



California Workers' Compensation Institute
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VIA E-MAIL to dwcrules@dir.ca.gov

July 3, 2015

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

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

Dear Ms. Gray:

These written comments on modifications to proposed regulations regarding benefit notices are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 72% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (28% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, Allianz/Fireman's Fund Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, The Hartford, 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 America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Santa Ana, 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, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

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(c) -- General Provisions

Recommendation – Communicating with claims adjuster

(c) Benefit notices, excepting those notices whose language or format is set forth in statute or where a specific notice form has been adopted as a regulation, may be produced on the claims administrator's letterhead.

1. All notices shall identify the claims administrator's name, mailing address, telephone number and website address if available, the employee's name, employer's name, the claim number, the date the notice was sent to the employee, and the date of injury. All notices shall clearly identify the name and telephone number and mailing address of the individual claims ~~examiner~~ **adjuster or specific claims department** responsible for the payment and adjusting of the claim

~~2. Where the claims administrator has a **clearly documented** 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.~~

~~32.~~ All notices shall include a notation if one or more attachments are being sent with the notice

Discussion

The proposed modifications in (c)(2) will add to the administrative burdens and complexity of benefit notices, and will create other unnecessary problems:

- It will be difficult and costly for some claims administrators to automate the inclusion of each individual claims adjuster's name, telephone number and address in the notices.*
- Adding individualized documentation of a security concern for an adjuster's personal safety will add expense and delay.*
- Claims adjuster assignments can change frequently; not only because of personnel changes, but also to improve outcomes and facilitate claims. Adjuster assignments may change depending on the type or status of a claim (for example, some adjusters only open new claims, others specialize in medical-only claims, TD claims or PD claims, or in claims involving back, knee or shoulder surgery. These modifications will discourage this type of specialization to the detriment of the employee.*
- If the name of the adjuster on a claim has changed by the time the employee seeks to contact him or her, communications may be delayed.*
- This new requirement may also become fodder for new legal disputes and penalties.*

If an outdated adjuster's name and telephone number appears on any notice, the employee may attempt to communicate with that adjuster. If a claims administrator is allowed to

continue to direct employees to a more central point of contact, unnecessary delays can be avoided since time won't be wasted in routing to the person who was the adjuster at the time of an old notice, but who is no longer assigned to the claim.

Language in 9810(e), permits claims administrators to direct employees with questions to the name and telephone number of either the specific adjuster, or a specific claims department. For all the reasons above we support this flexibility and recommend keeping 9710(c) consistent with the language in 9710(e).

Section 9810(e) -- General Provisions

Recommendation – Communicating with claims adjuster

(e) Every benefit notice, excepting those mandatory notices that have been set forth in statute or where a specific notice form has been adopted as a regulation, shall include a mandatory statement of employee's (or claimant's) remedies, as follows:

(1) For claims not subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7, the following language shall be used:

“You have a right to disagree with decisions affecting your claim. If you have any questions about the information provided to you in this notice, please call **me**, *[insert either me, the adjuster's name or a specific claims department name and telephone number]*. You also have the right to be represented by an attorney of your choice. However, if you are represented by an attorney, you should call your attorney, not **me** *[insert either me, the adjuster's name or a specific claims department name and telephone number]*.

“For information about the workers' compensation claims process and your rights and obligations, go to www.dwc.ca.gov or contact an information and assistance (I&A) officer of the state Division of Workers' Compensation. For recorded information and a list of offices, call (800) 736-7401.”

(2) For claims subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7, the language in paragraph (1) shall be used to the extent that it is consistent with the provisions of the ADR agreement, and the following language shall be substituted in its place to the extent appropriate according to the ADR agreement:

“You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call **me**, *[insert either me, the adjuster's name or a specific claims department name and telephone number]*, or *[insert name, title, and telephone of ombudsperson or mediator]*. However, if you are represented by an attorney, you should call your attorney, not *[insert me, or the specific claims department name]*, the ombudsperson, or mediator.

NOTE: For employees subject to an alternative dispute resolution (ADR) program under Labor Code section 3201.5, the claims administrator may include the following language if appropriate under the provisions of the ADR program:

“In accordance with the *[insert union name]* agreement, active participation by an attorney is not allowed in the Ombudsman and Mediation stages of the ADR workers'

compensation process. However, you have the right to consult with an attorney and your right to obtain legal advice is not limited and you may obtain such at your own expense at any time. If the Ombudsman and Mediation stages of dispute resolution are unsuccessful and a written request for Arbitration has been timely filed, attorney participation is allowed.

“For information about the workers’ compensation claims process and your rights and obligations, contact an information and assistance (I&A) officer of the state Division of Workers’ Compensation. Be sure to inform the I&A officer that your claim is subject to an alternative dispute resolution program. For a list of offices, go to www.dwc.ca.gov or call (800) 736-7401.”

Discussion

The suggested changes correct inadvertent typographical errors or minor oversights and are necessary for consistency and accuracy.

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Brenda Ramirez
Claims and Medical Director

Michael McClain
General Counsel

BR:MMc/pm

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