

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



March 10, 2006

ALL-COUNTY LETTER NO. 06-03

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERSReason For This Transmittal

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by one or More Counties
- Initiated by CDSS

**SUBJECT: WORKERS' COMPENSATION REQUIREMENTS FOR PHYSICIAN
PREDESIGNATION, RETURN-TO-WORK PROGRAM AND
SUPPLEMENTAL JOB DISPLACEMENT BENEFITS (SJDB)**

REFERENCE: SENATE BILL (SB) 899

The purpose of this All-County Letter (ACL) is to discuss the requirements imposed by the statutes and regulations that implement Senate Bill (SB) 899 (Chapter 34, Statutes of 2004). The provisions of SB 899 include amendments to the Return-to-Work program, the replacement of Vocation Rehabilitation with the Supplemental Job Displacement Benefit (SJDB), changes for predesignating a physician, and the establishment of a medical provider network for the provision of medical treatment to injured employees.

The changes in SB 899 affect every employee in the State of California. While these new requirements now provide new responsibilities for employers, the counties are not necessarily designated as the employer for all providers in the In Home Supportive Services (IHSS) program for purposes of workers' compensation benefits and; therefore, their responsibilities for the return-to-work requirements differ from other employers.

Return-to-Work Program and Supplemental Job Displacement Benefit (SJDB)

The Return-to-Work program was established in order to promote the early and sustained return-to-work of the employee following a work related injury. SB 899 amended the Return-to-Work program to require employers to offer employees, within 60 days of a disability becoming permanent, regular work, modified work, or alternative work for a period of least 12 months for injuries occurring on or after January 1, 2005.

Welfare and Institutions Code (W&I Code) sections 12302.2 and section 12302.21 require the State to provide workers' compensation coverage for IHSS providers in the Individual Provider (IP) and the County Contract Modes on behalf of the recipient as the employer. Accordingly, the State shall provide the coverage for any additional benefits that may result from the Return-to-Work program requirements and the SJDB for these two modes. In addition, the State shall be responsible for the requirements to offer modified/alternative work to an injured employee under the IP Mode. Counties shall be responsible for offering modified/alternative work to an injured employee under the Homemaker Mode, as well as, any additional benefits of workers' compensation coverage that may result from the Return-to-Work program and the SJDB since IHSS providers under the Homemaker Mode are county employees (Manual of Policies and Procedures (MPP) section 30-767.11). Further, counties shall inform their contract agencies of their responsibility to offer modified/alternative work to an injured employee under the County Contract Mode.

Regular, Modified or Alternative Work

The Department of Industrial Relations, Division of Workers Compensation, is in the process of issuing regulations to implement SB 899, statutes of 2004. The proposed regulations provide the following definitions:

- Regular work is defined as the position and wages the employee was receiving at the time of the injury and is located within a reasonable commuting distance from the employee's residence at the time of the injury.
- Modified work is defined as regular work modified so the employee can perform all the functions of the job and can receive wages of at least 85% of the wages paid at the time of injury and the location is in reasonable commuting distance from the employee's residence at the time of the injury.
- Alternative work is defined as work the employee is able to perform and can receive wages of at least 85% of the wages paid to the employee at the time of the injury and the location is in reasonable commuting distance from the employees residence at the time of the injury.

The employee must be informed of the requirement of the location of the offered work being within a reasonable commuting distance from the employee's residence; although, this condition will be considered waived by the employee if the employee does not object within 20 days. This requirement will be considered satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

Pursuant to the Division of Workers' Compensation, Return-to-Work proposed regulations, if an employer does not offer one of the return-to-work alternatives listed above by the end of the 60-day period, each of the employee's disability payments remaining to be paid, will be increased by 15 percent and the employer will bear the additional cost. However, if the employer, by the end of the 60-day period, has offered the employee one of the return-to-work alternatives for a period of at least 12 months, (regardless of whether the employee accepts or rejects the work), the disability payment will be decreased by 15 percent.

The 60-day period begins when the claims adjuster notifies the employer of a determination of a permanent disability, which can occur prior to the actual end of a temporary disability and/or prior to the disability becoming permanent and stationary.

If the employer terminates the work alternative before the end of the disability period, the disability payments will continue to be made with the 15 percent increase. An employee who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments.

Supplemental Job Displacement Benefit (SJDB)

Based on the California Code of Regulations (CCR), Title 8, section 10133.56, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the employee will be eligible for a SJDB. This benefit is a voucher for education related retraining and/or skill enhancement which, depending on the percentage of the disability, can be up to \$10,000. This applies to injuries occurring on or after January 1, 2004. In accordance with CCR, Title 8, section 10133.52, the State or county, as appropriate, will not be required to pay for supplemental job displacement benefits if the offer for modified or alternative work meets the following conditions:

1. The employee has the ability to perform the essential functions of the job provided,
2. The job provided is in a regular position lasting at least 12 months,
3. The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury, and
4. The job is within a reasonable commuting distance of the employee's home at the time of injury.

Predesignating a Physician

Prior to SB 899, employees were required to notify their employer in writing, prior to a work related injury, that he or she was predesignating a personal physician (Labor Code (LC) section 4600). SB 899 amended the eligibility requirement for predesignation by adding that an employee may predesignate if the employer provides nonoccupational group health coverage in a health-care service plan (Health Maintenance Organization/Preferred Provider Organization program) or the employer provides nonoccupational health coverage in a group health plan or group health insurance policy LC section 4616.7 and, the predesignated physician is part of the plan or coverage.

If the employee meets the requirements of LC section 4600(d), the physician must:

- Be the employee's regular physician and surgeon pursuant to Chapter 5 of Division 2 of the Business and Professional Code,
- Be the employee's primary care physician,
- Have previously provided treatment to the employee,
- Retain the employee's medical records and history, and
- Agree to be the predesignated physician by signing the predesignation form.

Based upon the new requirements, State Compensation Insurance Fund (SCIF) has revised the "New Employee's Guide to Workers' Compensation" pamphlet, SCIF 15765. Counties are responsible for distributing the New Employee's Guide to Workers' Compensation pamphlet, which includes the Physician/Chiropractor Predesignation Form, to all new IHSS providers and upon request from an existing provider. Counties are also responsible for ensuring that the Physician/Chiropractor Predesignation Form is maintained in the IHSS file with other provider documentation. As this form does not have a space for the recipient name, it is suggested that counties add a line for this information before distributing to providers. It is recommended that counties inform existing providers of the change in predesignation.

The attached New Employee's Guide to Workers' Compensation and the Physician/Chiropractor Predesignation Form may be reproduced and used for the employee to designate their personal physician or chiropractor. Furthermore, the Employee's Guide to Workers' Compensation and the Physician/Chiropractor Predesignation Form as well as additional material pertaining to the Workers' Compensation reform is available in pdf format at <http://www.scif.com/>. Scroll to the bottom of the page and select "Reform Resources" under the Worker's Comp Reform section and click on the corresponding link.

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Counties may also obtain copies of the Employee's Guide to Workers' Compensation and the Physician/Chiropractor Predesignation Form by calling Brenda Morua at SCIF at (951) 697-7368 or by E-mail at bmmorua@scif.com.

Establishing a Medical Provider Network

SB 899 also amended LC section 4616; hence, on or after January 1, 2005, an insurer or employer may establish or modify a medical provider network (MPN) for the provision of medical treatment to injured employees. If an employer establishes an MPN, the employee is limited to treating within the network for the life of the claim, except for employees who have predesignated a personal physician. SCIF has established two medical provider networks, Kaiser Permanente Alliance and the Preferred Provider Network (PPN). An MPN physician may be found by calling 1-888-222-3211 or through SCIF's MED finder program at www.scif.com/, click on MEDfinder in the top right corner of the page.

If you have any questions about this notice, please contact Suzie Nicholls-King, Policy Analyst, Policy Development Unit, at (916) 229-4000.

Sincerely,

Original Document Signed By:

JOSEPH M. CARLIN
Acting Deputy Director
Disability and Adult Programs Division

Attachment (Hard copy only)