association	Writer comments that in the event that an employer or its agent would fail to comply with any of these requirements and pay any DWC imposed penalty, it is unclear what recourse is left if the employer did not then correct the violation. Taken literally, paying a \$10,000 maximum fine for the failure to have a medical director with an unrestricted license to practice medicine in the state of California could imply no further need to comply with the law. Given the critical importance of decisions being rendered through the utilization review program and the often irrevocable impact on an injured worker's health. However, the wording of this regulation provides no recourse when the problem is not corrected. The maximum penalty has been applied. What then? Writer asks that for each of the single	Agree to revise subdivision (c) to clarify. Section 9792.11(c) will be revised to state that a non-routine investigation may be conducted at any time based on factual information ...indicating the possible existence of a violation of Labor Code section 4610. If, for example, it is determined that there is no medical director, the investigating unit will return for a non-routine investigation to determine if the violation was corrected. The regulations will allow another fine to be imposed and the investigators will continue to return and assess penalties until the violations are corrected. Additionally, investigators can follow	Section 9792.11(c) will be revised to state that a non-routine investigation may be conducted at any time based on factual information ...indicating the possible existence of a violation of Labor Code section 4610.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			instance penalties that there be remediation of the violation and, without prompt remediation, the ability for the DWC to impose additional penalties.	other remedies, such as the civil penalty pursuant to Labor Code section 129.5, which after two findings could cause an insurer to loose its license to insure. The division could refer the case to the attorney general’s office to file a complaint for unfair business practices under Business and Professions Code section 17200. The division could file for a TRO, preliminary injunction and writ of mandate with the Superior Court.	
9792.12(a)(3)	6/28/06	Jerrold (Jay) Garrard, V.P., Business Development GSG Associates, Inc.	Writer comments that in 9792.6 reviewers are only defined to the level of Medical Doctor, Chiro, Acupuncturist, etc. Does the proposed rule mean that a penalty could be imposed for an Occupational Medicine Physician who denied an Orthopedist's request for treatment, or does it only mean	Agree in part. Scope of practice, as used in (a)(3) means that a Medical Doctor could deny the treatment request of a chiropractor, but a chiropractor could not deny the request of the Medical Doctor. It is based on what the	We agree to remove “professional competence” because in order to determine if a specific treatment request falls within a medical doctor’s professional competence is factually specific and therefore subject to dispute.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>that a Chiropractor who denies a Physician would be penalized? This is an important issue; it should be made to noted that the reviewer in the Utilization Review process is not evaluating the treater's diagnosis, but is applying established guidelines (whether ACOEM or other Evidence Based Criteria) to the treatment requested for that diagnosis - this is an important distinction. How are audits to be performed? Will they be based on a sampling, will they be limitless?</p>	<p>licensing board defines. Further, an Occupational Medical Physician (because it is an MD) may deny an Orthopedist.</p> <p>Agree to clarify how audit will be preformed.</p>	<p>Section 9792.11(c) will be added to set forth how routine and non-routine investigations will occur and how often they will occur and what type of files will be reviewed. Subdivision (k) will be added to state that 32 files, cases or requests will be investigated.</p>
9792.12(a)(3)	6/28/06	Steven W. Rosen, M.D. CompPartners	<p>Writer comments that scope of practice and professional competence are not defined or easily measurable. Writer adds that it is unreasonable to hold a reviewer to a standard that is not objectively defined and suggests a maximum fine of \$3,000 for using a reviewer that is not school to school, MD or DO to MD, Chiro to Chiro, etc. Writer</p>	<p>Agree in part. Scope of practice, as used in (a)(3) means that a Medical Doctor could deny the treatment request of a chiropractor, but a chiropractor could not deny the request of the Medical Doctor. It is based on what the licensing board defines.</p>	<p>We agree to remove “professional competence” because in order to determine if a specific treatment request falls within a medical doctor’s professional competence is factually specific, would require a deposition as opposed to a record review to</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			also states that a fine could also be potentially levied if reviewer is not familiar with the intervention by training or experience.	Further, an Occupational Medical Physician (because he or she is an MD) may deny an Orthopedist. Because scope of practice is easily determined, that term will remain.	determine, and therefore would be subject to dispute.
9792.12(a)(3)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer is not clear on how the DWC would determine if the medical decision is outside the professional competence of a medical provider acting within their scope of practice. Writer believes that the potential for subjective application of this portion of the regulations is troublesome.	See above.	See above.
9792.12(a)(3)	6/29/06	Steven Cardinale Comprehensive Industrial Disability Management	Writer agrees that the terms “scope of practice” and “professional competence” leave too much discretion in their interpretation; for example do all	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>MDs have the same scope of practice (that seems strange that a general practitioner could comment on a back surgery) or does “scope of practice” imply medical board certifications (i.e. only orthopedic surgeons can comment on orthopedic surgeries). Writer recommends that DWC either clarify the regulations or provide definitions outside the regulations.</p>		
9792.12(a)(3)	6/29/06	<p>Michael McClain, General Counsel and Vice President California Workers’ Compensation Institute</p>	<p>Writer comments that the proposed regulation is vague and overbroad. This section provides that a DWC auditor will, in retrospect, determine that the physician reviewer acted beyond his or her "professional competence". While “scope of practice” for physicians has a body of information to define it, "professional competence" does not and the standard is not defined in the regulation. The utilization review program</p>	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>established by statute requires physician reviewers to assess whether the recommended treatment plan is or is not medical appropriate in accordance with the medical treatment utilization schedule (Labor Code Sections 4600 and 5307.27). The medical utilization reviewer need not have the "professional competence" to actually execute the treatment plan, only to assess its medical validity. Writer suggests deleting the proposed regulation.</p>		
9792.12(a)(3)	6/29/06	Steven Suchil American Insurance Association	<p>Writer comments that the Audit unit staff has neither the training and experience nor expertise to determine the scope of practice or professional competence of the reviewers nor does the regulation provide any standard by which such issues will be measured or determined. Indeed, the reference to</p>	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			“professional competence” may imply something that could not have been intended: the reviewer’s actual clinical skills rather than the reviewer’s expertise. Labor Code section 4610 requires the reviewer to be competent to evaluate the specific clinical issues involved.		
9792.12(a)(3)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	Writer comments that Professional competence should be removed as it is not required by the corresponding CA UR regulation. Also, due to the fact that the regulations are not clear as to the “scope of practice” of the reviewer needing to be matched to the specialty of the requesting provider, or the specialty of the servicing provider, (i.e. MD ordering chiropractic services), there should not be a \$5000 penalty for the variance that could exist in the decision.	See above.	See above.
9792.12(a)(3)	6/29/06	Jose Ruiz State Compensation	Writer recommends that this subsection be deleted. A	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Insurance Fund	physician’s professional competence is not solely based upon the physician’s licensure, but rather is determined by his or her training and experience. The regulations do not define ‘professional competence’ nor offers any criteria to judge whether the physician has acted beyond his or her competence level. Furthermore, the UR regulations CCR §9792.7(b)(2) only requires that the requested medical service be within the reviewer’s ‘scope of practice.’ This subsection introduces a new concept that is vague and unnecessary.		
9792.12(a)(4-8)	6/28/06	Steven W. Rosen, M.D. CompPartners	Writer suggests that this should be taken out of single penalty violations but included in the multiple penalty violations. These single violations are less egregious than multiple violations. The fine for multiple violations is appropriate and addresses <i>patterns</i> of behavior as opposed to a single error, which	Agree in part, disagree in part. The subdivision (b) penalties are for timeliness, notice content and failure to send the information to the appropriate parties. Former subdivision (a) (5) (now 8) concerns a denial solely because the	Former subdivision (a)(4) will be deleted. Also, former subdivision (a)(5),(6), (7), (9), and (10) will be clarified.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>could be a simple clerical error, for example. The amount of penalty should be in proportion to the number of violations. This would be consistent with the multiple instance penalty section.</p> <p>(a)(8) The requirement that a discussion must take place with the treating provider presumes the treater will accept the reviewer’s call. If the treater</p>	<p>condition was not addressed in the medical treatment guidelines after the requesting physician provided clinical rationale; (a)(6) (now 4) concerns a non physician reviewer denying a medical request; (a)(7) (now 10) concerns a complete failure to respond to a request for authorization; and (a)(8) (now 9) concerns denying medical care without attempting a good faith attempt to agree to a care plan with the requesting physician. These are all UR violations that are related to substantive medical care.</p> <p>Disagree. This is required by Labor Code section 4610(g)(3)(B).</p>	<p>None.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			refuses to talk with the reviewer, then all treatment must be approved or one would be in a penalty situation. Certain treaters will take advantage of this loophole. Writer suggests that the treater and the reviewer must make a good faith effort to make contact and discuss the case. A good faith effort should include calling during normal business hours or agreed-to windows of opportunity.		
9792.12(a)(4)	6/28/06	Andrew Dhadwal, Esq. CA-ICA Administrators, Inc.	Writer comments that the medical treatment circumstances in workers' compensation claims are presented to UR physicians in the same way that applicants present to their treating physicians and/or qualified/agreed medical examiners. Their cases are filled with medical circumstances and permutations that can make it impossible to render a decision that is based upon documented medical criteria or guidelines. Another problem with this	We agree to delete this subdivision.	Subdivision (a)(4) will be deleted.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>situation is that UR physician reviewers are doctors with medical practices in addition to their UR Review responsibilities. When these doctors are put in the position of having to review numerous medical treatises in order to render a UR Decision, they are often forced to choose between their practice and the UR duties. Their practices will generally take priority. While acknowledging that some level of standardization is necessary in the UR process, allowing a physician reviewer to utilize their medical expertise without the threat of penalty for doing so, will maintain the professional integrity of the UR process by preserving the medical discretion of physician reviewers. Writer suggests that the documentation of the clinical basis for the UR physician reviewer’s decision is clearly necessary in a UR Decision, but limited deviations from existing</p>		

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>documented treatises in limited circumstances where the injured worker’s situation falls outside of documented scenarios are also necessary. The “limited circumstances permitting deviation from the requirement to cite specific criteria or guidelines” will have to be narrowly tailored in order to ensure that citation of criteria and guidelines continues to be the normal standard. Further, the circumstances requiring limited deviation from including citations of criteria will have to be documented in the physician’s UR Decision.</p>		
9792.12(a)(4)	6/28/06	<p>Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee</p>	<p>Writer believes that the maximum penalty for this violation should be reduced in order to appropriately reflect the nature of the violation.</p>	<p>We agree to delete this subdivision.</p>	<p>Subdivision (a)(4) will be deleted.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		California Restaurant Association Scott Lipton California Coalition on Workers' Compensation			
9792.12(a)(4)	6/29/06	Steven Suchil American Insurance Association	Writer comments that the penalty is disproportionate to any harm that might be caused by the omission of the information especially since in most, if not all instances, a conversation with the requesting physician will have preceded the written decision and is required in the case of concurrent review.	We agree to delete this subdivision.	Subdivision (a)(4) will be deleted.
9792.12(a)(5)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant	Writer comments on the difference between an "injury" and a "request" for "treatment" needs to be clarified in the regulations in order to be consistent with the Labor Code. If it's not clarified, the regulation will serve to undermine the presumption of correctness that the medical treatment guidelines have in	Agree.	Former subdivision (a)(5) (new 8) will be revised to state: "condition for which treatment was requested..."

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Association Scott Lipton California Coalition on Workers’ Compensation	statute.		
9792.12(a)(5)	6/29/06	Steven Suchil American Insurance Association	Writer comments that the Administrative Director does not have the authority to rewrite the statute, nor to change the clear meaning of the statute through the regulatory process. The difference between the statute and the proposed rule is critical. The guideline is not required to cover all possible treatment modalities, and it is the guideline which is presumptively correct. The proposed regulatory language undermines the Legislature’s purpose in adopting a guideline that addresses injuries rather than treatment. It is not authorized and contrary to the statute.	Agree. See above.	See above.
9792.12(a)(5)	6/29/06	David N. Rockwell California Applicants’ Attorneys	Writer agrees that it’s a step in the right direction. Too many workers have had their treatment delayed because of confusion on	We agree to increase the fine.	The penalty will be increased from \$5,000 to \$10,000.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Association Written and Oral	this issue, despite the clear direction in §9792.8(a)(2) as adopted. Writer supports the proposed penalty for the “failure to respond to a treatment recommendation” as a Single Instance Penalty. This should be subject to a serious fine, although the Writer suggests that the language be modified to state that failure to <i>timely</i> respond is the key to enforcing prompt behavior by claims administrators.		
9792.12(a)(5)	6/29/06	Tina Coakley The Boeing Company	<p>Writer comments that it lacks authority and is contrary to the clear language of Labor Code §§ 4600 and 4604.5. Specifically, subdivision (b) of Labor Code § 4600 defines an employers obligation to provide medical treatment as follows:</p> <p>“As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the</p>	Agree to revise this subdivision.	This subdivision will be revised for clarity to state: “(8) A maximum of \$ 10,000 if the request for authorization is denied solely on the basis that the <i>condition for which treatment was requested</i> is not addressed by <i>the</i> medical <i>treatment</i> utilization schedule adopted pursuant to section 5307.27 of the

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to § 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.”</p> <p>The import of both the UR regulations currently in effect and of this proposed regulation is to state that a claims administrator cannot deny treatment based on ACOEM unless it is also considered inappropriate by other treatment guidelines that address treatment.</p>		<p>Labor Code, <i>after</i> the requesting physician has provided the specific clinical rationale for the requested treatment and has provided or referred to relevant page(s) of other evidence-based medical treatment guidelines that are generally recognized by the national medical community and are scientifically based.”</p>
9792.12(a)(5)	6/29/06	Mark Webb, Vice-President Governmental Relations Employers Direct Insurance	Writer comments that the statutory authority for conducting a review under Labor Code Section 4610 extends only to timeframes or other requirements in Section 4610.	We agree to revise the subdivision. Disagree that this penalty, as revised, is beyond the authority provided by Labor Code section	This subdivision will be revised for clarity to state: “(8) A maximum of \$ 10,000 if the request for authorization is denied

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>There is no authority to use the UR statute to audit whether there are denials of treatment solely on the basis of the medical utilization schedule. In fact that criterion is expressly contrary to subdivision (c) of Labor Code Section 4610 which states in part that UR policies and procedures, "...shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27." If the requested treatment is for a condition for which a recommended treatment is provided in the medical utilization schedule, how can a denial based solely on the schedule <i>not</i> be "consistent with the schedule" as that term is used in Section 4610 of the Labor Code? The utilization review regulations are wrong in this regard, and the penalty regulations compound this error</p>	<p>4610(i).</p>	<p>solely on the basis that the <i>condition for which treatment was requested</i> is not addressed by <i>the medical treatment</i> utilization schedule adopted pursuant to section 5307.27 of the Labor Code, <i>after</i> the requesting physician has provided the specific clinical rationale for the requested treatment and has provided or referred to relevant page(s) of other evidence-based medical treatment guidelines that are generally recognized by the national medical community and are scientifically based."</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>by subjecting such denials to penalties. The Division only has the authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute that are consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Government Code § 11342.2) There is no authority for penalizing payers who make utilization review decisions consistent with the medical utilization schedule. [See: Government Code § 11349.1(a)(2)]</p>		
9792.12(a)(6)	6/28/06	<p>Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce</p>	<p>Writer agrees on the enforcement of this section but believes that the penalty when combined with other sections will serve to severely limit how often utilization review is used by administrators. In addition, the regulations do not properly define what it means to “delay</p>	<p>We agree to delete “modify.” The terms “delay and deny” are clear. We agree to clarify the subdivision.</p>	<p>This section will be revised to state: “(6) (4) A maximum of \$5,000 <u>\$ 25,000</u> if a <u>non-physician reviewer (person other than a reviewer, expert reviewer or medical director as defined in section 9792.6 of Title 8 of the California</u></p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers' Compensation	deny or modify" a request for medical treatment.		<u>Code of Regulations</u> makes a decision to delay, modify or deny a treatment authorization request <u>without obtaining the opinion of a reviewer for that case."</u>
9792.12(a)(6)	6/29/06	Steven Suchil American Insurance Association	Writer comments that there are circumstances in which a treatment authorization request could lawfully be denied by a claims adjuster who is not a reviewer. It includes, but are not limited to: (1) the requested treatment requested exceeds the maximum \$10,000 for which an employer is liable during the time a claim is being investigated or the \$10,000 has already been exhausted; (2) the requested treatment is for physical medicine exceeding the statutory limit; (3) the requested treatment is for a claim that has been denied or is for treatment of a condition that does not arise out of or in the course of employment. The paragraph	Agree to revise the subdivision. However, if there is a legal basis (as opposed to a medical basis) for denying the medical care, the mitigation factors will allow the penalty to be reduced to zero.	See revised subdivision above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			should clarify that under such circumstances, no penalty is assessable.		
9792.12(a)(7)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer is concern about the proper identification of a “request for authorization.” Writer believes that the Division should create a new form for requesting medical treatment that includes space for the doctor to include all information necessary to process the request. This would significantly cut down on missed request for authorization and delays in obtaining the information needed to process the request.	This goes beyond the scope of these regulations. The term “request for authorization” is defined in section 9792.6.	None.
9792.12(a)(7)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	Writer suggest that this section should be changed to: A maximum of \$5,000 for failing to respond <u>within 14 days</u> to the <u>written</u> request for authorization by the <u>confirmed</u> employee’s treating physician.	Disagree. The penalty is for complete failure to respond. Late responses are covered in the (b) section. “Request for authorization” is defined in section 9792.6 and by definition it must be in	The subdivision will be revised as follows: <u>“(7) (10) A maximum of \$5,000 \$ 10,000 for failing to respond to the request for authorization by the injured employee’s requesting treating physician.”</u>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				writing.	
9792.12(a)(7)	6/29/06	Tom Condit Oral Testimony	Commenter states that the division should require a specific form for physicians to request treatment. Commenter also believes that it should be a specific, unique color so that it stands out from other paperwork.	This goes beyond the scope of these regulations. The term “request for authorization” is defined in section 9792.6.	None.
9792.12(a)(8)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer believes that claim administrators who act in good faith could be inappropriately hamstrung by this portion of the regulations and urges the division to review this portion of the proposed regulations.	Disagree. Labor Code section 4610(g)(3)(B) requires the claims administrator to discuss the care plan and act in good faith. Also, the adjustment factors in 9792.13 will allow the penalty to be mitigated if the claims administrator acted in good faith.	None.
9792.12(a)(8)	6/29/06	Michael McClain, General Counsel and Vice President	Writer comments that it is contrary to the statute to require the utilization reviewer to confer	Disagree. This subdivision only applies in the case of concurrent	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		California Workers' Compensation Institute	with the treating physician in an effort to agree to inappropriate, unnecessary, deleterious, or unreasonable medical care, which is expressly not authorized by Labor Code Section 4600. Writer recommends the following changes: “ <u>a an alternative care plan in accordance with Labor Code Section 4600 and 5307.27 and</u> as required by	review and is directly based on Labor Code section 4610(g)(3)(B).	
9792.12(a)(8)	6/29/06	Steven Cardinale Comprehensive Industrial Disability Management	Writer comments that the definition of “good faith effort” should be clarified so that communications breakdowns do not stop treatment (i.e. is a good faith effort a single phone call or is it 3 attempts with 2 different scheduling options).	We disagree. “Good faith” depends on the factual situation. The records will reflect what efforts were made.	None.
9792.12(a)(9)	05/31/06	Janet Selby, WC Manager Municipal Pooling Authority	Writer comments that a penalty of up to \$ 5,000 for a physician reviewer’s failure to state the guidelines relied on to make the decision to modify or deny	Disagree. Labor Code section 4610(g)(4) provides, in pertinent part: “Responses regarding decisions to	The penalty will be increased and the subdivision will be revised for clarity as follows:

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			requested treatment seems too harsh.	modify, delay or deny medical treatment services requested by physicians <i>shall include</i> a clear and concise explanation of the reasons for the employers decision, <i>a description of the criteria or guidelines used</i> , and the clinical reasons..." (emphasis added). Section 9792.9(j)(5) of Title 8 of the Cal. Code of Regs. implements this statutory provision. The penalty amount reflects the legislative intent that the communication about the reasons to deny or modify requested treatment must be sufficiently detailed to inform the requesting physician of the medical standard being applied.	"(9) (6) A maximum of \$5,000 \$ 25,000 for failing to authorize and to provide all medical treatment, as required by Labor Code section 5402(c) , consistent with the medical treatment utilization schedule adopted pursuant to Labor Code section 5307.27 or the AGOEM practice guidelines , until either the claim has been accepted, rejected or the dollar threshold in Labor Code section 5402(c) has been paid."
9792.12(a)(9)	6/28/06	Jason Schmelzer California Manufacturers and	Writer comments considering the amount of penalty for violating this section, it is fair to	We disagree. See above. The effect on the injured worker of the	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers' Compensation	assume that any violation of this section will be unintentional. This means that an unintentional act by a claims administrators acting in good faith could land them a \$5000 penalty under this section. Writer believes that the penalty is inappropriate and will ultimately serve to neuter utilization review and medical treatment guidelines.	“unintentional” violation is lack of medical care.	
9792.12(a)(9)	6/29/06	Steven Suchil American Insurance Association	Writer comments that the lag time in billing cycles (some providers, health facilities or others may not bill for months) and payment, will result in imposing a financial obligation greater than the statutory limit. The language also fails to accommodate situations in which the injured worker is referred to the employer’s MPN, but fails to go and self-procures medical care. The employer in such circumstances is under no legal obligation to pay and should not be penalized for	Disagree. It is up to the claims administrator to know whether the \$10,000 limit has been met. If it has not been, then the medical treatment cannot be denied per Labor Code section 5402. If there is a legal basis for denying the medical care, the mitigation actors will allow the penalty to be reduced to zero.	The section will be revised as shown above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			failure to authorize treatment outside the network. The proposed language should be revised to address both problems.		
9792.12(a)(9)	6/29/06	Tina Coakley The Boeing Company	<p>Writer comments that Labor Code section 4610 states clearly that its penalty provisions are intended to be used for violations of the timeframes of any other requirements <i>of this section</i>. The obligation to provide immediate medical treatment does not arise out of § 4610. Furthermore, Section 5402 states that the employer’s obligation is to provide all treatment consistent with the guidelines, which in turn means that the employer may deny treatment that is not consistent <i>solely</i> on that basis. This would place the employer in direct conflict with the UR regulations. (8 CCR § 9792.8)</p> <p>In addition, Labor Code Section 4610 requires the Division to</p>	<p>The subdivision will be revised as shown above. Disagree that the requirement to provide treatment under Labor Code section 5402 is in conflict with the timeframes in Labor Code section 4610. The payment for medical treatment under section 5402 must be consistent with ACOEM. However, the timeframes to accept a request for authorization or to delay in order to request additional medical information should still meet the Labor Code section 4610 timeframes even during the period before the claims</p>	<p>The section will be revised as shown above.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			enforce the timeframes in § 4610, not the timeframes in § 5402. In fact, at least some of the timeframes in § 4610 would not apply given the immediate obligation to provide treatment in § 5402. This is further indication that the obligation under § 5402 was intended to be outside the UR process set forth in § 4610.	administrator has accepted or denied the claim. The revision addressed the concern that section 5402 provides that the employer must provide medical treatment consistent with the guidelines.	
9792.12(b)	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers' Compensation	Writer comments that the proposed regulations are vague with regards to how the scaled application of penalties is to be applied.	Agree. The entire (b) section is revised.	Subdivision (b) is revised to set forth a basic penalty of \$50 or \$100, which can be waived if the investigation subject agrees to abate the violations, and is increased upon return investigations.
9792.12(b)	6/28/06	Jerrold (Jay) Garrard,	Writer comments if all these	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		V.P., Business Development GSG Associates, Inc.	penalties, per instance, up to 10, 20, etc? IE: \$200 for each instance up to 10 then \$800 for each instance 11-20?		
9792.12(b)(1)	6/29/06	David N. Rockwell California Applicants' Attorneys Association Written and Oral Peggy Sugarman Votersinjuredatwork.org Oral Testimony	Writer comments that at a minimum, a violation of Labor Code section 4610(g)(2) should be considered a Single Instance Penalty and the monetary penalty should be substantial and sufficient to deter future delays.	Agree. Penalty (a)(7) is added to address expedited reviews.	Subdivision (a)(7) is added as follows: “(7) A maximum of \$ 15,000, in the event of a request for an expedited review, as defined in section 9792.6(g) of Title 8 of the California Code of Regulations, for the failure to make and communicate the decision in a timely fashion, as required by section 9792.9 of Title 8.”
9792.12(b)(1)	6/30/06	Nileen Verbeten California Medical Association	Writer is pleased that multiple instance penalties impose a progressively serious penalty for repeated failure to comply. Writer interprets the language of this section to mean that if 50 instances of a UR agent's failure to respond within 72 hours to appropriate requests for expedited review were found, the maximum penalty would be	The entire (b) section is revised.	Subdivision (b) is revised to set forth a basic penalty of \$50 or \$100, which can be waived if the investigation subject agrees to abate the violations, and is increased upon return investigations. However, as stated above, a new subdivision (a)(7) is

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			50 X \$6,400 or \$320,000. Because of the importance of this section, Writer asks that the language be abundantly clear.		added to address expedited reviews.
9792.12(b)(1)	6/29/06	Jose Ruiz State Compensation Insurance Fund	Writer recommends specifying that the decision must be made within "...72 hours after receipt of <u>written</u> information..."	Disagree. "Requests for authorization" are defined in section 9792.6 and by definition they must be in writing. To repeat it here would be duplicative.	None.
9792.12(b)(3)	6/28/06	Andrew Dhadwal, Esq. CA-ICA Administrators, Inc.	Writer comments that if a UR entity other than the claims administrator fails in these respects, the claims administrator alone is held responsible for the failure(s). My company, like others, is in a situation where at least one self-insured client utilizes the TPA company's TPA services, but utilizes the UR services of a third party UR vendor. This section puts claims administrators the risk of being penalized for the inactions of the third party UR vendor.	Agree. The entire (b) section is revised, including the subdivision addressed here.	The entire (b) section is revised. The section refers to the type of violation without directing the violation to the behavior of only the claims administrator.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.12(b)(4)	6/28/06	Andrew Dhadwal, Esq. CA-ICA Administrators, Inc.	Writer comments that the proposed section puts claims administrators the risk of being penalized for the inactions of the third party UR vendor.	See above.	See above.
9792.12(b)(4)	6/28/06	Jerrold (Jay) Garrard, V.P., Business Development GSG Associates, Inc.	Writer is asking does this section mean that the review organization must provide where the criteria can be found (ie: ACOEM, Chapter 2, page 87) or must the organization provide the entire citation? Shouldn't the treating physician in CA who takes on work comp patients have some responsibility to have their own copy of guidelines?	Agree to clarify. Former (b)(4)(F) is now (b)(3)(F)(6). The penalty is a reflection of the requirement found in section 9792.8(a)(3). As now stated, a written disclosure or copy of the relevant portion is sufficient to comply with the requirement.	Former subdivision (b)(4) now (b)(3)(F)(6) will state: “(6) A written disclosure or copy of the relevant portion of the medical criteria or guidelines relied upon pursuant to section 9792.8(a)(3) of Title 8 of the California Code of Regulations by the reviewer, whether done by the medical director, expert reviewer or reviewer, in making the decision to modify, delay or deny requested treatment.”
9792.12(b)(4)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	Writer suggests to add a note stating that the provision of rationale and criteria or guidelines used for the decision is NOT required to be provided	We disagree. Section 9792.8(a)(3) sets forth that the relevant portion of the guideline must be disclosed in writing to the	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			to <u>non-physician</u> providers of goods or services.	requesting physician. This section refers to that section. It does not need to repeat the entire section.	
9792.12(b)(4) (a-j)	6/28/06	Steven W. Rosen, M.D. CompPartners	<p>Writer comments that a report deficiency may well be a typographical error and should not generate a penalty. These tend to be isolated and random deficiencies and as such are a reflection of simple human error. Writer suggests that a penalty is appropriate when there is a demonstrated pattern of multiple instance violations with failure to correct. Additionally, guidelines and/ or criteria terminology are used in a number of locations in the proposed regulations. For example;</p> <p>9792.12(a)(4) “state the portion of the medical criteria or guideline”</p> <p>9792.12(b)(4)(F) provide “a description of”</p>	<p>Agree that the penalty structure should be revised.</p> <p>Agree to clarify re the use of the guidelines relied upon as follows: (However, reference to the page or chapter is not acceptable. Often an unrepresented injured worker will not have access to the medical treatment guidelines, and therefore, reference must be made to the relevant portion.)</p> <p>Former (a)(4) is deleted;</p> <p>Former (b)(4) is revised as (b)(3)(F)(6);</p>	<p>Subdivision (b) is revised to set forth a basic penalty of \$50 or \$100, which can be waived if the investigation subject agrees to abate the violations, and is increased upon return investigations.</p> <p>Former (a)(4) is deleted.</p> <p>Former (b)(4) is revised to state: “(6) A written disclosure or copy of the relevant</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>9792.12(b)(14) “make available criteria or guideline”</p> <p>9792.12(a)(5) in reference to other EBM “provide or referral to relevant page(s) of other evidence based medical guidelines”</p> <p>It is unclear what exactly has to be provided on reports and to concerned parties as it relates to guidelines or references. ACOEM guidelines has a number of deficiencies. Such deficiencies may be cured by researching high grade clinical studies, academy or specialty college recommendations, Medicare guidelines or recent standard textbooks. From a practical viewpoint one cannot provide excerpts of a particular guideline in every report for some references are not in electronic formats, protected by copy write law or even available in the public domain.</p>	<p>Disagree re: the following: Former (b)(14) is now (b)(3)(G) (this refers to the producing entire guidelines upon request per Labor Code section 4610(f)(5) and regulations 9792.8(a)(3) and 9792.7(d) and Former (a)(5) is revised as (a)(8) – this refers to denying based solely on the guideline after the physician has provided other evidenced based medical treatment guidelines – it is not a requirement for the claims administrator to set forth to provide excerpts.</p>	<p>portion of the medical criteria or guidelines relied upon pursuant to section 9792.8(a)(3) of Title 8 of the California Code of Regulations by the reviewer, whether done by the medical director, expert reviewer or reviewer, in making the decision to modify, delay or deny requested treatment.”</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			Since regulations allow for documentation of a “portion or description of” of a guidelines, Writer feels that identification of the source coupled with chapter or page would meet the minimal criteria for this regulation.		
9792.12(b)(4) (E-G)	6/28/06	Andrew Dhadwal, Esq. CA-ICA Administrators, Inc.	Writer comments that it would require the claims administrator to violate CCR section 9792.9(c) by providing all “provider[s] of goods or services identified in the request for authorization” with confidential medical information contained in the UR physician reviewers report. It must be redrafted to comply with current CCR section 9792.9(c) and other legal and regulatory medical confidentiality protections.	Agree. Subdivision (b)(4) is revised as (b)(3)(F).	The introduction of subdivision (b)(3)(F) now states: “(F) For failure, by the claims administrator, utilization review organization or other person performing utilization review services for an employer, to include in the written decision that modifies, delays or denies authorization, all of the following items required by subdivision 9792.9(j) of Title 8 of the California Code of Regulations...”
9792.12(b)(4) (H)	6/29/06	Tina Coakley The Boeing Company	Writer is not clear even though it requires a “clear statement”.	Agree. Former (b)(4)(H) is revised as (b)(3)(F)(8).	Former (b)(4)(H) is revised as (b)(3)(F)(8):

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>Not all utilization disputes result in triggering the process under Labor Code § 4062. This provision applies only when there is a dispute between the provider and patient on the one hand and the payer on the other. If the injured worker is receiving treatment through a medical provider network, there may be a dispute arising out of a UR decision that the provider and payer agree to and the patient does not. That would trigger the second and third opinion processes within the MPN rather than a review under Labor Code § 4062. If it is the determination of the Division that an injured worker may proceed to the Appeals Board even in the situations governed by Labor Code § 4616.3 then that policy decision needs to manifest itself in more than a penalty regulation.</p>	<p>Disagree regarding the discussion pertaining to the second and third opinion process for MPNs. That process is triggered when the injured worker disputes the diagnosis or treatment prescribed by the primary treating physician. (8 CCR 9767.7. In contract, this notification is required when the claims administrator denies the treating physicians request for authorization.</p>	<p>“(8) A clear statement in compliance with section 9792.9(j)(7) of Title 8 of the California Code of Regulations regarding the time limits and the process for resolving disputes in accordance with Labor Code section 4062;”</p>
9792.12(b)(4)(I)	6/29/06	Tina Coakley The Boeing Company	<p>Writer comments that this section engrafts a notice that is</p>	<p>Disagree. Labor Code sections 133, 4603.5 and</p>	<p>None.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			not called for under either Labor Code § 4610 or § 4062. None of the statutes cited as authority or reference supporting this proposed Section authorizes the notice the Division seeks to impose.	5307.3 provide the Division with authority to support the utilization review regulations and these regulations.	
9792.12(b)(4) (I)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer recommends replacing “DWC” with “state” in order to be consistent with the language in the UR regulations, CCR §9792.9(j)(8). This subsection should also include the option to use the alternative mandatory text as provided in CCR §9792.9(j)(8) which reads:</p> <p>“If you want further information, you may contact the local state Information and Assistance office closest to you. Please see attached listing (attach a listing of I&A offices and telephone numbers) or you may receive recorded information by calling 1-800-736-7401.”</p>	Agree. The subdivision is revised to refer to 8 CCR 9792.9(j)(8).	Former subdivision (b)(4)(I) is revised as (b)(3)(F)(9) and refers to section 9792.9(j)(8).

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.12(b)(4) (J)	6/29/06	Jose Ruiz State Compensation Insurance Fund	<p>Writer recommends that this section be revised to reflect the UR regulations, CCR §9792.9(k):</p> <p>“(J) The name of the reviewer <u>or expert reviewer</u> relied on to make the decision modifying, delaying or denying the requested treatment authorization, along with the reviewer’s current license(s), area(s) of certified specialty, area(s) of practice, address, telephone number, and hours of availability.”</p>	Agree.	Former subdivision (b)(4)(J) is revised as (b)(3)(F)(10) and now states: “(10) The name and specialty of the reviewer, expert reviewer or medical director that made the decision to modify, delay or deny the requested treatment, along with his or her telephone number in the United States, and hours of availability in accordance with section 9792.9(k) of Title 8 of the California Code of Regulations.”
9792.12(b)(5)	05/09/06	Tina Coakley The Boeing Company	<p>Writer comments that the proposed section combines two timeframes into one penalty. Is it the Division’s intent that there will be no penalty if a prospective or concurrent decision is made later than 5 working days from receipt of</p>	Agree the subdivision was unclear. The subdivision is deleted. The purpose of this subdivision is to require compliance with the requirement in 8 CCR section 9792.9(g)(1)	The subdivision is deleted. New subdivision (b)(4)(E) states: “(E) For each failure by the claims administrator to provide immediately a written notice to the

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			necessary information but within 14 days of the request?	when the timeframe for a decision may be extended. The reference to 5 days and 14 days is to the timeframes listed in 8 CCR 9792.9(b).	requesting physician, to the injured employee, and to his or her attorney if any, that a decision on the request for authorization cannot be made within fourteen (14) days for prospective and concurrent reviews, or within thirty (30) days for retrospective reviews for one of the reasons stated in Labor Code section 4610(g)(5) and in accordance with section 9792.9(g)(2) of Title 8 of the California Code of Regulations;”
9792.12(b)(5)	05/09/06	Theodore Blatt, M.D. Blue Cross	1)Writer comments that the utilization review ‘best practices’ standard, accredited by URAC (Utilization Review Accreditation Commission), emphasizes the value of ‘direct communication between a requesting provider and the reviewer whenever a requested service cannot simply be	Agree. Subdivision (b)(5) is deleted. Under new subdivision (b)(4)(E), a penalty will not be imposed unless 14 days have passed without notification.	See revised section above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>approved under the treatment guideline. Writer is concerned that the requirement to make a decision within 5 business days even when all required medical supporting documentation is provided may be too short a time for such provider-reviewer direct communication. Writer recommends that the response time be extended to 14 calendar days.</p> <p>2) Writer comments that responses to requests from ‘providers of goods and services’ should not be required within 5 working days as stated in the regulation because the definition of ‘utilization review process’ in 8 Cal. Code Regs. § 9792.6(s) is limited to requests “by physicians as defined in Labor Code section 3209.3’.</p>	<p>2) Agree to revise. See above.</p>	
9792.12(b)(5)	6/29/06	David N. Rockwell California Applicants’ Attorneys Association Written and Oral	<p>Writer comments that this section contains a mistake and alters the specific statutory in Labor Code section 4610(g)(1). The sentence should read:</p>	<p>Agree to revise. See above.</p>	<p>See above.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>(5) <u>For prospective or concurrent review, for each failure of the claims administrator of the claims administrator to make a decision within 5 working days from the date of receipt of the information necessary to make the determination, and but in no event more than 14 calendar days from the date of the request for authorization of medical services, etc.</u></p>		
9792.12(b)(5)	6/29/06	Steven Schumann Concentra, Inc. Written & Oral	<p>Writer is concerned that the five-day time frame prescribed in this section is not sufficient to assure communication between the reviewing and treating physicians. Writer deems that communication between the treating and reviewing physicians potentially results in additional information or review of case details that impact the reviewing physician's decision and may well result in certification of the request with optimal medical care</p>	<p>Agree the subdivision was unclear. The subdivision is deleted. It is re-written as (b)(4)(E). The purpose of this subdivision is to require compliance with the requirement in 8 CCR section 9792.9(g)(1) when the timeframe for a decision may be extended. The reference to 5 days and 14 days is to the timeframes listed in 8 CCR 9792.9(b).</p>	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			subsequently achieved to the patient’s benefit. Writer’s recommendation is to allow for the time frame to extend to the 14 calendar days without a penalty if there is documentation of contract or specific attempted contact between the reviewing and treating physicians.		
9792.12(b)(5)	6/29/06	Steven Cardinale Comprehensive Industrial Disability Management	Writer has heard comments that the 5 day turnaround time for UR completion (e.g. 9792.12(b)(5)) should be increased to 10 working days. This seems inappropriate as UR companies should be efficient enough to process requests within 5 days of the receipt of all necessary information. The additional increase in processing time could impact patient care and seems only necessary for SOME vendors. Writer recommendation is to continue with the current standard and require UR vendors to become appropriately efficient.	Agree the subdivision was unclear. The subdivision is deleted. It is re-written as (b)(4)(E). The purpose of this subdivision is to require compliance with the requirement in 8 CCR section 9792.9(g)(1) when the timeframe for a decision may be extended. The reference to 5 days and 14 days is to the timeframes listed in 8 CCR 9792.9(b).	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.12(b)(11)	6/29/06	Jose Ruiz State Compensation Insurance Fund	Writer comments that UR regulations, CCR 9792.9(g)(2), does not require that the notice include the name of the expert reviewer to be consulted because the name of the reviewer is not always known in advance. It only requires the <u>specialty</u> of the expert reviewer to be consulted. Writer recommends that this subsection be revised to reflect the UR regulations.	Disagree. Former (b)(11) will be revised as new (b)(4)(G). If the claims administrator has access to the list of UR physicians by specialty, the physicians' names will also be available.	Former (b)(11) will be revised as new (b)(4)(G). It will state: “(G) For each instance in which the claims administrator communicates, in reliance on Labor Code section 4610(g)(5), a written decision to delay or to extend the time for making a decision on a request for authorization for medical services, but fails to state one or more of the following, as appropriate, to explain the reason for delay as required by section 9792.9(g)(1) of Title 8 of the California Code of Regulations: 1) the necessary medical information reasonably requested but not received; or 2) the name and specialty of the expert reviewer to be consulted;

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					or 3) the additional test(s) or examination(s) to be performed that is reasonable and consistent with professionally recognized standards of medical practice; AND 4) the anticipated date on which a decision will be made.”
9792.12(a)(3)	6/28/06	Philip M. Vermeulen, Legislative Advocate Governmental Relations Written & Oral	Writer comments that this section puts the DWC auditors into the business of being doctors. They have the authority to determine whether a doctor made a correct decision in denying medical treatment. Additionally, the term “professional competence” in this section has no definition. Therefore, it is speculative as to the manner in which an auditor might apply this vague terminology.	Agree to delete the term “professional competence.”	The term “professional competence” will be deleted from this subdivision.
9792.12(b)(12)	6/29/06	Steven Cardinale	Writer recommends maintaining	Disagree. Former (b)(12)	Former (b)(12) is revised

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Comprehensive Industrial Disability Management	<p>the 5 day turnaround time with the same argument as 5 above (an extension to 10 days, which was voiced today at the meeting could impact patient care and really should be managed by requiring vendors to be more efficient) with the caveat that the language in the regs be modified to retain the spirit of the section, which seems to be:</p> <p>“5 workings days from the date of receipt of the information necessary to make the determination”</p>	<p>is revised as (b)(3)(D). The 5 day response time is required by 8 CCR 9792.9(g)(3).</p>	<p>as (b)(3)(D). It will state: “(D) Upon receipt of information that gave rise to a formal delay pursuant to section 9792.9(g)(1)(A), 9792.9(g)(1)(B) or 9792.9(g)(1)(C), or upon receipt of information that gave rise to a delay pursuant to section 9792.9(b)(2)(A) of Title 8 of the California Code of Regulations, for failure of the claims administrator to make a decision to approve or for failure by the reviewer to make a decision to modify or deny the request for authorization, within five (5) working days of receipt of the information for prospective or concurrent review, or for failure to communicate the decision as required by section 9792.9(g)(3) of</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					Title 8.”
9792.12(b)(4)(I)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	<p>Writer suggests changing the mandatory language to:</p> <p><u>“If you want further information, you may contact the local state Information and Assistance office closest to you. Please see attached listing (attach a listing of I&A offices and telephone numbers) or you may receive recorded information by calling 1-800-736-7401.”</u></p>	Agree to refer directly to the language required by the regulation.	<p>Former subdivision (b)(4)(I) is revised as (b)(3)(F)(9) and refers to section 9792.9(j)(8). It will state:</p> <p>“(F) For failure, by the claims administrator, utilization review organization or other person performing utilization review services for an employer, to include in the written decision that modifies, delays or denies authorization, all of the following items required by subdivision 9792.9(j) of Title 8 of the California Code of Regulations:</p> <p>(1) The date on which the decision was made;</p> <p>(2) A description of the specific course of</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					<p>proposed medical treatment or the medical services for which authorization was requested;</p> <p>(3) A specific description of the medical treatment service approved, if any;</p> <p>(4) A specific description of the course of medical treatment and each medical service delayed, modified or denied in whole or part.</p> <p>(5) A clear and concise explanation of the reasons for the decision to delay, modify or deny each item requested.</p> <p>(6) A written disclosure or copy of the relevant portion of the medical criteria or guidelines relied upon pursuant to section 9792.8(a)(3) of</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					<p>Title 8 of the California Code of Regulations by the reviewer, whether done by the medical director, expert reviewer or reviewer, in making the decision to modify, delay or deny requested treatment;</p> <p>(7) The clinical reasons provided by the reviewer, whether the medical director, expert reviewer or reviewer, regarding medical necessity;</p> <p>(8) A clear statement in compliance with section 9792.9(j)(7) of Title 8 of the California Code of Regulations regarding the time limits and the process for resolving disputes in accordance with Labor Code section 4062;</p> <p>(9) The mandatory</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					<p>language required by section 9792.9(j)(8) of Title 8 of the California Code of Regulations; and</p> <p>(10) The name and specialty of the reviewer, expert reviewer or medical director that made the decision to modify, delay or deny the requested treatment, along with his or her telephone number in the United States, and hours of availability in accordance with section 9792.9(k) of Title 8 of the California Code of Regulations.”</p>
9792.12(b)(4) (J)	6/29/06	Mary Ellen Szabo Fair Isaac Corporation	<p>Writer suggest the following language:</p> <p>The name of the reviewer <u>or expert reviewer</u> relied on to make the decision modifying, delaying or denying the requested treatment</p>	Agree to revise.	<p>Former subdivision (b)(4)(J) is revised as (b)(3)(F)(10) and now states: “(10) The name and specialty of the reviewer, expert reviewer or medical director that</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>authorization, along with the <u>reviewer or expert reviewer’s current license(s), area(s) of certified specialty, area(s) of practice, address, and telephone number,; Additionally, and hours of availability, a minimum of four (4) hours per week during normal business hours, 9:00 AM to 5:30 PM, Pacific Time or an agreed upon scheduled time to discuss the decision with the requesting physician must be listed for the reviewer, expert reviewer or the medical director.</u></p>		<p>made the decision to modify, delay or deny the requested treatment, along with his or her telephone number in the United States, and hours of availability in accordance with section 9792.9(k) of Title 8 of the California Code of Regulations.”</p>
9792.12 (b)(4)(I)	6/29/06	Nina Bartholomew Oral Testimony	<p>Commenter states that this section relates to the proposal that the attorney’s fees deducted from awards of disability benefits if someone consults and attorney. Commenter states that many people have a settlement that grants them lifetime medical benefits, so this becomes extremely ambiguous. Commenter states that this should be clarified.</p>	<p>Disagree. The required language concerning consulting attorneys is stated verbatim in 8 CCR 9792.9. The UR penalties regulations refer to the mandatory language as a necessary component in the notice. The actual language goes beyond the scope of these regulations.</p>	<p>Former subdivision (b)(4)(I) is revised as (b)(3)(F)(9) and refers to section 9792.9(j)(8). (The revised version is set forth in the second box above.)</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.13	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers’ Compensation	Writer comments that the mitigation factors outlined do not carry any specific reductions or enhancements for the application of penalties, nor set forth any criteria for the Administrative Director to objectively evaluate the adjustment factors. Writer is concerned that the ability of the Administrative Director to unilaterally increase or decrease penalties based on a list of subjective criteria, or objective criteria with no requirement for objective analysis will ultimately lead to disputes with claims administrators.	Disagree. The penalties cannot be increased, as the amounts are the “maximum” amount. It is necessary to allow discretion to reduce the penalties in order to take into consideration different factors. In general, penalties are found to be constitutional where various factors are considered including; 1) degree of culpability, 2) prior misconduct, 3) the concern of creating a financial bonanza that would ill serve public policy, and 4) the sophistication and financial strength of the assessed. “Legislature may constitutionally impose reasonable penalties to secure obedience to statutes enacted under the police power so long as those enactments are	Additional factors will be added: “(7) The rate of violation found during the investigation giving rise to a penalty; (8) The impact of the penalties assessed in relation to the business revenues of the entity or person subject to Labor Code section 4610; and (9) In the event an objection or appeal is filed pursuant to subsection 9792.15 of these regulations, whether the employer, claims administrator, utilization review organization or other person performing utilization review services abated the alleged violation within the time period specified by the Administrative

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				<p>procedurally fair and reasonably related to a proper legislative goal.” <u>Kinney v. Vaccari</u> (1980) 27 Cal.3d 348, 352. These regulations take these factors into consideration. Further, the statute and regulations set forth a hearing process that will allow an investigation subject with an opportunity to contests the penalty amounts.</p>	<p>Director or his or her designee.”</p>
9792.13	6/29/06	Steven Suchil American Insurance Association	<p>Writer comments the proposed rule makes mitigation of penalties dependent entirely on the whim of the regulator. There is no assurance that each claims administrator will be treated equally under the law, or that mitigation factors will be applied at all.</p>	See above.	See above.
9792.13	6/29/06	David N. Rockwell California Applicants’ Attorneys	<p>Writer comments that the language allows too much discretion in the actual penalty amounts. This can seriously</p>	See above.	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Association Written & Oral	undermine the effectiveness of strong enforcement and creates an atmosphere that invites back room “deals”. The Penalty Adjustment Factors, as outlined, fail to specify how the administrative director will determine the “medical consequences or gravity of the violation” or how to measure the “good faith” of the employer or insurer. Either they followed the law or they didn't. Writer suggests to either specify a set penalty for these serious offenses or come up with a clearer path on what might mitigate the maximum amount. This will help the Division as well by eliminating costly and potentially litigious discussions over penalty amounts.		
9792.13(d)	6/29/06	Nina Bartholomew Oral Testimony	Commenter is concerned that under subsection (d) that there is an opportunity to evade penalties by blaming the worker for not cooperating. Commenter states that it’s interesting that this is	We agree to revise the subdivision by adding the following language: The claims administrator, utilization review organization or other	Subdivision (d) will be revised to include the following language: “The claims administrator, utilization review organization or

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>the same proceeding that they can think about blaming the worker for not cooperating, so they don't have to pay a penalty, there's no requirement that they notify the worker that the hearing is taking place. Commenter questions how the worker is supposed to be able to come in there and tell that he did cooperate. In essence, the worker doesn't know about it, the insurer shows up, and boom the worker did not cooperate.</p> <p>Commenter states that missing from this section are additional penalties and penalty adjustments for aggravated behavior by the insurer. What if the worker could demonstrate that the insurer intentionally lied? For instance, subjected the injured worker to abuse by its employees, falsified records, intentionally and purposefully denied treatment that they knew they had to approve; for example, at the last moment</p>	<p>person assessed a proposed penalty pursuant to sections 9792.12 of Title 8 of the California Code of Regulations shall have the burden of proof in establishing both the refusal to cooperate and that such refusal prevented compliance with the relevant applicable statute or regulation.</p> <p>The investigating unit will be able to contact the injured worker and the physician, and review the records pertaining to the request for authorization. Also, at any time an injured worker can inform the medical unit or the audit unit if he or she has complaints regarding UR. The complaint may trigger an investigation. Received</p>	<p>other person assessed a proposed penalty pursuant to sections 9792.12 of Title 8 of the California Code of Regulations shall have the burden of proof in establishing both the refusal to cooperate and that such refusal prevented compliance with the relevant applicable statute or regulation.”</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			before the hearing changes their position. There is no factor in aggravation to increase or adjust the penalties.	complaints will also be reviewed during UR investigations.	
9792.13(d)	6/29/06	David N. Rockwell California Applicants' Attorneys Association Written & Oral	<p>Writer does not understand the involvement of injured workers in the utilization process. Their role is passive. A statement from the claims administrator that the worker has "refused to cooperate" by failing to attend a scheduled consultation or appear for a battery of diagnostic tests should be viewed with extreme caution.</p> <p>The decimation of the Labor Code has basically allowed claims administrators to enjoy a much larger degree of ineptitude, sloppiness, just plain mean-spiritedness. The regulations should therefore include an inspection of whether medical mileage has been promptly advanced or reimbursed where employees accused of failing to attend a scheduled consultation.</p>	<p>Disagree. See above.</p> <p>This is outside the scope of these regulations, which are UR enforcement.</p>	See above.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>But on a practical note, if the injured worker refuses to "cooperate" for some reason, the treatment should simply be denied. There is no reason to delay a decision. Writer requests to eliminate the language that refers to an injured worker's "refusal to cooperate".</p>		
9792.13(a)(3)	05/09/06	Tina Coakley The Boeing Company	<p>Writer comments that the proposed 8 CCR § 9792.11(c) states that a “utilization review investigation” may be conducted concurrently with an audit pursuant to Labor Code §§ 129 and 129.5. This is reiterated in proposed 8 CCR § 9792.11(g)(2). Does this also suggest that a history of violations of “these regulations” means a history of violation of audit standards under Labor Code §§ 129 and 129.5, and if it does may penalties under these regulations be increased because of a history of violations of standards that have nothing to do</p>	<p>Agree to clarify this subdivision.</p>	<p>Subdivision 9792.13(a)(3) is clarified to state: “(3) The history of previous penalties for violations of Labor Code section 4610 or these regulations sections 9792.6 through 9792.12 of Title 8 of the California Code of Regulations;”</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			with utilization review?		
9792.13(c)	05/09/06	Tina Coakley The Boeing Company	Writer is asking does this invoke the doctrine of <i>inclusio unius est exclusio alterius</i> ? Is it the Division’s intent that no duplicate penalties will be assessed during a concurrent audit, and if so why is that not articulated?	Disagree. The subdivision is clear that both a civil penalty under Labor Code section 129.5 and an administrative penalty under the UR penalty regulations may be assessed based on the same violation.	None.
9792.13(d)	6/29/06	Michael McClain, General Counsel and Vice President California Workers’ Compensation Institute	Writer envisions that there may be interference with the utilization review process from either the injured worker or the provider and that this could affect the claims administrator’s ability to conduct the process in a timely fashion. The proposed regulation is premised on such a finding, yet the application of an audit penalty is still discretionary. Where such interference is found, no penalty is warranted. The recommendation is to change the word “may” to “shall”.	Disagree. Whether or not a penalty is warranted will be based on the specific facts presented by the investigation subject and the information revealed by the investigation.	None.
9792.13(d)	6/29/06	Jose Ruiz	Writer supports the ability to	Disagree. An injured	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		State Compensation Insurance Fund	<p>forego a penalty where the failure to act was due to the lack of cooperation of other parties involved in the case, including the applicant’s attorney where the injured employee is represented by counsel. Writer recommends the following language:</p> <p>“(d) Where an injured worker’s, <u>injured worker’s attorney if represented by counsel</u>, or a requesting provider’s refusal <u>has refused</u> to cooperate in the utilization review process <u>and</u> has prevented the claims administrator from determining whether there is a legal obligation to perform an act, the Administrative Director, or his or her designee, may forego a penalty assessment for any related act or omission.”</p>	worker’s attorney is acting on behalf of the injured worker. It is not necessary to specifically include the attorney.	
9792.14	06/19/06	Dave Mitchell Republic Indemnity Company of America	Writer comments that the term “claims administrator” is defined differently in	Disagree. Labor Code section 4610 provides authority to more entities	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			9792.6(c) ⁴⁸ vs. 10100.1(i) ⁴⁹ . The regulation therefore lacks the consistency and clarity required for OAL approval.	than Labor Code section 125. Therefore, the definition in 8 CCR 9792.6 is specific to the UR regulations beginning with 9792.6 through these proposed regulations.	
9792.14	6/28/06	Andrew Dhadwal, Esq. CA-ICA Administrators, Inc.	Writer comments that changing the language will not allow the claims administrator to dodge the responsibility of overseeing the UR process. The current UR regulations at CCR section 9792.6 <i>et. seq.</i> make it clear that the claims administrator must take responsibility in administrating the UR process, regardless of whether the UR services are provided by third parties or by the claims administrator.	We agree, however, the claims administrator may contract with the UR organization to perform certain functions and that the UR company will be liable for damages that may occur due to its actions. Also, Labor Code §4610 provides authority to the AD to assess utilization review organizations directly.	None.
9792.14	6/28/06	Jason Schmelzer California Manufacturers and Technology Association Written & Oral Marti Fisher	Writer is concerned that this could be interpreted to mean that CIGA could be liable for the penalties accumulated before CIGA took over administration of the claims. Writer strongly believes that the Division should	Disagree. CIGA’s rights and obligations are defined by the Insurance Code and case law. Although we agree CIGA is not liable for penalties, it is not necessary to state	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		California Chamber of Commerce Kerry Lee California Restaurant Association Scott Lipton California Coalition on Workers' Compensation	review its statutory authority and seek to provide protection against successor liability to CIGA above and beyond that which is provided to other claims administrators in similar situations.	CIGA's responsibilities in these regulations.	
9792.14	6/29/06	Nina Bartholomew Oral Testimony	Commenter states that the assessments are all directed at the entity and not the individual employee. Commenter states that in the state of California insurance adjusters are not licensed (as they are in many other states) and therefore, have no motivation whatsoever to be honest. Commenter requests that Division consider penalizing the adjusters.	Disagree that the penalties should be against the individual claims adjusters. The penalties will be imposed against the claims administrators or utilization review organizations. The employers of the insurance representative are responsible for training and discipline of their employees. If the employer determines that specific employees are dishonest, they can terminate the employees.	None.
9792.14(b)	6/29/06	Jose Ruiz State Compensation	Writer is concerned that where the employer is acting independently	We disagree. The claims administrator may	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
		Insurance Fund	<p>from the claims administrator, and by doing so, performs a violation of UR standards, the claims administrator may be jointly and severally liable due to the language in the UR Enforcement Regulations subsection 9792.14(b) despite the fact that the employer is not an authorized agent of the claims administrator. Writer believes that it may be contrary to public policy for an insurer to pay penalties on behalf of an employer who has stepped out of its role as policyholder, whose claims by contract are to be adjusted by the insurer. Therefore, we propose the following language to address penalties resulting from an insured employer’s unlawful and independent actions:</p> <p>“(b) The claims administrator or other entity subject to Labor Code section 4610 is liable for all penalty assessments, except that if the subject of the investigation or audit is acting as an agent, the agent is jointly and</p>	<p>recover from the employer if the employer is responsible for the penalty and may argue that it (the claims administrator) is not responsible for the penalty assessed by the AD. The suggested language is not necessary and would only increase disputes regarding the party responsible for the violations.</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>severally liable with the liable entity for all penalty assessments. This paragraph does not prohibit an agent and its principal from allocating the administrative penalty liability between them. Liability for civil penalties assessed pursuant to Labor Code section 129.5(e) for violations under Labor Code section 4610 or sections 9792.6 through 9792.10 of Title 8 of the California Code of Regulations shall not be allocated.”</p> <p><u>When an insured employer acts independently of the insurers responsibility for the Utilization Review program as described in Labor Code §4610, the insurer will not be liable for any penalty assessments for those actions.”</u></p>		
9792.14(b) and (c)	6/28/06	Philip M. Vermeulen, Legislative Advocate Governmental Relations Written & Oral	Writer comments that joint and several liability is imposed on claims administrators in this section. The intent of DWC is unclear. If it is done to pre-empt a claims administrator from	Disagree. If the claims administrator has hired a utilization review organization to handle the UR requests and the investigation subject is	The section is revised to add “utilization review organization” to the subdivisions.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>avoiding liability, then it is redundant and raises questions about due process. There is no disincentive here unless the subject of the audit had complete control over the activity and expressly condoned those activities. The regulations are imposing a standard not supported by the enabling statute.</p>	<p>the claims administrator, it is responsible for the utilization review organization's actions because it hired to the company to perform the UR duties. The claims administrator may recoup the penalties from the utilization review organization. The purpose of the subdivision is to prevent the AD from having to assess both the claims administrator and the utilization review organization and being placed in the position of proving which actor did which actions.</p>	
9792.14(b) and (c)	6/29/06	Michael McClain, General Counsel and Vice President California Workers' Compensation Institute	<p>Writer comments that the Division has the authority to hold the insurer or employer responsible for its utilization review process and decision-making, and that is all that the statute authorizes. The AD's attempt to impose joint and</p>	<p>Disagree. Re: joint and several liability: The purpose of this subdivision is to clarify that where an insurer has hired a utilization review organization to handle</p>	<p>The section is revised to add "utilization review organization" to the subdivisions.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>several liability and successor liability on claims administrators who are not otherwise involved in the utilization review decision-making process raises questions of policy and authority. It is unclear whether this is an effort to preclude a claims administrator from shielding itself from the misconduct of its agents or an attempt to restate applicable principles of agency in this circumstance. In either event, the statute does not give the Division the authority to impose joint and several or successor liability on entities that are not engaged in conduct relating to the DWC’s review. Writer recommends eliminating joint and several liability and successor liability from these regulations.</p>	<p>UR, the parties are jointly liable for any assessed penalties, but as between themselves, the liabilities are several. This means that if the Division pursues one party, and receives payment in full, that party can then pursue the other obligors for a contribution to their share of the liability. The reason for this subdivision is that the defendants are in the best position to apportion damages amongst themselves.</p> <p>Re: successor liability: The purpose of (c) is to provide that successor liability will be imposed on subsequent claims administrators (or utilization review organizations) where the original entity has merged or consolidated</p>	

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
				with another entity and if there has been a substantial continuity of business and/or the successor business uses substantially the same work force.	
9792.14(c)	6/29/06	Association of California Insurance Companies	Writer is asking how will the penalty provisions assure a better utilization review process. Writer endorses CWCI's recommendation regarding the appeals process and supports the comments provided by CWCI, Republic Indemnity and Employers Direct Insurance Company.	Subdivision (c) will prevent claims administrators or utilization review organizations from escaping liability from penalties by simply merging with another company or re-naming themselves despite the fact that they are essentially the same organization and continuing in the same business of handling UR requests. See response to CWCI, Republic Indemnity and Employers Direct Insurance Company.	See response to CWCI, Republic Indemnity and Employers Direct Insurance Company (above and below).

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
9792.15	06/19/06	Dave Mitchell Republic Indemnity Company of America	Writer comments that the proposed regulations repeatedly use the term “employer, insurer or other entity subject to Labor Code section 4610”, but the proposed regulations inconsistently refer to different entities regulated. The regulation therefore lacks the consistency and clarity required for OAL approval.	Agree.	Section 9792.11(a) is revised to define the term utilization review organization. Throughout the regulations the references are corrected to be consistent.
9792.15	6/29/06	Michael McClain, General Counsel and Vice President California Workers’ Compensation Institute	Writer comments that the proposed regulation sets out the procedures for reviewing the assessment of administrative penalties under Labor Code section 4610. These proposed regulations track but do not replicate the procedures used for other administrative penalties in the Labor Code. It is duplicative and confusing to craft separate sets of appeal procedures for each administrative penalty in the system. Writer’s recommendation is to simply	Disagree. Labor Code section 129.5 (f) and (g) provide specific appeal procedures that must be followed for administrative audit penalties and for a notice of penalty assessment. Labor Code section 129.5(e) does not provide a procedure for the civil penalty hearings (except that that there must be a finding and a hearing). Civil penalty hearings are	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			reference the procedures established for appeals under Labor Code Sections 129 and 129.5 (regulation sections 10113 – 10114.4).	conducted as provided in 8 CCR 10113 et seq. In contrast, Labor Code section 4610(i) provides a specific procedure that must be followed. The AD must assess the penalty. Following that, there must be a procedure for the issuance of an order with notice to and an opportunity for a hearing. The proposed regulations include these requirements. Although the procedures in this set of regulations are similar to the procedures in 10113, simply referring to them would be confusing as they are specific to a civil penalty violation.	
9792.15(d)	6/29/06	Nina Bartholomew Oral Testimony	Commenter states that there is a requirement that the Order to Show Cause be served on the employer and the administrator. There is no requirement that the order be served on the injured	Disagree. The Order is served on the party who is being assessed the penalties. The injured worker is potentially a witness not a party.	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>worker involved in the case. Commenter states that this needs to be corrected. The injured worker is an interested party and should be notified. Due process requires this.</p>	<p>Further, as the Order will address all violations found during the investigation, there could be numerous injured workers requests for admissions at issue. A requirement to serve the Order on all injured workers whose requests for admissions were a subject to a penalty is impractical and unnecessary. Also, the final findings will be posted on the DWC website per 9792.12(b)(5).</p>	
9792.15(g)	6/29/06	Nina Bartholomew Oral Testimony	<p>Commenter states that this section allows the insurer to submit a response that is not verified. In other words, the insurer is allowed to make false statements with impunity. Commenter states that this section should be changed. Any answer submitted by the employer should be signed under penalty of perjury and should be</p>	<p>Disagree. The regulations require the testimony at the hearing to be taken under oath. Also, section 9792.11(k)(1) will require the investigation subject to provide the records with a statement signed under penalty of perjury that the records</p>	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			verified.	produced are true, correct and complete copies of the originals.	
9792.15(j)	6/29/06	Nina Bartholomew Oral Testimony	Commenter notes that the Administrative Director can issue a subpoena to the attendance of people residing within the state. Commenter states that the Division should give serious consideration to implementing a requirement that all utilization review take place within the state of California. Commenter states that if the review takes place out of state that there is difficulty investigating and obtaining records.	This goes beyond the scope of these regulations. The utilization review regulations allow utilization reviews to be conducted outside the state of California.	None.
9792.15(n)	6/29/06	Nina Bartholomew Oral Testimony	Commenter states that this section states that written documents can be submitted, and states that oral testimony should be heard under penalty of perjury. Commenter questions where the requirement is that the documents be submitted under penalty of perjury and that they all be properly sworn and submitted by the custodian of	We agree.	Section 9792.15(o), (now p) requires that all oral testimony shall be taken under oath. Section 9792.11(k)(1) will require the investigation subject to provide the records with a statement signed under penalty of perjury that the records produced are true, correct

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			records who testifies to the accuracy of the copies.		and complete copies of the originals.
9792.15(o)	6/29/06	Nina Bartholomew Oral Testimony	Commenter states that this section provides that oral testimony shall be taken only on oath or affirmation. Commenter doesn't see the oath. Commenter questions why should these documents be submitted if they are not under penalty of perjury. Additionally, commenter states that when these documents are submitted under penalty of perjury, there also needs to be a system set up whereby a worker who detects perjury in them can request the department to make a referral for criminal prosecution for that perjury.	Disagree. It is not necessary for the oath to be incorporated in the regulations. It is the standard oath that is given at any hearing. The hearing officer rules on the admissibility of evidence. Injured workers may refer others to the district attorneys for referral at any time.	None.
General Comment	6/29/06	Sally King Oral Comment	Commenter is a nurse who discusses the difficulty she and her husband, an injured worker, have had getting treatment approved for his injuries. Comments do not substantively address any specific section of the proposed regulations.	The comments go beyond the scope of the regulations.	None.
General	6/29/06	Ernest Medieros, III	Commenter is an injured worker	No response is required	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
Comment		Oral Comment	who has experienced great difficulty getting the insurance company to authorize treatment and his history has been detailed in Peggy Sugarman’s testimony at the public hearing. Commenter confirms that he is getting ready to sell his home because of delays and non-payment of PD benefits. Comments do not substantively address any specific section of the proposed regulations.	as no specific comment concerning the regulations was made.	
General Comment	6/29/06	Kelly Sedam Oral Comment	Commenter’s husband recently died due to denial of medical care and medication by the insurer. The story is outlined in Peggy Sugarman’s oral testimony during the public hearing. Comments do not substantively address any specific section of the proposed regulations.	No response is required as no specific comment concerning the regulations was made.	None.
General Comment	6/29/06	Dina Padilla Oral Comment	Commenter states that any denial of treatment that results in premature death should be criminally prosecuted and carry severe monetary penalty. Commenter states that	Disagree. The AD does not have authority to criminally prosecute. Basing the penalty amount on the result of the denial of treatment is	Section 9792.11(k) will require the claims administrators or utilization review organizations to produce the requested file with a

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>documents produced by doctors should be provided under penalty of perjury.</p> <p>Comments do not substantively address any specific section of the proposed regulations.</p>	<p>unfeasible. At the time of the investigation, the result of the denial of treatment may not yet be known. Relating the denial of treatment to a premature death may be speculative or require expert testimony and opinion. For the purposes of assessing penalties, it is preferable to state the violations in terms of objective factors that can be determined by reviewing the utilization review records.</p> <p>The file records will all be required to be produced under penalty of perjury. The regulations do not request physicians to produce documents and do not impose any additional duties on physicians who write reports.</p>	<p>statement made under penalty of perjury that the records are true and correct copies of the originals.</p>
General Comment	6/29/06	Latrice Holley Oral Comment	Commenter spoke of her personal experience in obtaining	These comments go beyond the scope of these	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			<p>medical treatment as an injured worker. Suggests that the Division keep records of fraud by the insurance carrier. Comments do not substantively address any specific section of the proposed regulations.</p>	<p>regulations. Suspected fraud is referred to the local district attorneys and Department of Insurance.</p>	
General Comment	6/29/06	Steve Zeltzer, Chair California Coalition for Workers Memorial Day Oral Comment	<p>Commenter states that there is a state of emergency in the state of California because injured workers are getting denied treatment on a regular basis.</p> <p>Commenter recommends that the Division introduce criminal penalties and revoke the licenses of insurers who abuse the utilization process.</p> <p>Commenter states that the proposed penalty amounts are inadequate and are not a deterrent to insurers who make billions of dollars.</p> <p>Commenter states that there should be a Federal investigation of insurers in the state of California.</p>	<p>Agree to increase the penalty amounts listed in section 9792.12(a).</p> <p>The AD does not have authority to criminally prosecute or revoke the licenses of insurers. However, Labor Code section 129.5(e) requires the AD to refer an insurer to the Insurance Commissioner to determine if the license should be revoked after two findings that the insurer was engaged in a general business practice of discharging and administering its compensation obligations in a manner causing</p>	<p>The following penalties in 9792.12(a) will be increased: (3) from \$5,000 to \$25,000; (4) (formerly 6) from \$5,000 to \$25,000; (6) (formerly 9) from \$5,000 to \$25,000, (8) (formerly 5) from \$5,000 to \$10,000; (9) (formerly 8) from \$5,000 to \$10,000, (10) (formerly \$5,000) to \$10,000; (11) (formerly 10) from \$1,000 to \$5,000. The section 9792.12(b) penalties will all be either \$100 or \$50 each.</p>

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			Comments do not substantively address any specific section of the proposed regulations.	injury to those dealing with it. Thus, under Labor Code 129.5(e), the insurer’s license may be revoked. The Division does not have authority to require a federal investigation.	
General Comment	6/29/06	Angela Cross Oral Testimony	Commenter is an injured worker that spoke of the difficulties she has encountered in litigating her workers’ compensation claim. Comments do not substantively address any specific section of the proposed regulations.	The comments go beyond the scope of the regulations.	None
General Comment	6/29/06	Michael Leedie	Commenter is an injured worker who spoke of his negative experience litigating his workers’ compensation case. Commenter states that the proposed penalties are woefully inadequate. Commenter states that there should be criminal penalties for improper UR denials.	Some of the comments go beyond the scope of the regulations. Some of the penalties will be increased. The AD does not have authority to impose criminal penalties.	The following penalties in 9792.12(a) will be increased: (3) from \$5,000 to \$25,000; (4) (formerly 6) from \$5,000 to \$25,000; (6) (formerly 9) from \$5,000 to \$25,000, (8) (formerly 5) from \$5,000 to \$10,000; (9) (formerly 8) from \$5,000 to \$10,000, (10) (formerly \$5,)) to \$10,000; (11)

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
					(formerly(10) from \$1,000 to \$5,000. The section 9792.12(b) penalties will all be either \$100 or \$50 each.
General Comment	6/29/06	Marie Shahidah Musawwir Oral Testimony	<p>Commenter speaks of fraudulent conduct of insurers that she experienced as an insurance representative. She states that there should be personal accountability.</p> <p>Comments do not substantively address any specific section of the proposed regulations.</p>	<p>The comments go beyond the scope of the regulations.</p> <p>The penalties will be imposed against the claims administrators or utilization review organizations. The employers of the insurance representative are responsible for training and discipline of their employees.</p>	None.
General Comment	6/29/06	Ellen Stevenson with assist from Elizabeth Myers Oral Testimony	<p>Commenter gave testimony of the extreme problems she has had litigating her workers' compensation case. Commenter alleges that the insurance company tried to kill her and in the process caused her to have an automotive accident, denied her treatment and mutilated her pet cat.</p>	<p>The comments go beyond the scope of the regulations.</p>	None.

SUMMARY OF PUBLIC COMMENT – 45 DAY COMMENT PERIOD

**TITLE 8 CAL. CODE REGS. §§ 9792.11 – 9792.15
UTILIZATION REVIEW PENALTY REGULATIONS**

SECTION	DATE OF COMMENT	NAME OF COMMENTOR	SUMMARY OF COMMENT	AGENCY RESPONSE	ACTION
			Comments do not substantively address any specific section of the proposed regulations.		
General Comment	6/29/06	Tom Condit Oral Testimony	Commenter states that the use of the ACOEM guidelines for utilization review purposes violates their copyright.	We disagree. Labor Code section 4610(f) sets forth the guidelines that must be used in the utilization review process and specifically refers to ACOEM.	Because the medical treatment guidelines will be adopted pursuant to a separate set of regulations, the reference to ACOEM will be stricken and instead the sections will refer to the medical treatment utilization schedule adopted pursuant to Labor Code section 5307.27.
General Comment	6/29/06	Cathon Rhodes Adams Oral Testimony	Commenter is an injured worker that spoke of the difficulties she has encountered in litigating her workers' compensation claim. Comments do not substantively address any specific section of the proposed regulations.	The comments go beyond the scope of the regulations.	None.