

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

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: **Workers' Compensation
Employee Benefit Notices**

**Title 8, California Code of Regulations, Title 8
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 to amend and repeal regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9810, relating to Benefit Notices; Claims Administrator's Duties and Responsibilities; Claim Form and Notice of Potential Eligibility for Benefits; Regulatory Authority of the Administrative Director, Article 8.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations commencing with section 9881.1 (DWC 7 Rev. July 2014), relating to Employee Information, and Article 9, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10139 relating to the Workers' Compensation Claim Form (DWC 1 Rev. July 2014) and Notice of Potential Eligibility.

PROPOSED REGULATORY ACTION

The Division proposes to amend and repeal regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9810, relating to Benefit Notices; Claims Administrator's Duties and Responsibilities; Claim Form and Notice of Potential Eligibility for Benefits; Regulatory Authority of the Administrative Director:

Amend section 9810	General Provisions;
Amend section 9811	Definitions;
Amend section 9812	Benefit Payment and Notices; and,
Repeal section 9813	Vocational Rehabilitation Notices.

The Division also proposes to amend regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8.5, California Code of Regulations, commencing with section 9881.1, relating to Employee Information, and Article 9, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations:

Amend section 9881.1	Notice to Employees Poster (DWC 7 Rev. July 2014)
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The Division also proposes to amend regulations within Article 9, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10139 relating to the Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility:

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following date:

Date: Wednesday, September 3, 2014
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

PLEASE BE ADVISED: All visitors to this building are required to go through a security screening which includes passing through metal detectors, and the x-raying and inspection of all personal belongings.

The Elihu Harris State Office Building and its Auditorium are accessible to persons with mobility impairments. Other disability accommodations are available upon request.

Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division of Workers' Compensation, should contact the Disability Accommodation Coordinator or the state-wide Disability Accommodation Coordinator at 1-866-681-1459 (toll free) as soon as possible to request assistance. The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Acting Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Division. The written comment period closes at **5:00 p.m., on Wednesday, September 3, 2014**. The Division will consider only comments received by the Division by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by 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

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on Wednesday, September 3, 2014**.

The official record of the rulemaking proceeding will be closed at the conclusion of the public hearing. The Administrative Director will not consider written comments received after the close of the public hearing unless an extension of time in which to receive written comments is announced at the public hearing.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 59, 124, 133, 138.3, 138.4, 4061, 4603.5, 4637, 5307.3, and 5401.

Reference is to Labor Code sections 132(a), 133, 138.3, 138.4, 139.48, 139.6, 3201.5, 3201.7, 3208, 3300, 3350, 3351, 3351.5, 3700, 3753, 4060, 4061, 4062.2, 4600, 4600.3, 4603, 4604.5, 4601, 4610, 4610.5, 4610.6, 4616, 4635, 4636, 4637, 4641, 4643, 4644, 4650, 4653, 4654, 4656, 4658, 4658.5, 4658.6, 4661.5, 4700, 4701, 4702, 4703, 4703.5, 4800, 4850 - 4850.7, 4903, 4906, 5400, 5401, 5401.7, and 5402; Insurance Code sections 11651 and 11652; Government Code Section 19871; Education Code Section 89529.03; and, Civil Code sections 2330 and 2332.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Labor Code section 138.3 requires the Administrative Director to prescribe reasonable rules and regulations to require employers to serve notice on injured employees that they may be entitled to benefits under Division 4 of the Labor Code.

Labor Code section 138.4 requires the Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation, to prescribe reasonable rules and regulations for service on the employee (or employee's dependents, in the case of death), notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, and death benefits; notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation; and, an accounting of benefits paid.

Labor Code section 3550 requires the Administrative Director, after consultation with the Commission on Health and Safety and Workers' Compensation, to prescribe the form and content of a notice to employees poster.

Labor Code section 5401 requires the Administrative Director, after consultation with the Commission on Health and Safety and Workers' Compensation, to prescribe the form and content of the notice of potential eligibility for benefits and claim form.

These proposed regulations implement, interpret, and make specific these sections of the Labor Code as follows:

Section 9810 prescribes the general provisions governing the correct procedures and formats for notice letters used to inform injured workers about their entitlement to workers' compensation benefits.

The proposed amendments to section 9810 will delete the effective date of the last series of amendments to the benefit notice regulations.

The proposed amendments will relocate the existing substantive mandatory content of the statement of employee's rights from subdivision (f) section 9811 of the current regulations (a section that sets forth definitions of terms used in the regulations) to this more appropriate location in the regulation which sets forth mandatory provisions applicable to all benefit notices.

The proposed amendments will provide that regardless of whether they are sent on the claims administrator's letterhead or not, all benefit notices are required to identify the claims administrator's name, mailing address, telephone number, the employee's name, employer's name, the claim number, the date the notice was sent to the employee, and the date of injury. Benefit notices will also have to include the claims administrator's website address if available.

The proposed amendments will provide that benefit notices are required to clearly state that additional information may be obtained on the Division's website: www.dwc.ca.gov, as well as from an Information and Assistance officer with the Division of Workers' Compensation.

The proposed amendments will provide that where a notice is being issued but a check for benefits to which the notice refers is being separately mailed to the employee, the notice must advise the employee that the check is being mailed separately.

The proposed amendments will provide that 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, must include a mandatory statement of employee's (or claimant's) remedies. Two specific alternative provisions that set forth mandatory language clearer than the provisions of the existing regulation are being adopted. Which provision is required to be used will depend on whether or not the claim in which the benefit notice is being issued is subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7.

The proposed amendments will provide that the Administrative Director's making sample notices that comply with the benefit notice requirements available on the DWC website is discretionary instead of mandatory. The proposed amendments also will provide that benefit notices using the sample notices devised by the Administrative Director and available on the Division's website are presumed to be adequate notice to the employee and, unless modified, will not be subject to audit penalties.

The proposed amendments will provide that every benefit notice is required to have a title at the top of the first page that clearly identifies the subject of the notice. The notice must also contain the statement in bold font at the end of the notice instructing the employee to: "Keep this notice. It contains important information about your workers' compensation benefits."

The proposed amendments will provide that upon the documented agreement of the attorney, all benefit notices, including attachments, may be sent electronically in lieu of by mail. An attorney may elect to change the method in which he or she receives benefit notices by giving written notice to the claims administrator.

The proposed amendments will provide that the extension of any deadline for reply which is measured from the date a notice is sent, and all rights protected within the deadline, is also extended if the notice is sent electronically.

The proposed amendments will provide that upon the documented agreement of the employee, all benefit notices, including attachments, may be sent electronically in lieu of by mail. The employee's agreement may be documented by provision of a personal email address on the claim form (DWC Form 1) and checking the box agreeing to receive benefit notices electronically. An employee may elect to change the method in which he or she receives benefit notices by giving written notice to the claims administrator.

The proposed amendments will also make minor, non-substantive grammatical and other changes to improve the clarity of the regulation and numbering changes to accommodate the newly added subdivisions. Existing subdivision (d) is being changed to (e), existing subdivision (e) is being changed to (h), existing subdivision (g) is being changed to (i), existing subdivision (h) is being changed to (j), and existing subdivision (i) is being changed to (k).

The proposed amendments will delete an authority citation to Labor Code section 139.5(a)(2) and a reference citation to Labor Code section 139.5(a)(3).

The proposed amendments will add a reference citation to Code of Civil Procedure sections 1010.6 and 1013.

Section 9811 provides definitions of the terms used in the benefit notice regulations.

The proposed amendments to section 9811 will relocate the definition of the term dependent from section 9812(f) without substantively changing the definition.

The proposed amendments will relocate the existing substantive mandatory content of the statement of employee's rights from the definitions section of the regulations to the more appropriate section 9810, the section of the benefit notice regulations which sets forth mandatory provisions applicable to all benefit notices.

The proposed amendments will add a definition of the term "medical issue", and provide that the term means a dispute or question that is subject to Labor Code section 4060, 4061, or 4062, and that the term does not include a medical treatment issue that is subject to Labor Code section 4610, 4610.5, and 4610.6.

The proposed amendments will add a definition of the term "salary continuation," and provide that the term means payments made to an employee pursuant to a plan that meets the criteria specified in Labor Code section 4650(g).

The proposed amendments will provide that the term "temporary disability payment", includes salary continuation as defined in proposed subdivision (l) of this section.

The proposed amendments will also make minor, non-substantive grammatical and other changes to improve the clarity of the regulation and numbering changes to accommodate the newly added subdivisions. The amended regulation will add the word "employer" to the existing definition of the term "self-administered legally uninsured". Existing subdivision (d) is being changed to (e), existing subdivision (e) is being changed to (f), existing subdivision (f) is being changed to (g), existing subdivision (g) is being changed to (h), existing subdivision (h) is being changed to (i), and existing subdivision (i) is being changed to (k).

The proposed amendments will delete a reference citation to Labor Code section 139.5 subdivisions (c) and (d) and add reference citations to Labor Code sections 4060, 4062, 4610, 4610.5, 4610.6, 4850.

The proposed amendments will also add a reference citation to Insurance Code section 19871, Government Code section 19871 and Education Code section 89529.03.

Section 9812 prescribes the required timeframes for sending benefit notices and the content for notices dealing with each type of benefit to which an injured worker might be entitled.

The proposed amendments to section 9812 will delete the requirement to provide a copy of various DWC informative pamphlets with the notices required by this section.

The proposed amendments will delete the requirement that notices concerning the right of an employee to obtain an evaluation by a Qualified Medical Evaluator have a warning in not less

than 12 point font at the top of the first page that the employee may lose important rights if they do not take certain actions within 10 days, and replace the warning with more detailed language explaining the QME process in the body of the notices.

The proposed amendments substantially revise the required content of the notices required to resolve a delay or denial of temporary disability benefits related to a medical issue. Instead of prescribing content, specific mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

The proposed amendments will also make minor, non-substantive grammatical, formatting and other changes to improve the clarity of the regulation.

The proposed amendments will replace all reference in this section to the term “injured worker” or “injured workers” with “employee” or “employees” and replace the reference to “continuing medical care” to “future medical care”.

To improve the clarity of section 9812 as a whole, the subdivision addressing the Notice of Delay in Determining All Liability will be renumbered so it precedes, rather than follows, the subdivision addressing the Notice Denying Liability for All Compensation Benefits.

The proposed amendments will also make minor, non-substantive numbering changes to accommodate the newly added and re-ordered subdivisions. Existing subdivision (g) is being changed to (e), existing subdivision (h) is being changed to (f), existing subdivision (i) is being changed to (h), and, existing subdivision (j) is being changed to (g).

(a) Temporary Disability Notices.

(2) Notice of Delay in Any Temporary Disability Indemnity Payment.

The proposed amendments will improve the clarity of the notice by providing that the issuance of the Notice of Delay in Any Temporary Disability Indemnity Payment is required if the employee's entitlement to any period of temporary disability indemnity cannot be determined within 14 days **after** the date of knowledge of the employee's injury and disability. (The current regulation uses the ambiguous phrase “within 14 days **of** the date of knowledge of injury and disability”.)

The proposed amendments will improve the clarity of the section by relocating the requirement that a subsequent delay notice is required to comply with all requirements for the contents of an original delay notice from the end of the subdivision (where it appeared that the requirement might only apply to a delay where the employee was represented by an attorney) to make it clear that the requirement applies to *any* delay in any temporary disability indemnity payment.

The proposed amendments will clarify the language used in the notice to provide an explanation of the employee's right to challenge the claims administrator's determination to delay any temporary disability indemnity payment. Instead of prescribing content, specific mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

(3) The Notice of Denial of Any Temporary Disability Indemnity Payment.

The proposed amendments to subdivision will substantially revise the notice requirements for the denial of any liability for any temporary disability indemnity payment.

The proposed amendments will require that if the claims administrator's determination is based on a medical report, a copy of the medical report or reports is required to be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.

The proposed amendments will clarify the language used in the notice to provide an explanation of the employee's right to challenge the claims administrator's determination to deny any liability for any temporary disability indemnity payment. Instead of prescribing content, specific mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

(b) The Notice of Resumed Benefit Payments.

The proposed amendments will delete any reference to salary continuation, vocational rehabilitation temporary disability indemnity or maintenance allowance.

(c) The Notice of Changed Benefit Rate, Payment Amount or Schedule.

The proposed amendments will delete any reference to salary continuation, vocational rehabilitation temporary disability indemnity or maintenance allowance.

The proposed amendments will also change the requirement that the notice must be given before or **with** the new payment, to allow it to be given before or **at the same time** as the new payment.

(d) The Notice that Benefits Are Ending.

The proposed amendments will delete any reference to salary continuation, vocational rehabilitation temporary disability indemnity or maintenance allowance.

The proposed amendments will improve the clarity of the notice by providing that the notice is required if the decision to end payment of indemnity was made after the last payment, the claims administrator must send the notice and accounting of benefits paid within 14 days **after** the last payment. (The current regulation uses the ambiguous phrase "within 14 days **of** the date of knowledge of injury and disability".)

The proposed amendments will require that if the claims administrator's determination is based on a medical report, a copy of the medical report or reports is required to be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.

The proposed amendments will clarify the language required in the notice to provide an explanation of the employee's right to challenge the claims administrator's determination to end the employee's benefits. Instead of prescribing content, specific mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

(e) Permanent Disability Notices For Injuries That Occurred Prior To 1991.

The proposed amendments will repeal this subdivision.

(f) Permanent Disability Notices for Injuries Occurring in 1991, 1992, 1993.

The proposed amendments will repeal this subdivision.

(g) Permanent Disability Notices For Injuries Occurring on or after 1/1/94. For injuries occurring on or after January 1, 1994.

The proposed amendments will make this subdivision applicable to all dates of injury, eliminating the differing requirements for notices for date of injury on or after January 1, 1994 through December 31, 2004 and dates of injury on or after January 1, 2005.

(1) Condition Not Permanent and Stationary, May Cause Permanent Disability -- Notice of Monitoring Until P&S Date.

The proposed amendments will change the requirement that the Notice of Monitoring Until P&S Date must be given **together with** the last payment of temporary disability indemnity, to allow it to be given **at the same time as** the last payment of temporary disability indemnity.

(2) Condition Becomes Permanent and Stationary, Causes Permanent Disability - Notice of QME/AME Procedures.

The proposed amendments will clarify the notice required when the employee's condition becomes permanent and stationary, and causes permanent disability by changing the name of the notice to the "Notice That Permanent Disability Exists".

The proposed amendments will change the requirement that the notice must be given **together with** the last payment of temporary disability indemnity disability or within 14 days of knowledge that the injury is permanent and stationary or has caused permanent disability, to allow it to be given **at the same time as** the last payment of temporary disability indemnity or within 14 days of knowledge that the injury has caused permanent disability, whichever is later.

The proposed amendments will revise the requirement for the claims administrator to advise the employee whether there **is** the need for continuing future medical care, to require the claims administrator to advise the employee whether there **will be** the need for continuing future medical care.

The proposed amendments will require the claims administrator to advise the employee whether an indemnity payment will be deferred pursuant to paragraph (2) of subdivision (b) of Labor Code section 4650.

The proposed amendments will clarify the language used in the notice to provide an explanation of the employee's right to challenge the claims administrator's determination to delay any permanent disability indemnity payment. Different mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

The proposed amendments will repeal the requirement that a copy of the medical report on which the estimate of permanent disability was based be sent to the employee, and instead provide that if the claims administrator's determination is based on a medical report, a copy of the medical report or reports is required to be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.

(3) Notice That No Permanent Disability Exists.

The proposed amendments will clarify that this notice is only required in cases where the employee has sustained compensable lost time from work, has received payment of temporary disability indemnity or the employee claims permanent disability.

The proposed amendments will change the requirement that the notice must be given **together with** the last payment of temporary disability indemnity or within 14 days after the claims administrator determines that the injury has caused no permanent disability, to allow it to be given **at the same time as** the last payment of temporary disability indemnity or within 14 days after the claims administrator determines that the injury has caused no permanent disability.

The proposed amendments will repeal the requirement that a copy of the medical report on which the determination of no permanent disability was based be sent to the employee, and instead provide that if the claims administrator's determination is based on a medical report, a copy of the medical report or reports is required to be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.

The proposed amendments will clarify the language used in the notice to provide an explanation of the employee's right to challenge the claims administrator's determination of no permanent disability. Instead of prescribing content, specific mandatory and uniform language will be required depending on whether the employee is unrepresented or represented by an attorney.

(4) Notice of Permanent Disability Indemnity Payment When Injury Causes Permanent Disability.

The proposed amendments will delete the requirement that the notice be given if the claims administrator knows that the employee has sustained permanent disability, whether or not its extent is known and whether or not the employee's medical condition is permanent and

stationary, and instead require the notice at the same time as the first payment of permanent disability indemnity.

The proposed amendments will delete the requirement for injuries occurring on or after January 1, 2005 that the claims administrator advise the employee, in specified benefit notices, of any increase or decrease in the amount of the employee's permanent disability payments, pursuant to Labor Code section 4658, subdivision (d) resulting from the employer's offer of regular, modified or alternative work or resulting from the employer's failure to offer, or the employer's early termination of, regular, modified or alternative work.

(h) Notices to Dependents in Death Cases.

The proposed amendments will relocate the definition of the term "dependent" from this subdivision to the more appropriate section 9811 which provide definitions of terms applicable to all benefit notices. There will be no substantive change in the definition.

2) Notice of Changed Benefit Rate, Amount or Schedule or that Benefits are Ending.

The proposed amendments will change the requirement that a notice that payment is ending must be sent **with** the last payment unless the decision to end payment was made after that payment; in that case it must be sent within 14 days **of** the last payment, to require instead that the notice be sent **at the same time as** the last payment unless the decision to end payment was made after that payment; in that case it must be sent within 14 days **after** the last payment.

(i) Notice Denying Liability for All Compensation Benefits

The proposed amendments will provide that if the claims administrator's determination is based on a medical report, a copy of the medical report(s) must be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.

The proposed amendments will provide that if the employee is not represented by an attorney, the determination to deny liability for all compensation benefits is related to a medical issue, and the employee has not previously received a comprehensive medical evaluation for this claim, the notice must be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, and an explanation of the QME panel request and selection process.

The proposed amendments will provide that if the employee is represented by an attorney, the employee will be instructed to contact their attorney with any questions.

The proposed amendments will provide that instead of requiring service of a copy of the Notice Denying Liability for All Compensation Benefits on "all persons or entities who can reasonably be identified by the claims administrator from information in the claims file to be potential lien claimants on account of their having furnished benefits, goods or services for which a lien may be filed under Labor Code sections 4903 through 4906, inclusive," the notice will be required to be served on "all persons or entities that have been authorized by

the claims administrator to furnish benefits, goods or services for which a lien or claim for costs may be filed under Labor Code sections 4903 through 4906, inclusive.”

To improve the clarity of this subdivision, the four paragraphs will be numbered.

The proposed amendments will add an authority citation to Labor Code section 124, and delete authority citations to Labor Code sections 139.5(a)(2), 4636(d), and 4637.

The proposed amendments will add reference citations to Labor Code sections 4060 and 4062.2, amend a reference citation from Labor Code section 4061(e) to 4061(f), and amend a reference citation from Labor Code section 4061(f) to 4061(g).

(j) Notice of Delay in Determining All Liability.

The proposed amendments will improve the clarity of the notice by providing that the issuance of the Notice of Delay in Determining All Liability is required if the claims administrator cannot determine whether the employer has any liability for an injury, other than an injury causing death, within 14 days **after** the date of knowledge of injury. (The current regulation uses the ambiguous phrase “within 14 days **of** the date of knowledge of injury”.)

The proposed amendments will also require the claims administrator to send an additional notice if a determination cannot be made by the date specified in a prior notice to the employee, or if the reason for the delay has changed. The additional notice will be required to be sent as soon as is reasonably practical, but in any event not later than the determination date specified in the previous notice, and the additional notice will be required to explain the reason for the additional delay.

The proposed amendments will provide that, for unrepresented employees, if the delay is related to a medical issue, and the claims administrator is requesting a comprehensive medical evaluation the notice must be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators and an explanation of the QME panel request and selection process.

The proposed amendments will provide that if the employee is represented by an attorney, the employee will be instructed to contact their attorney with any questions.

Section 9813 prescribes the required timeframes for sending notices, and the required content for each notice, for vocational rehabilitation benefits.

Section 9813 is being repealed in its entirety.

Section 9814 prescribes notice requirements in claims involving salary continuation.

The proposed amendments will delete a reference citation to Labor Code section 139.5(a)(2).

The proposed amendments will also add a reference citation to Insurance Code sections 11651 and 11652, Government Code section 19871 and Education Code section 89529.03.

Section 9815 prescribes the requirements for corrected notices.

The proposed amendment will provide that if information in any notice, or the action taken as reflected in the notice, was incorrect or incomplete, the claims administrator must provide the employee with a corrected notice within 14 days **after** knowledge of the error or omission, instead of the more ambiguous “within 14 days **of** knowledge of the error or omission.”

The proposed amendments will delete reference citations to Labor Code sections 139.5 and 4636.

Section 9881.1 prescribes the form and content of the Notice to Employees Poster.

The proposed amendments to section 9881.1 will update the information on the poster and to reflect the existing state of the law, and improve its clarity by rephrasing some of its content in more readily understandable language.

The proposed amendments will replace the employer’s MPN’s address with its identification number.

The proposed amendments will inform employees that they can access the publication “Workers’ Compensation in California: A Guidebook for Injured Workers” on the DWC website.

Section 10139 prescribes the form and content of the notice of potential eligibility for benefits and the claim form.

The proposed amendments to the notice of potential eligibility will inform the employee that if he or she loses time from work, the claims administrator must notify the employee within 14 days whether the employee’s claim is accepted or whether additional investigation is needed.

The proposed amendments will inform the employee to submit the claim form, with a complete description of their injury, to their employer, and advise the employee that in some cases, benefits will not start until they inform their employer about their injury by filing a claim form.

The proposed amendments will suggest that the employee mail the form to their employer, using first-class or certified mail, and buy a return receipt, so they will be able to prove that the claim form was mailed and when it was delivered.

The proposed amendments will advise the employee that their medical benefits may include equipment and travel costs, and that there are limits on chiropractic, physical therapy, and other occupational therapy visits.

The proposed amendments will update the information on the role of the primary treating physician, explain the predesignation process, and inform the employee that if their employer is not using an MPN or HCO, in most cases, the claims administrator can choose the doctor

who first treats the employee unless he or she predesignated a personal physician or a medical group.

The proposed amendments will inform the employee that within one working day after the employee files a claim form, the claims administrator must authorize the provision of up to \$10,000 in treatment for the employee's injury, consistent with the applicable treating guidelines, until the claim is accepted or rejected.

The proposed amendments will also explain how to obtain treatment if the claims adjuster does not authorize treatment.

The proposed amendments will explain how the employee can transfer their treatment to a different primary treating physician in cases where the employee is being treated in a Medical Provider Network, a Health Care Organization, or where the employee is being treated by an employer selected doctor.

The proposed amendments will explain how to resolve disagreements with the claims administrator or primary treating physician about medical treatment or other issues.

The proposed amendments will expand the discussion of the return to work process to emphasize the value of the employee staying at work if possible, in addition to the benefits of returning to work as soon as the employee is medically able. The proposed amendments will explain the process and encourage the employee to actively communicate with the other participants in the process.

The proposed amendments will clarify the meaning of the term "permanent disability."

The proposed amendments will update the section on the Supplemental Job Displacement Benefit to reflect the existing state of the law.

The proposed amendments will clarify that a spouse is a relative who may be entitled to a death benefit.

The proposed amendments will advise the employee that they may contact their employer as well as the claims administrator to resolve disputes about their claim.

The proposed amendments advise the employee that they may be able to get unemployment insurance benefits if they are not receiving workers' compensation benefits, and advises the employee how to get information about unemployment insurance benefits.

The proposed amendments clarify the kinds of information available from information and assistance officers, and provide additional sources of information about workers' compensation.

The proposed amendments to the claim form will advise the employee to detach the notice of potential eligibility from the claim form, and save it for future reference.

The proposed amendments will advise the employee that they may receive written notices from their employer or its claims administrator about their claim, and that if the employee agrees to receive these notices only by email, to provide their email address in the space being added to the claim form and check the box being added to the form. The employee will be informed that if they later decide they want to receive the notices by mail, they must inform the claims administrator in writing.

The proposed amendments will also improve the section's clarity by rephrasing some of its content in more readily understandable language.

The existing line numbering is being amended to reflect the addition of the space and check box for the employee to provide their e-mail address and indicate their agreement to receive notices by e-mail.

The proposed amendments will also add an authority citation to Labor Code section 5401.

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the regulations is to streamline the workers' compensation benefit notice program to allow claims administrators to more effectively communicate with injured workers, and implement the mandate of Labor Code section 138.3 for Administrative Director to prescribe reasonable rules and regulations requiring the employer to serve notice on the injured employee that he may be entitled to benefits under this division.

A 2010 study conducted by the California Commission on Health and Safety and Workers' Compensation concluded that the current benefit notice regulations produced notices that were "too voluminous (e.g., overly wordy, redundant, and containing factsheets and forms that are not needed by all workers)". The existing benefit notices were also described as being "complex, overwhelming, frightening, vague, confusing (e.g., "you may lose important rights if you do not take certain actions within 10 days"; "you may be asked to return to the physician for a new evaluation").

These proposed regulations are the regulatory portion of ongoing collaboration between the Division and the Commission to explore and implement methods to provide clear information to all injured workers soon after injury describing the entire workers' compensation claims process and the parties' respective rights and obligations, to make this information continually available for workers to access later in their claims, and to improve California's system of benefit notices.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting Administrative Director has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that set forth the form and/or content of the notices required by the regulations being amended or repealed in this rulemaking.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The requirement to provide notices to injured workers of their entitlement to various workers' compensation benefits is a statutory mandate. The regulations only provide the procedures to be used to provide these notices. There will be costs for claims administrators to train their employees on the new notice requirements, and claims administrators that use computerized systems to generate benefit notices will have to adjust their systems to produce the amended and newly required notices.
- Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None. The requirement to provide notices to injured workers of their entitlement to various workers' compensation benefits is a statutory mandate. The regulations only provide the procedures to be used to provide these notices.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely that the proposal would cause the expansion of the business currently doing business within the State of California.

Individuals and/or businesses that are subject to these regulations will incur minor costs for updating the form and content of notices and forms that they currently already are required to use, and training employees on the requirements of the new regulations. As almost all claims administrators use computerized systems to compose and print notices and forms, they will have to adjust their systems to produce the amended notices and forms. These one-time costs will be offset with long term savings in printing and postage costs due to the shortening

of benefit notices and the elimination of several enclosures that will no longer be required to be enclosed with benefit notices.

Benefits of the Proposed Action:

Injured workers will benefit from updated and more accurate benefit notices.

Employers and claims administrators will experience a cost savings of an indeterminable amount based on the use of clearer and more accurate benefit notices. Savings will be reflected both in administrative costs (shortening the length of benefit notices and eliminating enclosures will significantly reduce printing and mailing costs) and litigation costs. However, the lack of empirical data on the extent of attorney involvement and litigation before benefit notices reached their current level of complexity, in the mid-1990s, in addition to the difficulty in ascertaining the current level of litigation driven by complicated benefit notices as opposed to amount of compensation paid, makes it difficult to estimate a total amount of savings. That said, the Division conservatively estimates that the total cost savings to employers and claims administrators will be in the range of \$15 million.

Small Business Determination:

The Acting Administrative Director has determined that the proposed regulations will have no effect on small businesses. The regulations apply to workers' compensation insurers, self-insured employers and third party claims administrators. None of these entities are small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Acting Administrative Director must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Acting Administrative Director's attention, would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment by an advisory group of interested stakeholders and the general public through a posting on the Division's Internet message board (the DWC Forums) from April 18 through May 3, 2013.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the Economic and Fiscal Impact Statement (Form 399). Also included are any studies and documents relied upon in drafting the proposed regulations. As public comments are received during the rulemaking process, they will be added to the rulemaking file.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Benefit Notice Regulations" rulemaking.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the headquarters of the Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Inquiries may be submitted by e-mail to: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT / PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

James M. Robbins
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

Upon closure of time for receipt of public comments, the Administrative Director may adopt the proposed rulemaking substantially as described above or may modify it if such modifications are sufficiently related to the original text.

With the exception of technical, grammatical or other non-substantive changes, if the Administrative Director makes any changes to the proposed regulations as a result of the public hearing and public comment received, the full text of such modifications to the proposed rulemaking, with changes clearly indicated, will be made available for public comment 15 days prior to their adoption. Notice of the modified text will be mailed to those persons who submit written or oral comments related to the proposed rulemaking or who request notification of any changes to the proposed rulemaking.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the proposed amendments to the benefit notice regulations will appear in Title 8, California Code of Regulations, commencing with section 9810.

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