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VIA E-MAIL to [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

May 11, 2015

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94612

**RE: Benefit Notices -- Title 8, California Code of Regulations,  
§§9810–9815, Notice to Employees – §9881.1, Claim Form & NOPE – §10139**

Dear Ms. Gray:

This written testimony on proposed regulations regarding benefit notices, the Notice to Employees poster, the DWC1 Claim Form and Notice of Potential Eligibility (NOPE) is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, Allianz Global Corporate & Specialty, AmTrust North America, Chubb Group of Insurance Companies, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford Insurance Group, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL Insurance, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Chevron Corporation, City and County of San Francisco, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

## **Introduction**

### **The Workers' Compensation in California: A Guidebook for Injured Workers**

The Institute's members are very much in favor of the DWC creating a comprehensive, centralized electronic library to provide injured workers with up-to-date information that applies to their specific circumstances. Enhancing the information available on the DWC's website and eliminating the paper blizzard of fact sheets and enclosures will make the notices less confusing for injured workers, streamline the benefit workflow, and reduce the cost of communicating with the injured worker. While the worker's primary source of information will continue to be the claims administrator and the I & A Office, providing access to more extensive information will enhance their understanding of the benefits and the workers' compensation system.

Recommended revisions to the proposed benefit notice regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion are indented and identified by *italicized text*.

## **Benefit Notices**

### **Section 9810(a) -- General Provisions**

#### **Recommendation -- Effective Date and Implementation**

The Institute recommends that language be included in subdivision (a) allowing a 180-day implementation period from the effective date of the regulations.

#### **Discussion**

While the informational material, fact sheets, and alternate procedures for communicating with the injured worker have changed, the revisions to the benefit notice system will still require considerable reprogramming and process adjustment by claims administrators, in part because many claims administrators incorporate the information developed by the Division into their own notices. A reasonable period of time must be permitted for these system revisions.

### **Section 9810(d) -- General Provisions**

#### **Recommendation -- DWC Guidebook**

Subdivision (d) requires all notices to refer to the specific chapter number and Internet URL of the Guidebook that relates to the notice being sent.

1. The Institute recommends that the Guidebook be updated, as necessary.
2. All versions of the Guidebook posted at any given time must be archived and readily available, so that injured workers, attorneys, and judges can ascertain what information was provided to the worker if a dispute arises.
3. The Division must keep the workers' compensation community apprised of any revised or new notice information in the Guidebook.

#### **Discussion**

The purpose of benefit notices and the Guidebook is to provide the injured worker with up-to-date, accurate, and comprehensive information regarding the workers' compensation benefits being provided. While the use of the DWC website is essential to better inform injured workers, it is crucial that it contain current, accurate information in order to avoid misinforming the injured worker. Statutory changes, new regulations, and case law changes must be promptly posted so

that obsolete or conflicting information is eliminated. The current Guidebook has not been updated in over a year and is obsolete in several significant areas. Since both the claims administrator and the I & A Office will refer the injured worker to the Division's website, it is important that this information be current and correct and that the Division notify the workers' compensation community whenever the Guidebook is revised.

### **Section 9810(l, m, n) -- General Provisions**

#### **Recommendation – Electronic Service of Notices**

Delete the subdivisions regulating the electronic delivery of benefit notices.

#### **Discussion**

The administrative burden of the proposed regulations is such that claims administrators will have to opt out. The IT requirements alone will overwhelm most current claims systems. The requirement to create a log of every e-mail notice and acknowledgement is excessive and beyond what the current process requires. The log imposes excessive administrative burden and cost not to enhance communication with the injured worker but for review by the DWC audit unit. Compelling the injured worker to acknowledge every e-mail notice is unworkable, as they may or may not acknowledge receipt and may not understand the need to do so. Under the proposed regulations, if no acknowledgement is received then the claims administrator must send a redundant paper notice.

The mandate to encrypt the notices will necessitate a new, separate IT platform because most current systems cannot manage these requirements. The proposed regulations do not allow the injured worker to agree to receive benefit notices and other communications electronically by any other means, so there is no flexibility. Simply stated, it is clear that the cost of compliance exceeds the benefit of electronic communication.

Electronic communication is a global issue for the workers' compensation system and the division should reconsider a regulatory system that addresses the utility of electronic communication for all areas. Therefore, the Division should delete the regulation of electronic communication relating to benefit notices and allow claims administrators and employers to use various means of communication with injured workers as systems evolve.

### **Section 9813 -- Deleted**

#### **Recommendation**

Renumber the sections of the sections that followed section 9813 if necessary.

#### **Discussion**

The deletion of section 9813 may require the renumbering of the following sections.

## **Notice to Employees Poster**

### **Section 9881.1 -- Notice to Employees Poster.**

#### **Recommendation**

Retain the modifications, and consider reorganizing the form content to avoid unnecessary duplication and the splitting of information that addresses the same subject, most particularly on predesignation.

## Discussion

There were very few modifications to the proposed revisions. The Institute supports those modifications, but continues to believe that reorganizing the material on the form as recommended in the Institute's written testimony dated September 3, 2014, will add clarity and avoid confusion caused by unnecessary duplication or splitting of information, particularly on the subject of predesignation, which is addressed in four different places on the form.

## Workers' Compensation Claim Form (DWC 1) & Notice of Potential Eligibility

### Section 10139 – Notice of Potential Eligibility (NOPE)

#### Recommendation

Retain the modifications made to the proposed Notice of Potential Eligibility (NOPE).

#### Discussion

The Institute supports the modifications as they increase the accuracy of the notice.

#### Recommendation

Consider incorporating other revisions recommended by the Institute in its written testimony dated September 3, 2014.

#### Discussion

There were very few modifications to the proposed NOPE revisions. While the Institute supports those modifications, it continues to believe that additional improvements are necessary to improve the flow, tone and accuracy of the notice and to delete unnecessary detail. The recommendations will:

- improve the flow by consolidating reorganizing the information in the notice for better comprehension and to provide a more succinct notice
- provide information in a matter-of-fact way that will reassure and not alarm the injured employee at the stressful time of injury
- focus the Notice on potential benefits as required by the statute, rather than on potential disputes
- improve the accuracy of the Notice
- shorten the notice and lessen its complexity by removing the nonessential detail and minutiae that is not required by statute

### Section 10139 – Claim Form (DWC1)

#### Recommendation

Delete the words "only" and "solo" from item number 8 on the claim form:

8.  Check if you agree to receive notices about your claim by email **only**.  *Marque si usted acepta recibir notificaciones sobre su reclamo **solo** por correo electrónico..* Employee's e-mail. \_\_\_\_\_ *Correo electrónico del empleado.* \_\_\_\_\_.

You will receive benefit notices by regular mail if you do not choose, or your claims administrator does not offer, an electronic service option. *Usted recibirá notificaciones de beneficios por correo ordinario si usted no escoge, o su administrador de reclamos no le ofrece, una opción de servicio electrónico.*

**Discussion**

The recommended change is necessary because as written in 8, the language implies that the employee will receive every notice electronically; however the claims administrator may choose to offer to electronically issue certain types of notices, such as MPN notices, but may not choose to offer to issue indemnity notices electronically. In addition, if the electronic transmission is returned or unsuccessful for any reason, the claims administrator will follow up by mailing the notice.

**Recommendation**

Retain the other modifications made to the proposed claim form.

**Discussion**

The Institute supports the remaining modifications.

Thank you for considering our comments. Please contact us if further clarification is needed.

Sincerely,

Michael McClain  
General Counsel

Brenda Ramirez  
Claims & Medical Director

Robert Young  
Communications Director

MMc:BR:BY

cc: Destie Overpeck, DWC Administrative Director  
Christine Baker, DIR Director  
James Robbins, DIR Counsel  
CWCI Claims Committee  
CWCI Legal Committee  
CWCI Medical Care Committee  
CWCI Return to Work Group  
CWCI Regular Members  
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