

The California Commission on Health and Safety and Workers' Compensation



Report on Benefit Notices and Recommendations

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Benefit Notices: Recommendations

Background, Vision, and Principles

Labor Code section 77(b) authorizes the Commission on Health and Safety and Workers' Compensation to issue periodic reports and recommendations to improve and simplify benefit notices. In March and April 2010, Commission staff held separate meetings with members of a small task force of knowledgeable advisors – from Schools Insurance Authority, California Workers' Compensation Institute, Tristar Risk Management, California Applicants' Attorneys Association, and Southern California Edison Company – to review specific problems with the current system of benefit notices and brainstorm on possible alternatives. The vision and principles shown below were discussed in the meetings.

Vision

California will have a streamlined benefit notices program that allows claims administrators to communicate effectively with injured workers.

Principles

Benefit notices should:

- 1. Help injured workers understand the entire claims process*
- 2. At particular stages, inform injured workers of their rights and obligations and instruct them on steps to take*
- 3. Be easy to administer*
- 4. Help avoid unnecessary litigation*

Problems with Benefit Notices

The advisors shared their experiences and views about problems with benefit notices. They were in basic agreement about the problems, characterizing benefit notices as follows:

- Too voluminous (e.g., overly wordy, redundant, containing factsheets and forms that are not needed by all workers)
- 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”)
- Difficult to understand (e.g., indirect wording, unfamiliar terminology)
- Not coordinated as a single system, not standardized
- Misleading (e.g., workers think they are required to submit the QME panel request form; notice that no PD exists sounds like denial of the entire claim)
- Not conveying the main points to workers
- Difficult to keep updated (i.e., the required factsheets)

Possible Methods to Improve Benefit Notices

The participants were also in basic agreement about possible methods to improve benefit notices, as follows:

- Identify what injured workers need to know at each stage. Relay necessary information at the right time, eliminate unnecessary information, and use plain language. Clearly inform injured workers about applicable deadlines.
- Explore providing background, explanatory information to all injured workers about the entire claims process and workers' rights and obligations. Provide the information early in their claims, and make it continually available to allow workers to access relevant portions later in their claims. The information could be posted on the Internet, for example. Transferring this information from factsheets included with the current benefit notices to an online source would greatly reduce the volume of paper in the system, and would allow claims administrators to convey the main points about a particular claim in the individual notices.
- Provide clear information to workers about where and how they can access information on the Internet about workers' compensation and the forms that are needed by some workers. Create mechanisms to allow access for workers who do not have easy access to the Internet, such as providing paper copies upon request.
- Simplify and standardize the language of benefit notices. Consider, for example, using a form similar to Form DIA 500, which was a one-page benefit status notice used in the 1980s by the Division of Industrial Accidents (predecessor to the DWC). Using a similar form may help claims administrators concisely relay necessary messages to the workers about their claims.

Injured Workers' Access to the Internet

To assess the feasibility of providing background and explanatory information through online sources, Commission staff sought data to estimate the extent that injured workers have access to the Internet. Over the course of four working days in April 2010, Commission and DWC staff administered a brief questionnaire to injured workers calling and visiting the Information & Assistance (I&A) offices in Salinas, San Bernardino, San Diego, Oakland, and Stockton. These five offices have high volumes of traffic, serve urban and rural locations in northern and southern California, and employ one or more I&A officers. In addition, these offices probably serve populations facing some of the greatest barriers to accessing the Internet.

The workers were asked whether they access the Internet and whether they or anyone in their household accesses the Internet at least once a month. Of the 162 workers who responded, 16 percent indicated they did not have access to the Internet.

Recommendations

Currently, there is no requirement to provide all injured workers with comprehensive information that workers can use and reference to understand the individual benefit notices they receive in their claims. It is recommended that the Commission collaborate with the Division of Workers' Compensation 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. The bulk of the information currently provided with benefit notices – including the DWC form to request a QME panel and the content of the DWC fact sheets on temporary disability benefits, permanent disability benefits, and the QME/AME process – would be made available on the Internet for most workers, and made available upon request to workers who do not have easy access to the Internet. The notices themselves would become much shorter in length and greatly reduced in total volume. This would allow claims administrators to effectively communicate their main messages. It would also enable injured workers to understand their rights and obligations and not be overwhelmed by the claims process.

Estimated Costs

Sixteen (16) percent of the workers in the survey described above indicated they did not have access to the Internet. Because a greater percentage of all injured workers in California probably have access to the Internet compared to the workers who participated in the survey, we believe the 16 percent figure is on the high side. Furthermore, Internet access will probably increase over time for everyone. On the other hand, some workers would request a paper copy even if they are able to access the Internet. We therefore believe that 10 to 20 percent of newly injured workers would request a paper copy of a written booklet describing the entire claims process if informed of its availability.

There were 625,765 claims in 2008 (CHSWC Annual Report, 2009, page 44). Assuming 10 to 20 percent of newly injured workers would request a paper copy, we estimate that 60,000 to 130,000 copies will need to be provided. The cost of printing and delivering one booklet similar to the CHSWC Guidebook for Injured Workers is \$5.00. This cost multiplied by 60,000 to 130,000 yields a total cost to print and deliver paper booklets of \$300,000 to \$650,000, or less than \$1 million per year.

Estimated Savings

Improving communications between claims administrators and injured workers will reduce confusion, misunderstandings, disputes, and litigation. Insured employers incur legal defense expenses of \$607 million per year (Workers' Compensation Insurance Rating Bureau, 2008 California Workers Compensation Losses and Expenses report, June 25, 2009, page 4), and represent 70 percent of all California workers' compensation claims (DWC workers' compensation information system data). Dividing the \$607 figure by 70 percent yields an estimated cost of \$867 million for all employers. We assume, conservatively, that providing

comprehensive information early in the claims process and substantially clarifying the information in benefit notices will reduce legal defense expenses by five percent, or \$43 million per year.

In addition, shortening the length of benefit notices and eliminating enclosures will significantly reduce printing and mailing costs.

Estimated Net Savings

As discussed above, we estimate that the costs of providing paper copies of an informational booklet to injured workers upon request will be less than \$1 million per year and that the savings in legal defense costs and printing and mailing costs will be \$43 million or more per year. We therefore estimate the overall net savings to be more than \$42 million per year.

Legislation

To accomplish the recommended changes, legislation would be required to amend the Labor Code as follows:

138.4. (a) For the purpose of this section, "claims administrator" means a self-administered workers' compensation insurer; or a self-administered self-insured employer; or a self-administered legally uninsured employer; or a self-administered joint powers authority; or a third-party claims administrator for an insurer, a self-insured employer, a legally uninsured employer, or a joint powers authority.

(b) With respect to injuries resulting in lost time beyond the employee's work shift at the time of injury or medical treatment beyond first aid:

(1) If the claims administrator obtains knowledge that the employer has not provided a claim form or a notice of potential eligibility for benefits to the employee, it shall provide the form and notice to the employee within three working days of its knowledge that the form or notice was not provided.

(2) If the claims administrator cannot determine if the employer has provided a claim form and notice of potential eligibility for benefits to the employee, the claims administrator shall provide the form and notice to the employee within 30 days of the administrator's date of knowledge of the claim.

(c) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall prescribe reasonable rules and regulations for serving 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, supplemental job displacement, and death benefits; ~~and the provision of vocational rehabilitation services;~~ 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; and notices of rights to select the primary treating physician, written continuity of care policies, requests for a comprehensive medical evaluation, and offers of regular, modified, or alternative work.

(d) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall develop, make fully accessible on the Internet, and make

reasonably available by mail and at district offices, a booklet written in plain language that describes the overall workers' compensation claims process, including the rights and obligations of employees and employers at every stage of a claim when a notice is required. Each notice prescribed by the administrative director shall be written in plain language, shall reference the booklet to enable employees to understand the context of the notices, and shall clearly state the website address(es) and contact information that employees may use to obtain the booklet.

3550. (a) Every employer subject to the compensation provisions of this division shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice that states the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment.

(b) Failure to keep any notice required by this section conspicuously posted shall constitute a misdemeanor, and shall be prima facie evidence of noninsurance.

(c) This section shall not apply with respect to the employment of employees as defined in subdivision (d) of Section 3351.

(d) The form and content of the notice required by this section shall be prescribed by the administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, and shall advise employees that all injuries should be reported to their employer. The notice shall be easily understandable. It shall be posted in both English and Spanish where there are Spanish-speaking employees. The notice shall include the following information:

(1) How to get emergency medical treatment, if needed.

(2) The kinds of events, injuries, and illnesses covered by workers' compensation.

(3) The injured employee's right to receive medical care.

(4) The rights of the employee to select and change the treating physician pursuant to the provisions of Section 4600.

(5) The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement ~~vocational rehabilitation services~~, and death benefits, as appropriate.

(6) To whom injuries should be reported.

(7) The existence of time limits for the employer to be notified of an occupational injury.

(8) The protections against discrimination provided pursuant to Section 132a.

(9) The website address(es) and contact information that employees may use to obtain further information about the workers' compensation claims process and injured employees' rights and obligations, including the location and telephone number of the nearest information and assistance officer.

(e) Failure of an employer to provide the notice required by this section shall automatically permit the employee to be treated by his or her personal physician with respect to an injury occurring during that failure.

(f) The form and content of the notice required to be posted by this section shall be made available to self-insured employers and insurers by the administrative director. Insurers shall provide this notice to each of their policyholders, with advice concerning the requirements of this section and the penalties for a failure to post this notice.

3551. [written information to new employees] – *no change*

3553. [notice to employee who is victim of workplace crime] – *no change*

4060. (a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.

(b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.

(c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

(d) If a medical evaluation is required to determine compensability at any time after the claim form is filed, and the employee is not represented by an attorney, the employer shall provide the employee with notice either that the employer requests a comprehensive medical evaluation to determine compensability or that the employer has not accepted liability and the employee may request a comprehensive medical evaluation to determine compensability. Either party may request a comprehensive medical evaluation to determine compensability. The evaluation shall be obtained only by the procedure provided in Section 4062.1.

~~—(e) (1) Each notice required by subdivision (d) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an information and assistance officer or an attorney. It shall contain the following language: —"Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits."~~

~~—(2) The notice required by this subdivision (d) shall be accompanied by the form prescribed by the administrative director for requesting the assignment of a panel of qualified medical evaluators.~~

4061. (a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice either that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury or notice of the amount of permanent disability indemnity determined by the employer to be payable. ~~The notice shall include information concerning how the employee may obtain a formal medical evaluation pursuant to subdivision (e) or (d) if he or she disagrees with the position taken by the employer. The notice shall be accompanied by the form prescribed by the administrative director for requesting assignment of a panel of qualified medical evaluators, unless the employee is represented by an attorney.~~ If the employer determines permanent disability indemnity is payable, the employer shall advise the employee of the amount determined payable and the basis on which the determination was made and whether there is need for continuing medical care.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount

cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine the need for continuing medical care, or at which time the employer will advise the employee of the amount of permanent disability indemnity the employer has determined to be payable. ~~If an employee is provided notice pursuant to this paragraph and the employer later takes the position that the employee has no permanent impairment or limitations resulting from the injury, or later determines permanent disability indemnity is payable, the employer shall in either event, within 14 days of the determination to take either position, provide the employee with the notice specified in paragraph (1).~~

~~—(b) Each notice required by subdivision (a) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an information and assistance officer or an attorney. It shall contain the following language:~~

~~—"Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits."~~

(b)(c) If either the employee or employer objects to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for continuing medical care and the parties do not agree to a permanent disability rating based on the treating physician's evaluation, and the employee is represented by an attorney, a medical evaluation to determine permanent disability shall be obtained as provided in Section 4062.2.

(c)(d) If either the employee or employer objects to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for continuing medical care and the parties do not agree to a permanent disability rating based on the treating physician's evaluation, and if the employee is not represented by an attorney, the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. Either party may request a comprehensive medical evaluation to determine permanent disability and the need for continuing medical care, and the evaluation shall be obtained only by the procedure provided in Section 4062.1.

(d)(e) The qualified medical evaluator who has evaluated an unrepresented employee shall serve the comprehensive medical evaluation and the summary form on the employee, employer, and the administrative director. The unrepresented employee or the employer may submit the treating physician's evaluation for the calculation of a permanent disability rating. Within 20 days of receipt of the comprehensive medical evaluation, the administrative director shall calculate the permanent disability rating according to Section 4660 and serve the rating on the employee and employer.

(e)(f) Any comprehensive medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 and 4664 shall first be submitted by the administrative

director to a workers' compensation judge who may refer the report back to the qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(f)(g) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the administrative director reconsider the recommended rating or obtain additional information from the treating physician or medical evaluator to address issues not addressed or not completely addressed in the original comprehensive medical evaluation or not prepared in accord with the procedures promulgated under paragraph (2) or (3) of subdivision (j) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the comprehensive medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the treating physician or qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the treating physician's or qualified medical evaluator's final comprehensive medical evaluation and summary form, the administrative director shall recalculate the permanent disability rating according to Section 4660 and serve the rating, the comprehensive medical evaluation, and the summary form on the employee and employer.

(g)(h) (1) If a comprehensive medical evaluation from the treating physician or an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation or promptly commence proceedings before the appeals board to resolve the dispute.

(2) If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The administrative director shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(h)(i) No issue relating to the existence or extent of permanent impairment and limitations resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician or an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations resulting from the injury shall be obtained, except in accordance with Section 4062.1 or 4062.2. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board.

4600.3(a). [notices about predesignation where there is an HCO] – *no change*

4616.2(c); 4616.3(b). [where there is an MPN, notices about continuity of care policy and method to access list of physicians] – *no change*

4658(d)(2), (3). [offer of work with PD bump-up/down] – *no change*

4658.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state-approved or accredited schools, as follows:

(1) Up to four thousand dollars (\$4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars (\$6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars (\$8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars (\$10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return-to-work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and other matters necessary to the proper administration of the supplemental job displacement benefit.

~~(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail.~~

~~—(d) This section shall apply to injuries occurring on or after January 1, 2004.~~

4658.6. [offer of work and no liability for SJDB] – *no change*

5401. (a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case of death, to his or her dependents. As used in this subdivision, "first aid" means any one-time treatment, and any followup visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. This one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel. "Minor industrial injury" shall not include serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302. The claim form shall request the injured employee's name and address, social security number, the time and address where the injury occurred, and the nature of and part of the body affected by the injury. Claim forms shall be available at district offices of the Employment Development Department and the division. Claim forms may be made available to the employee from any other source.

(b) Insofar as practicable, the notice of potential eligibility for benefits required by this section and the claim form shall be a single document and shall instruct the injured employee to fully read the notice of potential eligibility. The form and content of the notice and claim form shall be

prescribed by the administrative director after consultation with the Commission on Health and Safety and Workers' Compensation. The notice shall be easily understandable and available in both English and Spanish. The content shall include, but not be limited to, the following:

(1) The procedure to be used to commence proceedings for the collection of compensation for the purposes of this chapter.

(2) A description of the different types of workers' compensation benefits.

(3) What happens to the claim form after it is filed.

(4) From whom the employee can obtain medical care for the injury.

(5) The role and function of the primary treating physician.

(6) The rights of an employee to select and change the treating physician pursuant to subdivision (e) of Section 3550 and Section 4600.

(7) How to get medical care while the claim is pending.

(8) The protections against discrimination provided pursuant to Section 132a.

(9) The following written statements:

(A) You have a right to disagree with decisions affecting your claim.

(B) To obtain important information about the workers' compensation claims process and your rights and obligations, go to [applicable website(s)], or contact ~~You can obtain free information from~~ an information and assistance (I&A) officer of the state Division of Workers' Compensation. ~~You can also, or you can~~ hear recorded information and a list of local I&A offices by calling [applicable information and assistance telephone number(s)].

(C) You can consult an attorney. Most attorneys offer one free consultation. If you decide to hire an attorney, his or her fee will be taken out of some of your benefits. For names of workers' compensation attorneys, call the State Bar of California at [telephone number of the State Bar of California's legal specialization program, or its equivalent].

(c) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. Except as provided in subdivision (d), a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail. A dated copy of the completed form shall be provided by the employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(d) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650, or prior to the injured employee's request for a medical evaluation under Section 4060, 4061, or 4062. Filing of the claim form with the employer shall toll, for injuries occurring on or after January 1, 1994, the time limitations set forth in Sections 5405 and 5406 until the claim is denied by the employer or the injury becomes presumptively compensable pursuant to Section 5402. For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail.