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REQUEST FOR PUBLIC COMMENT

Proposed regulations governing the criteria for assessing and contesting penalties for violations of Labor Code Section 5814.6 and of utilization review requirements are now being circulated to the Audit Advisory Committee and will post on the Division of Workers' Compensation Forum at for comment during week of June 13, 2005, prior to formal rulemaking.

The Division of Workers' Compensation has rewritten and significantly revised the proposed regulations on these two topics.

As part of the most recent reforms in the California workers' compensation system, section 5814.6 of the Labor Code mandates the Administrative Director to penalize employers and insurers who knowingly violate Labor Code section 5814 with a frequency that constitutes a general business practice. The maximum administrative penalty allowed is \$ 400,000, four times the maximum threshold for civil audit penalties. Section 5814.6 also specifies that where an administrative penalty pursuant to the section is assessed, no civil penalty may be assessed under Labor Code section 129.5, in addition. The penalty structure for violations of this section is intended to provide a disincentive for such violations.

In addition, California law has required all employers, their insurers and their third party administrators, since January 1, 2004, to have an utilization review process in place that is transparent and meets minimum statutory standards. The Legislature considered this an important tool in workers' compensation reforms in California for providing appropriate, quality and cost effective medical treatment while reducing unnecessary delays and costs in the system. The penalty structure here creates incentives for complying with the requirements.

The proposed regulations in each case also describe the process for an employer, insurer or third party administrator to contest the determination of a violation and penalty. The process is similar to other existing penalty appeal procedures by providing for an initial informal resolution and an evidentiary hearing, if requested. Appeals from the determination after hearing are addressed as well.

These proposed regulations are being circulated and posted for informal comment prior to the formal rulemaking process. The regulations are a work in progress. Your comments are valuable and will be reviewed and considered prior to formal rulemaking.

Andrea Lynn Hoch
Administrative Director, Division of Workers' Compensation

June 10, 2005