

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Workers' Compensation Employee Benefit Notices

**TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS
9810, 9811, 9812, 9813, 9814, 9815, 9881.1 and 10139**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 138.3, 138.4, 139.5, 4061, 4616, 4636, 4637, 4658.5, and 5307.3 proposes modify the text of the following proposed regulations:

Amend section 9810	General Provisions
Amend section 9812	Benefit Payment and Notices
Amend section 9881.1	Notice to Employees Poster (DWC 7 Rev. July 2014)
Amend section 10139	Workers' Compensation Claim Form (DWC 1 Rev. July 2014), and Notice of Potential Eligibility.

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations described in this notice will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on Monday, May 11, 2015. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Due to the inherent risks of non-delivery by facsimile transmission, the Acting Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile

transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division of Workers' Compensation's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by underlining: added language. Deletions are indicated by strikeout: ~~deleted language~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text was indicated by double underlining: added language. Deletions are indicated by double strikeout: ~~~~deleted language~~~~.

SUMMARY OF PROPOSED CHANGES

1. Section 9810: General Provisions

Subsection (c) is being broken apart with the last paragraph being re-numbered as subsection (d).

The remainder of subsection (c) is being organized into three separate, numbered, subdivisions.

Subdivision (c)2 is being added to provide that where the claims administrator has reason to believe that disclosure of the claims examiner's name presents or may present a security concern towards the personal safety of the claims examiner, the claims administrator may identify an alternate but specific claims department name and telephone number in lieu of the claims examiner's name and telephone number.

A grammatical correction is being made in subdivisions (c)1 and (c)2 replacing the word "are" with "is".

Subdivision (d) is being amended to require that each benefit notice refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers'

Compensation in California: A Guidebook for Injured Workers” that addresses the benefit(s) to which the notice pertains, and advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers’ Compensation’s website at: <http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html> or by contacting an information and assistance (I&A) officer of the Division of Workers’ Compensation.

All following subsections are being renumbered accordingly.

Subdivisions (e)(1) and (e)(2) are being amended (in conformity with the above described amendment to subdivision (c)(2)) to provide that notices may be sent either to the claims adjuster or a specific claims department name, as appropriate.

The fourth paragraph of subdivision (e)(2) is being amended to specifically state that the injured worker has the right to consult an attorney.

Subdivision (i) is being amended to clarify that electronic service of benefit notices is only available where the claims administrator offers that option, and that the written agreement of the attorney is required.

Subdivision (m) is being amended to clarify that electronic service of benefit notices is only available where the claims administrator offers that option, that the written agreement of the employee is required, and that electronic service of notices under this subdivision only applies to the employee.

New subdivision (n) is being adopted to provide that when the method of service of the benefit notice is electronic, in lieu of regular mail, service shall be through the use of a secure, encrypted email system. The claims administrator will be required to maintain a log of service dates, and receipt acknowledgements, for each benefit notice sent electronically on each claims file, and will be required produce this log upon demand to the employee, the employee’s attorney, if represented and the DWC Audit Unit. If the claims administrator receives notice that an electronic benefit notice was not delivered to the email address provided by the employee, or attorney, if represented, the claims administrator will be required to send the benefit notice to the employee and attorney by regular mail within one (1) business day of receipt of the failed electronic delivery notice.

New subdivision (o) is being adopted to provide that electronic delivery of benefit notices by a claims administrator does not constitute consent to accept electronic service of any communications sent to the claims administrator.

2. Section 9812: Benefit Payment and Notices

Subdivision (a)(2)(A)2. is being amended to provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. The

requirement to provide the QME panel request form, and include specific notice language is being deleted.

Subdivision (a)(3)(A)1. is being amended to include the phrase “and the employee disputes the results of the evaluation”.

Subdivision (a)(3)(A)3. is being amended to delete the requirement to provide the QME panel request form and include specific notice language.

Subdivision (c) is being amended to clarify that the notice may be given before or at the same time as a new payment.

Subdivision (d)(1)(A) is being amended to include the phrase “and the employee disputes the results of the evaluation”.

Subdivision (d)(1)(B) is being amended to delete the phrase “and the claims administrator agrees with those findings” and include as a final sentence, “If the claims administrator’s determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the 14 days required by this subdivision”.

Subdivision (d)(1)(C) is being deleted.

Subdivision (d)2. is being amended to correct the numbering from 2. to (2).

Subdivision (e)(2)(A)1. is being amended to provide that if the determination is based on a comprehensive medical evaluation, the notice shall advise the employee that if he or she disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.

Subdivision (e)(2)(A)1. and 2. are being renumbered as (e)(2)(A) (2) and (e)(2)(A) (3), respectively.

Subdivision (e)(2)(A)(3) is being amended to delete subdivision (e)(2)(A)(3)(ii), and provide instead that if the claims administrator’s determination is based on an evaluation by a treating physician, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must contact the claims administrator within the applicable time limit prescribed by Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation if possible.

Subdivision (e)(3)(A)(2) is being amended to delete subdivision (e)(3)(A)(2)(ii), and provide instead that if the claims administrator’s determination is based on an evaluation by a treating physician, the notice shall advise the employee that if he or she disagrees with the results of the

evaluation, the employee must contact the claims administrator within the applicable time limit prescribed by Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation if possible.

Subdivision (g)(3) is being amended to provide that if the employee informs the claims administrator of his or her choice but does not arrange the appointment, the claims administrator will arrange the appointment; if the employee does not inform the claims administrator of his or her choice, the claims administrator may choose the QME who will examine the employee and arrange the appointment.

Subdivision (g)(4)(i) is being amended to provide that if the employee informs the claims administrator of his or her choice but does not arrange the appointment, the claims administrator will arrange the appointment; if the employee does not inform the claims administrator of his or her choice, the claims administrator may choose the QME who will examine the employee and arrange the appointment.

Subdivision (h)(1) is being amended to provide that where the employee is not represented by an attorney, and the determination is related to a medical issue, the notice shall advise the employee one of two alternatives.

Subdivision (h)(1)(A) is being amended to provide that if the determination is based on a comprehensive medical evaluation, and the employee disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.

Subdivision (h)(1)(B) will provide that if the employee has not previously received a comprehensive medical evaluation for this claim, the notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. The notice shall contain the following statement (with the phrase “10 days” in bold font as shown): “If you disagree with the decision to deny your claim and wish to obtain a comprehensive medical evaluation, enclosed is a form that you must submit to the state Division of Workers’ Compensation (DWC) within 10 days to request a panel of three Qualified Medical Evaluators (QMEs). If you do not submit the form within 10 days, we will have the right to submit the form. In addition, within 10 days after the DWC sends you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and inform me of your choice and appointment time.

If the employee informs the claims administrator of his or her choice but does not arrange the appointment, the claims administrator will arrange the appointment.

If the employee does not inform the claims administrator of his or her choice, the claims administrator may choose the QME who will examine the employee and arrange the appointment. However, if the employee has already received a comprehensive medical evaluation and he or she disagrees with the decision to deny the claim, the notice may instead

advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation if possible.

If the employee is represented by an attorney, the notice shall instruct the employee to contact the attorney with any questions.

Subdivision (h)(3) is being amended to advise the employee to immediately send in their medical bills for consideration of payment.

3. Section 9881.1: Notice to Employees Poster (DWC 7)

Under the heading “Benefits”, the sentence concerning the Supplemental Job Displacement Benefit is being amended by adding the phrase “your injury causes permanent disability”. The amended sentence will read: “A nontransferable voucher, if you are injured on or after 1/1/2004, your injury causes permanent disability, and your employer does not offer you regular, modified, or alternative work.”

Under the heading “Report your injury”, the last sentence is being amended to improve its readability, by including a reference to the claims administrator as well as the employer, and by relocating the reference to the limit of ten thousand dollars on medical treatment.

The amended sentence will read “Within one working day after you file a claim form, your employer or claims administrator must authorize the provision of all treatment, up to ten thousand dollars, consistent with the applicable treatment guidelines, for your alleged injury.”

Under the heading “Medical Provider Networks”, the word “selected” is being replaced with “designated”. The bold font is being removed from the sentence “If you have predesignated a personal physician or medical group prior to your work injury, then you may go there to receive treatment from your predesignated doctor.” The sentence “If you have not predesignated and your employer is using a MPN, you are free to choose an appropriate provider from the MPN list after the first medical visit directed by your employer” is being deleted.

The effective date of the revised poster has been amended to January 1, 2016.

PLEASE NOTE: the revised Spanish translation of the Notice to Employees Poster is shown in a clean text version.

4. Section 10139: Workers’ Compensation Claim Form (DWC 1) and Notice of Potential Eligibility.

Changes to the Notice of Potential Eligibility:

In the final sentence of the first paragraph, the phrase “lose time form work” is being replaced with “file a claim”. The amended sentence will read “If you file a claim, the claims administrator, who is responsible for handling your claim, must notify you within 14 days whether your claim is accepted or whether additional investigation is needed”.

In the paragraph headed “Medical Care”, the word “for” is being added to the first sentence. The amended sentence will read “Your claims administrator will pay for all reasonable and necessary medical care for your work injury or illness.”

In the second sentence, the phrase “are subject to approval and” is being added. The amended sentence will read “Medical benefits are subject to approval and may include treatment by a doctor, hospital services, physical therapy, lab tests, x-rays, and medicines, equipment and travel costs.”

In the third sentence, the phrase “are subject to approval and” is being added. The amended sentence will read “Your claims administrator will pay the costs of approved medical services directly so you should never see a bill.”

In the section referring to “The Primary Treating Physician (PTP)”, in the final bulleted point item the phrase “be able to” is being added. The amended sentence will read “If your employer has not put up a poster describing your rights to workers’ compensation, you may be able to be treated by your personal physician right after you are injured.”

In the final paragraph of the section, references to the employer are being added as an alternative to three references to the claims administrator. The amended paragraph will read:

Within one working day after you file a claim form, your employer or the claims administrator must authorize up to \$10,000 in treatment for your injury, consistent with the applicable treating guidelines until the claim is accepted or rejected. If the employer or claims administrator does not authorize treatment right away, talk to your supervisor, someone else in management, or the claims administrator. Ask for treatment to be authorized right now, while waiting for a decision on your claim. If the employer or claims administrator will not authorize treatment, use your own health insurance to get medical care. Your health insurer will seek reimbursement from the claims administrator. If you do not have health insurance, there are doctors, clinics or hospitals that will treat you without immediate payment. They will seek reimbursement from the claims administrator.

The effective date of the revised Notice of Potential Eligibility has been amended to January 1, 2016.

Changes to the Workers’ Compensation Claim Form (DWC 1)

The second paragraph of the instructions to the employee is being amended to clarify that electronic service of benefit notice is only available if the employee’s claims administrator offers that option.

Item 8 is being amended to provide a place for the employee to check a box if he or she agrees to receive benefit notices only by email. The employee will be advised that if they choose not to

receive benefit notices by email, or their claims administrator does not offer an electronic service option, they will receive benefit notices by regular mail.

The employee's signature line is being renumbered as item 9.

In the Spanish language translation of the instructions to the employer at the bottom of the form, two typographical errors are being corrected. The words "compañía" and "reclamos" were inadvertently hyphenated during the editing and formatting of the form.

The effective date of the revised claim form has been amended to January 1, 2016.

PLEASE NOTE: the Spanish translation of the Notice of Potential Eligibility will be furnished after the final regulations are approved.