



California Workers' Compensation Institute
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VIA E-MAIL

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RE: 2nd Forum Comments on Draft Regulations Implementing EAMS

Introduction

The paramount rationale in the process of modernizing the information flow of the Board and the Division is the efficient and effective resolution of disputes in order to deliver the appropriate benefits to injured workers. Most significant aspect of this process is, therefore, the evidentiary record of the appeals board. All documents necessary to fully and fairly adjudicate the entitlement to compensation must be filed, served on the parties, and available for the judge's review in determining an award of benefits. The judges working on the development of EAMS certainly must understand that this is the prime directive – of the workers' compensation system.

In order to avoid exalting form over substance, the procedural regulations creating the information flow for EAMS must ensure that the material essential to the proper adjudication of a claim are a part of the Board's evidentiary file – one way or another. The regulations must ensure that no processing, technical, or system related issue impeded the dispute resolution process at the appeals board.

Direction is needed on what filers should do when the circumstances of a case cannot be properly addressed within the fixed parameters of these OCR forms. For example, when, companion cases exceed the number accommodated by the fields on a form. What are the consequences when the form and size requirements in Section 10232 cannot be met, for instance in the case of medical bills that are in dispute? It is important that the system can allow some flexibility.

In a number of proposed regulations, the Division is establishing a new procedure for filing documents in EAMS and advises that material successfully loaded into the new system will or may be destroyed. In each set of proposed regulations, the Division includes a procedure for documents that are filed incorrectly but the rules are not consistent. In some cases, the incomplete documents will be reviewed and discarded, sometimes with notice to the parties, sometimes with notice if the filer has included a SASE, and sometimes, it is implied, without notice to the parties. Without confirmation that a document has been successfully loaded into the system, the filing party will not know what documents have become a part of the evidentiary record. Rejection without notice to the filing party will only exacerbate the confusion and taint the Board's record.

The Institute recommends that:

- The system provide a confirmation of the records successfully filed,
- The records rejected by the Division, for whatever reason, be returned to the filing party with an explanation of the failure, and
- If a user repeatedly fails to follow the filing procedures, the Division should consider sanctions.

But in no event should the Division, on purely procedural grounds, reject a document intended for inclusion in the evidentiary record of the appeals board and discard it without notice to the parties and an opportunity to correct the defect.

Filing EAMS Forms

It is not clear from these proposed regulations that a filer must submit the EAMS Form that is pulled from the Division website and not a copy of that form. The community has been advised by the developers of the system that the OCR forms have a very specific format and that any alteration in size, font, or field spacing will adversely affect the ability of the scanner to read these forms. This should be clarified and emphasized in the proposed regulations.

Case Number

The case number will be an essential element to the proper functioning of the system, yet the proposed regulations are rather vague about how this number is assigned and how the appropriate case number will be communicated to all parties and lien claimants. There does not appear to be a requirement that the party filing a case opening document must obtain a unique case number and serve that on all parties. These proposed regulations refer to the case number often throughout but do not include a clear procedure to ensure that it is adequately communicated.

Documents will be rejected (and in many cases could be discarded without notice to the filing party), if the correct case number is not used. At the outset, the workers' compensation community will not have access to the system, so how will they obtain the necessary case number?

Court Administrator Regulations

Section 10210(i), (j), & (k)

It appears that the failure to submit documents in accordance with these procedures (cover sheet and document separator) means that the documents will not be considered a part of the Board's evidentiary record. The Division must advise the parties that certain records have been excluded from the Board file and provide an opportunity to correct the defect.

Section 10210(o) – Electronic Signature

While this definition may suffice for the Board's purposes, it might be appropriate to cite the Uniform Electronic Transactions Act, as well.

Section 10210(p) – Fax

Is this definition meant to include filing into the system by electronic means or an E-Fax from an external computer? If so, then that needs to be clarified. In either event, there may be medical record confidentiality concerns, if entities are allowed to transmit medical records to an open, unsecured fax machine or computer terminal at the Division. These medical privacy issues need to be clarified, as well.

Section 10211 – Compliance with Rules of the Court Administrator

This regulation seems to establish contradictory standards. In the initial phrase, it says that the failure to comply with these rules "shall be deemed" a bad faith act. In the next clause, it retracts that declaration if the failure to comply is inadvertent or negligent. This proposed regulation should be deleted as it adds nothing to the standards that the WCAB already imposes and for which there is a body of case law defining the conduct at issue.

Section 10217 – Official Address Record

This section states the duty of parties and lien claimants to maintain the address record and it would be helpful to add an indication of the entities preferred method of service (section 10218) along with that information.

Section 10225 – Extended System Unavailability

The procedures described in section 10225 raise some of the issues regarding a potential system failure but the procedures do not address the likelihood that an extended system failure would shut the local Boards down. If the Division routinely scans all documents and destroys the paper copies, as the proposed regulations provide in several areas, then no previously filed documents will be available when the system fails for any period of time. The Board and the Division must consider a more detailed backup system or disaster recovery plan in order to ensure the continued delivery of benefits. That plan should be in place well before the "go live" date and should be communicated to the workers' compensation community in detail.

Section 10233(e) – Filing Medical Record Excerpts

This section sets the procedure for filing a relevant excerpt of a medical record, which is the only portion of the medical record that will become a part of the Board's evidentiary record. These procedures coupled with the 25-page filing limit could become burdensome for both the parties and the Board and could lead to an inappropriate and detrimental restriction on the Board evidentiary record. There should be some standards in place to permit supplemental filings as appropriate.

In order to protect the Board's record, the regulation should provide some flexibility, based on a showing of good cause or clerical error, to permit the evidentiary record to be amended up to the time of trial, if there are technical or procedural reasons why a particular document had not been received into evidence previously.

Section 10235 – Improperly Filed Documents

This proposed regulation seems to allow the Board to discard improperly filed documents without notice to the parties. These documents are considered by the party filing them to be integral to the case and a necessary part of the evidentiary record. In the interim, before the workers' compensation community has electronic access to the system, it is improper for the Division to simply refuse to accept or discard material deemed important to one of the parties without notice. It may be more appropriate to return improperly filed materials and sanction the errant party.

Because the filing of these documents is so important, there should also be a confirmation statement to advise the parties that documents submitted to the Board have been appropriately filed in the case.

Section 10251 – Objection to a Declaration of Readiness to Proceed

The objection to a Declaration of Readiness to Proceed must be filed as an OCR form pulled from the Division's website, filled out, mailed to the Division, and scanned into the system by the Division – all within 10 days. Any breakdown in this process will result in the objection being rejected. The proposed regulation does not include notice to the parties or an extension of the time limits based on delays by the Division, although one would assume that the WCALJ has that authority.

Section 10270 – Access to the Electronic Case File

The section delineates the access provided to parties and the public, but the procedure for viewing the EAMS case file electronically is not stated. The community is aware that the system has certain limitation and that each individual attempting to view an electronic file must have a "log-on" and password. It seems that the proposed regulations should address some of the necessary logistics and limitations to provide a greater understanding of what will be required of the users.

Section 10272 – Sealed Documents

Consideration should be given to certain specific documents that may need to be routinely sealed, like cases involving blood borne pathogens and other sensitive medical conditions.

Section 10280 – Walk-Through Documents

With regard to opening documents and petitions, the proposed regulations establish a cumbersome 2-day process tied not to any substantive issues or failure of notice, but to the technical requirements of the system. It is recommended that all action necessary to finalize the adjudication be taken by the walk-through judge on the day the documents are presented and that the scanning, case number assignment, and other procedural requirements be completed the next day.

DEU Regulations

References to the medical legal evaluators in the workers' compensation system should be uniform. These are primary treating physicians, AMEs or QMEs. All references to the treating physician should be to the primary treating physician. Wherever qualified medical evaluators (QMEs) are referenced, agreed medical evaluators (AMEs) should be referenced, too, in these regulations

Section 10150.2 – EAMS Availability

The regulatory references in subdivisions (a) and (b) are erroneous. Sections 10220 and 10224 do not exist and section 10225 relates to the penalties under Labor Code section 5814.6.

Section 10161.1 – Reproduction of Forms

The section allows DEU forms to be reproduced but requires that the printed layout of the form be identical to the specified form. We would suggest that the content be identical, as well.

Rehabilitation, Retraining and Return to Work Regulations

Section 10116 – Filing and Reporting Requirements

In subdivision (b)(2), the regulation states that improperly filed documents will be returned to the sender with instructions for proper filing. Section 10116.2 states that the Unit shall notify the filer when a form or document “is not deemed filed.” The notification process and return of documents is entirely appropriate and necessary but the actions taken should be consistent throughout and the notification process should be stated in greater detail.

Section 10116.4 – EAMS Availability

The regulatory references in subdivisions (a) and (b) are erroneous. Sections 10220 and 10224 do not exist and section 10225 relates to the penalties under Labor Code section 5814.6.

Section 10116.8(r) – Definitions

References to the medical legal evaluators in the workers' compensation system should be uniform. These are primary treating physicians, AMEs or QMEs. All references to the treating physician should be to the primary treating physician.

Section 10117(b)(3) – Offer of Work

Delete the language requiring work offer forms and proofs that service was made on employees to be filed with the Retraining and Return to Work Unit. There is no necessity to send them to the Retraining and Return to Work Unit unless disputes arise, in which case they can be supplied at that time. If information on the forms is desired for research purposes, WCIS regulations already require that any new or change in return to work and release to return to work information be submitted to WCIS within 15 business days. Having a second, paper trail is unnecessary and duplicative. Government Code section 11349(f) requires that a regulation not serve the same purpose as a state or federal statute or another regulation.

Section 10133.56(c)(1) and (2) and (d)– Dispute Resolution

Delete the language requiring voucher forms DWC-AD 10133.57, and proofs that service was made on employees, to be filed with the Retraining and Return to Work Unit. There is no necessity to send them to the Retraining and Return to Work Unit unless a dispute arises. If a dispute arises, copies and proofs of service can be supplied at that time.

Section 10133.58(c) –Approved Schools

The reference to the Bureau of Postsecondary and Vocational Education should be deleted as the Bureau no longer exists.

Forms

EAMS Patchcode – DWC-CA form 10232.2

Since DWC-CA form 10232.2 is referenced in Section 10210 of the draft regulations as the “document separator sheet,” CWCI recommends changing the title of the form from “EAMS Patchcode” to “document separator sheet.” The regulations need to define the options for the “document type” and other fields on the form. Should the form include a field for the case number?

Cover Sheet – DWC-CA form 10232.1

Since DWC-CA form 10232.12 is referenced in Section 10210 of the draft regulations as the “document cover sheet,” CWCI recommends changing the title of the form from “Cover Sheet” to “document cover sheet.” A party should be required to submit only the pages in this document that are sufficient to describe the case in chief and any companion cases. Consider adding a note at the bottom of each page to instruct the user to submit additional pages of form as appropriate.

Check boxes this and other forms have been added to indicate specific and cumulative injury. This proposed form prompts for a start and end date for specific injury. This prompts should be moved to apply to cumulative injury. A prompt for a single date should be added for specific injury. Instruction in parentheses for cumulative trauma should be changed here and in other forms as follows:

“(If ~~Specific~~ Cumulative Injury, use the start date for ~~as the specific~~ date of injury)”

Notice of Offer of Regular Work – DWC-AD form 10018

Check boxes have been added to this and some other forms to indicate whether the claims administrator type is insurance company, third party administrator, or employer. Since this is not necessary information that would facilitate the return to work process, CWCI recommends its removal.

To improve clarity, CWCI recommends modifying language on the first page as follows:

“Based on the opinion of: ☐ Treating Physician ☐ QME ☐ AME ☐ _____

(Name of Physician), ~~Y~~you are able to return to your usual occupation or the position you held at the time of your ~~injury~~

(Choose only one)

~~a~~-specific injury on _____
MM/DD/YYYY

~~a~~-cumulative trauma injury which began on _____ and ended on _____.”

Restore original “Date offer received” in lieu of “Date received” on page 3 to clarify that the date received refers to the offer.

Request for Reimbursement for Accommodation Expenses – DWC-AD10120

Restore Date of Injury field that was replaced by Date of Birth field. It is important that there is evidence of a workers compensation claim to establish the employers’ eligibility for reimbursement.

Notice of Offer of Modified or Alternative Work – DWC-AD 10133.53

Check boxes have been added to this and some other forms to indicate whether the claims administrator type is insurance company, third party administrator, or employer. Since this is not necessary information that would facilitate the return to work process, CWCI recommends its removal.

The purpose of the field following “is offering you” on page 1 is unclear, therefore CWCI recommends deleting it or clarifying its purpose.

There is no case number field on the form. CWCI recommends adding a field for the case number.

A field for date of birth has been added to this and other forms. Since it is not necessary to have this information on the forms, CWCI recommends removing it.

Supplemental Job Displacement Nontransferable Training Voucher Form – DWC-AD form 10133.57

Restore “For injuries occurring on or after 1/1/04” at the top of the form to clarify eligibility. It is important that there is evidence of a workers compensation claim to establish the employers’ eligibility for reimbursement.

Under Training Provider Details, replace fields for First and Last Names with a field for Training Provider, since training providers are more generally an entity than an individual.

To eliminate language duplication, modify the second to last paragraph on the form as follows:

In order to initiate your training or return to work counseling present the voucher to the school or the vocational and return to work counselor of your choice, ~~chosen from the list developed by the Division of Workers’ Compensation’s Administrative Director, in order to initiate your training and return to work counseling.~~

Request for Dispute Resolution before Administrative Director – DWC-AD form 10133.55

CWCI recommends changing the name of this form from “Request for Dispute Resolution before Administrative Director” to “Request for SJDB Voucher Dispute Resolution” to clarify that the form is to request dispute resolution regarding SJDB vouchers only.

Check boxes have been added to this form to indicate whether the employer is insured, self-insured, legally uninsured, or uninsured. Since this information is neither relevant nor necessary to voucher dispute resolution, CWCI recommends removing the boxes.

CWCI recommends restoring a mailing address to the form so that users know where to mail the form.

Vocational Rehabilitation Plan – (Voc. Rehab.) § 10133.13 – RU-102

Check boxes have been added to this form to indicate whether the employee representative is “Law Firm/Attorney” or “Attorney/Non-Attorney Representative.” These options are confusing because they over-lapping and contradictory. Since this information is not necessary for a Vocational Rehabilitation Plan, CWCI recommends removing the boxes.

Request for Dispute Resolution – (Voc. Rehab.) § 10133.14 – RU-103

CWCI recommends changing the name of this form from “Request for Dispute Resolution” to “Request for Vocational Rehabilitation Dispute Resolution” to clarify that the form is to request dispute resolution regarding Vocational Rehabilitation only.

Employee's Disability Questionnaire – DWC-AD form 100

CWCI recommends changing "Address 1" to "Address", and deleting the "Address 2" and "International Address" fields as only one street address field is necessary.

CWCI also recommends reverting to a single field for "Claim Number" and removing fields for Claim Numbers 1 through 5 as only one is necessary.

Request for Summary Rating Determination of Qualified Medical Evaluator Report – DWC-AD form 101

CWCI recommends revising the heading from "Request for Summary Rating Determination of Qualified Medical Evaluator" to "Request for Summary Rating Determination of QME or AME"

CWCI recommends changing "Address 1" to "Address", and deleting the "Address 2" and "International Address" fields as only one street address field is necessary.

CWCI also recommends reverting to a single field for "Claim Number" and removing fields for Claim Numbers 1 through 5 as only one is necessary.

The form instructs the physician to submit the form to the Disability Evaluation Unit. CWCI recommends adding a mailing address to the form so that the physician knows where to mail it

CWCI recommends replacing the prompt for "WCAB Case No." with "Case Number" to conform to EAMS.

Request for Summary Rating Determination of Primary Treating Physician's Report – DWC-AD form 102

CWCI recommends changing "Address 1" to "Address", and deleting the "Address 2" and "International Address" fields as only one street address field is necessary.

The form instructs the physician to submit the form to the Disability Evaluation Unit. CWCI recommends adding a mailing address to the form so that the physician knows where to mail it

CWCI recommends replacing the prompt for "WCAB Case No." with "Case Number" to conform to EAMS.

Request for Reconsideration of Summary Rating – DWC-AD form 103

CWCI recommends changing "Address 1" to "Address", and deleting the "Address 2" and "International Address" fields as only one street address field is necessary.

The form instructs the physician to submit the form to the Disability Evaluation Unit. CWCI recommends adding a mailing address to the form so that the physician knows where to mail it

CWCI recommends replacing the prompt for “Disability Evaluation Unit File No.” with “Case Number” to conform to EAMS.

CWCI recommends that the DWC revise as follows the language in the second paragraph of the box:

A request for reconsideration may be granted if it is shown that the Agreed Medical Evaluator (AME), Qualified Medical Evaluator (QME) or Primary Treating Physician (PTP) has failed to address all issues, failed to completely address issues, failed to follow the procedures regulations promulgated by the Industrial Medical Council (IMC) Division of Workers’ Compensation (DWC), or if the rating was incorrectly calculated.

And the prompt language on page 2:

QME/TP AME/QME/PTP

IMC Medical Unit procedures DWC regulations not followed by QME/TP AME/QME/PTP.

Update the mailing address for the form so that the physician does not mail it to the incorrect address.

Request for Consultative Rating – DWC-AD form 104

CWCI recommends reverting to a single field for “Claim Number” and “Date of Birth,” and removing fields for Claim Numbers 1 through 5 and Dates of Birth 1 through 5, as only one of each is necessary.

CWCI recommends adding a mailing address to the form.

CWCI recommends adding a field for “Case Number” to conform to EAMS.

Thank you for considering these comments. Please contact us for further clarification or if I can be of any other assistance.

Sincerely,

Brenda Ramirez
Claims & Medical Director

Michael McClain
General Counsel & Vice President

BR:MMc/pm

cc: Destie Overpeck, DWC Counsel
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