

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 1st 15 DAY COMMENT PERIOD (April 24, 2015 – May 11, 2015)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9812 Benefit Payment and Notices	<p>Commenter opines that in reviewing the proposed Regulations, under CCR 9812 (e) Permanent Disability Notices [beginning on page 19] it appears that the Regulations are going to allow for Delay of Permanent Disability Benefits based upon the fact that the employer does not know the extent of the disability or it is too soon to tell. The Regulations instruct the employer/claims administrator to tell the employee that they are going to monitor the employee's condition.</p> <p>The proposed regulations seem to be in contradiction with the Labor Code. Labor Code 4650 (b) was specifically amended by SB 899 in 2004 to remove that option. The revised version of Labor Code 4650 (b) states:</p> <p>(b)(1) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of the last payment of temporary disability indemnity, except as provided in paragraph (2). When the last payment of temporary disability indemnity has been made pursuant to subdivision (c) of Section 4656, and</p>	Dennis Knotts, Workers' Compensation Consultant April 29, 2015 Written Comment	<p>The Administrative Director does not agree with this comment.</p> <p>The regulations do not dictate the circumstances under which benefits are or are not required to be paid, they merely require the claims administrator to give notice to the employee of what is happening in his or her claim.</p> <p>Section 9812(e) does not allow a delay in payment of permanent disability indemnity benefits where such payments are due, it only requires the claims administrator to advise the employee that the claims administrator is presently unable to determine the total amount of permanent disability indemnity that will be paid.</p>	None.

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	<p>REGARLESS OF WHETHER THE EXTENT OF PERMANENT DISABILITY CAN BE DETERMINED AT THAT DATE, the employer NEVERTHELESS shall commence the timely payment required by this subdivision and SHALL CONTINUE TO MAKE THESE PAYMENTS until the employee’s reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined, until the amount is paid.” [Emphasis Added]</p> <p>SB 863 created a sub-paragraph (1) and added (2). Sub-paragraph (2) is the employer/claim administrator's right to defer Permanent Disability Indemnity if the employee is working either in a position paying 85% of the pre-injury salary, or 100% of the pre-injury salary. Commenter states that this adds to the position that it was not the intent of SB 899 to allow Delay of Permanent Disability Indemnity; otherwise, would the Legislature make an exception in the Labor Code for mandatory advancing of Permanent</p>			

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	<p>Disability Indemnity?</p> <p>Commenter states that it appears from the referenced portions of subparagraph (1) that it was the intent of the Legislature in 2004 to stop the practice of delaying Permanent Disability Indemnity payments/advances based upon whether or not the amount of permanent disability was known.</p> <p>Commenter opines that this was done because the Legislature added the 104 week cap on Temporary Disability Indemnity payments under SB 899.</p> <p>This would force the employer/claims administrator to make a determination of Permanent Disability Indemnity and begin to advance it so the employee would have something to live on in those cases where Temporary Disability Benefits ended not because the employee could return to work; but because the cap on Temporary Disability Benefits has run.</p> <p>Commenter states that the addition of</p>			

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	<p>sub-paragraph (2) under SB 863 shows that it was the intent of the Legislature to have the employee receiving some kind of benefit with the ending of Temporary Disability Indemnity payments.</p> <p>From the wording of Labor Code 4650 (b), the employer/claims administrator has only two options where Temporary Disability Indemnity payments have ended and the employee is not working in either a position paying 85% of pre-injury salary or 100% of pre-injury salary: estimate an amount and begin to advance; or believe there is no permanent disability and deny.</p>			
9812 Benefit Payment and Notices	<p>Commenter notes that section 9812(g)(3) is in conflict with the Labor Code. Commenter states that he discussed this very issue several times with former Acting Administrative Director Carrie Nevans during the last proposed Regulations on this subject.</p> <p>Commenter states that Ms. Nevans wanted the procedure in place to send</p>	Dennis Knotts, Workers’ Compensation Consultant April 29, 2015 Written Comment	The comment does not address the substantive changes made to the proposed regulations during the 1st 15-day comment period.	None.

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	<p>the Panel QME Form to the employee when a claim was being delayed for medical reasons and to turn the decision regarding compensability over to a PQME; this is not supported by the Labor Code.</p> <p>Commenter states that if you "misread" Labor Code 4062.1 you will come to the conclusion that the Panel QME is supposed to make the initial decision regarding compensability, but notice the wording and Labor Code 4062.1(a) and try to harmonize it with clearer instructions under Labor Code 4060, 4061 and 4062, then you come away with a different mandatory procedure set forth by the Labor Code.</p> <p>Labor Code 4062.1:</p> <p>"(b) If either party requires a medical evaluation pursuant to Section 4060, 4061, or 4062, either party MAY submit a form prescribed by the administrative director..."</p> <p>The first point of Labor Code 4062.1 (b) is that this is a voluntary option, not mandatory. [Labor Code 15: "shall</p>			

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	<p>in mandatory, may is permissive."]</p> <p>The wording of Regulation 9812(g)(3) makes this sending of the PQME Form mandatory. So first of all, there is no legal authority for this.</p> <p>Second, Labor Code 4062.1 notes if there is a required evaluation and then cites three Labor Codes. We need to go to those Labor Codes and see the condition under which a medical evaluation is needed.</p> <p>Labor Code 4060 (a) notes that this is for disputed liability for the entire claim. Paragraph (b) outlines the procedure for obtaining this evaluation without going to a PQME:</p> <p>"(b) Neither the employer nor the employee shall be liable for any comprehensive medical legal evaluation except as provided by this section..."</p> <p>This section would include the 4060 (c) which is the PQME process. If (b) stopped there; then we would be mandated to use the PQME process as your proposed Regulation suggests.</p>			
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	<p>But (b) goes on to note "...However, reports of treating physicians SHALL be admissible."</p> <p>Commenter opines that this empowers the employer/claims administrator to use the treating physician to first address the issue of causation. Your own regulation on Benefit Notices in other paragraphs note the difference between a medical decision based upon a comprehensive medical evaluation versus the decision of the treating physician.</p> <p>As additional position, Labor Code 5402 (c) mandates treatment on Delayed claim. Commenter states that we now have two Labor Codes procedures relating to treatment. Delayed Claims treat under Labor Code 5402 (c). Accepted claims treat under Labor Code 4600. [Note that Labor Code 3602 (c) states that if any of the conditions of compensability do not concur, it is the same "as if this Division had not been enacted." Labor Code 4600 is part of "this Division."]</p> <p>Under Labor Code 3602(c) with Labor</p>			

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	<p>Code 5402(c), Labor Code 4600 is not yet enacted until the conditions of compensation are found to concur. So treatment on a Delayed claim would require treatment within one working day of the DWC-1 being filed, treatment consistent with the MTUS, and treatment to continue until the claim is either rejected or the employer/claims administrator has paid \$10,000 whichever comes first.</p> <p>Why is this important? Because Labor Code 4600 is the procedure for accepted claims. Labor Code 4600 allows the pre-designation of a personal treating physician. Labor Code 4600 allows for the employee to request a change of physician. Labor Code 4600 allows for the employee to assume medical control after thirty days. These rights ARE NOT listed under Labor Code 5402(c). Commenter states that the employer/claims administrator is afforded complete medical control during the delay period of the claim. The way Labor Code 5402(c) is worded by the Legislature shows their intent to give the employer/claims</p>			

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	<p>administrator complete medical control and delayed claims. They chose not to refer back to Labor Code 4600, thereby blocking any legal argument to extend Labor Code 4600 procedure to apply to delayed claims. They chose not to extend the right to pre-designate. They chose not to allow a change of physicians. They chose not to set a limit on the employer/claims administrator's medical control when dealing with a delayed claim.</p> <p>Commenter opines that this regulation violates this complete medical control and mandates that the employer/claims administrator turn over the decision-making process to a PQME against the employer/claims adjusters will. So now we are in violation of Labor Code 3602(c) and Labor Code 5402(c).</p> <p>Labor Code 4061(b) notes that if either the employer or employee "objects to a medical determination made BY THE TREATING PHYSICIAN...". Finally, Labor Code 4062 (a) notes "if either the employee</p>			

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	<p>or employer objects to a medical determination made BY THE TREATING PHYSICIAN..."</p> <p>Commenter states that the three Labor Codes cited in Labor Code 4062.1 clearly instruct the employer/claims administrator to allow the treating physician to make the initial medical determination. THEN if there is a dispute, THEN you go to the PQME process. Commenter states that the proposed regulation ignores these Labor Codes, it makes a voluntary process mandatory; and it blocks what the Legislature clearly intended to be the employer's complete medical control during the Delay and Discovery portion of a claim.</p> <p>Commenter opines that this and similar portions of the proposed regulations should delete any mandatory requirement of the PQME or an AME until after the procedures allowed in Labor Codes 4060, 4061, 4062 and 5402(c) have taken place and a medical determination has been issued.</p>			

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General Comments	<p>Commenter states that initially, many of the amendments to this current version of the Employee Benefit Notice Regulations do contain improvements to conform to AB 335, which amended Labor Code §138.4, subdivision (d), to require that the AD, in consultation with CHSWC, develop and make accessible, both on its website and at district offices, "informational material 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." Further, subdivision (e), prescribed that each notice must "reference the informational material ... to enable employees to understand the context of the notices and shall clearly state the Internet Web site address and contact information that an employee may use to access the informational material."</p> <p>Simply stated, our prior comments stated that each benefit notice must stand on its' own to meet these</p>	Diane Worley, Director of Policy Implementation CAAA May 11, 2015 Written Comment	The Administrative Director thanks the commenter for this comment.	None.

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	notification requirements. CAAA appreciates where our concerns were incorporated into the amendments made to the regulations.			
9810 General Provisions	<p>Commenter states that subdivision (c) (2) is being added to this section to provide that, where the claims administrator has reason to believe that disclosure of the claims examiner’s name presents or may present a security concern towards the personal safety of the claims examiner, the claims administrator may identify an alternate but specific claims department name and telephone number in lieu of the claims examiner’s name and telephone number.</p> <p>Subdivisions (e)(1) and (e)(2) are being amended (in conformity with the above described amendment to subdivision (c)(2)) to provide that notices may be sent either to the claims adjuster or a specific claims department name, as appropriate.</p> <p>Commenter states that CAAA believes that the wording of subdivision (c) is</p>	Diane Worley, Director of Policy Implementation CAAA May 11, 2015 Written Comment	The Administrative Director accepts this comment in part.	Amended language has been distributed

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	<p>too broad and ambiguous and allows too much discretion on the part of the claims adjuster to hide their identity if their “security” is threatened. Does this mean an injured worker who calls several times a day because they have not received benefit payments or medical treatment? Or does it mean threatening the claims adjuster with bodily harm? The word “security” could arguably apply to both situations.</p> <p>CAA recommends that subdivision (c) be amended to only apply in those situations where the claims adjuster has been threatened with bodily harm or other serious threats by an injured employee.</p> <p>CAA further recommends that the claims file must be clearly documented with the incidents leading up to the need to remove the claims adjuster’s name from benefit notices.</p> <p>Lastly, the alternative claims department name and telephone number should not simply be a toll free number for the claims</p>		<p>Subdivision (c)(2) is being amended to require a clearly documented reason to believe that disclosure of the claims examiner’s name presents or may present a security concern towards the personal safety of the claims examiner before the claims administrator may identify an alternate but specific claims department name and telephone number in lieu of the claims examiner’s name and telephone number.</p>	<p>for public comment.</p>

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	<p>organization leading to an automated phone system where you often have to input a claims adjuster name! It should be a direct line to a claims administrator who is assigned to the specific claim.</p> <p>Subdivision (n) is being added to this section to provide that, when the method of service of the benefit notice is electronic, in lieu of regular mail, service shall be through the use of a secure, encrypted email system. The claims administrator will be required to maintain a log of service dates, and receipt acknowledgements, for each benefit notice sent electronically on each claims file, and will be required to produce this log upon demand to the employee, the employee's attorney, if represented and the DWC Audit Unit. If the claims administrator receives notice that an electronic benefit notice was not delivered to the email address provided by the employee, or attorney, if represented, the claims administrator will be required to send the benefit notice to the employee and attorney by regular mail within one (1) business day of</p>			
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	<p>receipt of the failed electronic delivery notice.</p> <p>CAAA recommends that an amendment to subdivision (n) be added to provide that any deadline to comply with the delayed electronic benefit notice be tolled during the period of delay, and that the required time period begin with the date the delayed notice is sent by regular mail.</p>		<p>The Administrative Director does not accept this comment. Tolling of statutory or regulatory deadlines is a judicial issue reserved to the Workers' Compensation Appeals Board.</p>	<p>None.</p>
<p>9812 Benefit Payment and Notices</p>	<p>Commenter states that subdivision (a)(2)(A) is being amended to provide (for represented employees) that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators.</p> <p>Subdivision (e)(2)(A)(3) has a similar requirement that the employee must contact the claims administrator for</p>	<p>Diane Worley, Director of Policy Implementation CAAA May 11, 2015 Written Comment</p>		

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	<p>the request for a QME panel when they are disputing an evaluation by the treating doctor.</p> <p>In contrast, subdivision (h)(1)(B) provides that if an unrepresented employee has not previously received a comprehensive medical evaluation for the claim, the notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators.</p> <p>CAAA continues to believe that the QME panel request form must always be attached to any notice to the injured employee which includes the right to request an assignment of a panel of Qualified Medical Evaluators. This notice must include at the top “You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully. “</p> <p>The burden should never be on the injured worker to contact the claims administrator to get a form, particularly one which has a strict</p>		<p>The Administrative Director does not accept this comment.</p> <p>Provision of the QME panel form with all notices has led to many injured workers being confused, and believing that they were required to submit the form whenever it was received. This required the DWC Medical Unit to deny the panel requests, and advise the injured workers of the reasons for the denial. This placed an unnecessary workload on the Medical Unit.</p>	<p>None.</p>

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	<p>statutory time limit where they may lose rights to obtain a medical evaluation if they don't act within 10 days. It is sometimes very difficult to reach a claims administrator by phone, and it could take several days before an injured employee may be successful, despite their best efforts.</p> <p>As an alternative, the notice could also provide an online link to request the QME panel form. This notice should also provide the telephone number and local address of the Information and Assistance Office.</p> <p>Therefore, CAAA recommends that all notice requirements in Section 9812 be amended to require that each notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators (where applicable).</p>		<p>The Administrative Director accepts this comment in part.</p> <p>Subdivisions (a)(2)(A)2, (a)(3)(A)1, (a)(3)(A)2, (a)(3)(A)3, (d)(1)(B), (e)(2)(A)3, and (e)(3)(A)2 are being amended to provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:</p> <p>i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>Lastly, subdivision (h)(3) is being amended to advise the employee to “immediately” send in their medical bills for consideration of payment. CAAA recommends the word “immediately” be deleted. There is no statutory authority to require an injured employee to submit bills for medical services “immediately”, nor does this word have any clear meaning in the context of these regulations.</p>		<p>form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or</p> <p>ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (Note: the notice will be required to provide the employee with the url to enable the employee to download the applicable form.)</p> <p>The Administrative Director does not accept this comment.</p> <p>The requirement is only for the claims administrator to advise the employee to immediately send in his or her medical bills for consideration of payment. The employee is not required to do so, and there is no penalty if they do not. The Administrative Director</p>	<p>None.</p>

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	<p>In summary, while CAAA does not oppose the basic vision and principles of a "streamlined benefit notice program", CAAA does not believe this should place additional burdens on injured workers to request forms or notices which were previously provided by the claims administrator.</p> <p>CAAA also believes that these regulations must not ignore the requirements of what each benefit notice must contain as set forth in Labor Code section 138.4, nor the need for easy accessibility to this information for all of California's injured workers.</p>		<p>believes that the word "immediately" is sufficiently clear as a matter of everyday usage.</p> <p>The Administrative Director believes that the proposed regulations do not unreasonably burden employees, and comply with Labor Code section 138.4's mandate.</p>	None.
9810 General Provisions	<p>Commenter recommends that language be included in section 9810(a) allowing a 180-day implementation period from the effective date of the regulations.</p> <p>Commenter notes that while the</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p>	The Administrative Director accepts this comment in part.	The amended regulations will have an effective date of January 1, 2016.

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	<p>informational material, fact sheets, and alternate procedures for communicating with the injured worker have changed, the revisions to the benefit notice system will still require considerable reprogramming and process adjustment by claims administrators, in part because many claims administrators incorporate the information developed by the Division into their own notices. Commenter states that a reasonable period of time must be permitted for these system revisions.</p>	<p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) May 11, 2015 Written Comment</p>		
9810 General Provisions	<p>Commenter notes that section 9810(d) requires all notices to refer to the specific chapter number and Internet URL of the Guidebook that relates to the notice being sent.</p> <ol style="list-style-type: none"> 1. Commenter recommends that the Guidebook be updated, as necessary. 2. All versions of the Guidebook posted at any given time must be archived and readily available, so that injured workers, attorneys, and judges can ascertain what information was provided to the worker if a dispute arises. 	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) May 11, 2015</p>	<p>The Administrative Director agrees in principle with these comments, and intends to do as the commenter suggests. The comments, however, related to the substance and maintenance of the Guidebook and the DWC website are outside the scope of this regulatory proceeding.</p>	None.

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	<p>3. The Division must keep the workers' compensation community apprised of any revised or new notice information in the Guidebook.</p> <p>Commenter notes that the purpose of benefit notices and the Guidebook is to provide the injured worker with up-to-date, accurate, and comprehensive information regarding the workers' compensation benefits being provided. Commenter states that the use of the DWC website is essential to better inform injured workers, and that it is crucial that it contain current, accurate information in order to avoid misinforming the injured worker. Statutory changes, new regulations, and case law changes must be promptly posted so that obsolete or conflicting information is eliminated. Commenter notes that the current Guidebook has not been updated in over a year and is obsolete in several significant areas. Since both the claims administrator and the I & A Office will refer the injured worker to the Division's website, it is important that this information be current and correct and that the Division notify the</p>	Written Comment		

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	workers' compensation community whenever the Guidebook is revised.			
9810 General Provisions	<p>Commenter recommends the deletion of section 9810, subdivisions (l), (m), and (n), regulating the electronic delivery of benefit notices.</p> <p>Commenter states that the administrative burden of the proposed regulations is such that claims administrators will have to opt out. The IT requirements alone will overwhelm most current claims systems. The requirement to create a log of every e-mail notice and acknowledgement is excessive and beyond what the current process requires. The log imposes excessive administrative burden and cost not to enhance communication with the injured worker but for review by the DWC audit unit. Compelling the injured worker to acknowledge every e-mail notice is unworkable, as they may or may not acknowledge receipt and may not understand the need to do so. Under the proposed regulations, if no acknowledgement is received then the claims administrator must send a</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) May 11, 2015 Written Comment</p>	<p>The Administrative Director does not accept these comments.</p> <p>The claims community asked for the ability to send benefit notice electronically and will benefit economically from doing so.</p> <p>The Administrative Director believes that the proposed regulations are balanced and impose reasonable procedural requirements for the protection of the employees to whom benefit notices are sent while not unduly burdening claims administrators.</p> <p>The Administrative Director notes that there is no requirement for employees to acknowledge receipt of each notice, only for the claim administrator to send a hard copy if their email system</p>	None.

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	<p>redundant paper notice.</p> <p>Commenter states that the mandate to encrypt the notices will necessitate a new, separate IT platform because most current systems cannot manage these requirements. The proposed regulations do not allow the injured worker to agree to receive benefit notices and other communications electronically by any other means, so there is no flexibility. Commenter states that the cost of compliance exceeds the benefit of electronic communication.</p> <p>Electronic communication is a global issue for the workers' compensation system and commenter recommends that the division should reconsider a regulatory system that addresses the utility of electronic communication for all areas. Commenter recommends that the Division delete the regulation of electronic communication relating to benefit notices and allow claims administrators and employers to use various means of communication with injured workers as systems evolve.</p>		reports a delivery failure.	

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9813 Vocational Rehabilitation Notices	Commenter suggests renumbering the sections that follow deleted section 9813.	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) May 11, 2015 Written Comment</p>	The Administrative Director does not accept this comment. Section 9813 is being reserved for possible future use.	None.
9881.1 Notice to Employees Poster	<p>Commenter recommends retaining the modifications and requests that the Division consider reorganizing the form content to avoid unnecessary duplication and the splitting of information that addresses the same subject, most particularly on predesignation.</p> <p>Commenter notes that there were very few modifications to the proposed revisions. Commenter supports those modifications, but continues to believe</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation</p>	The Administrative Director does not accept this comment. The Administrative Director believes that the currently proposed version of the Poster is clear.	None.

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	that reorganizing the material on the form, as recommended in the their written testimony dated September 3, 2014, will add clarity and avoid confusion caused by unnecessary duplication or splitting of information, particularly on the subject of predesignation, which is addressed in four different places on the form.	Institute (CWCI) May 11, 2015 Written Comment		
10139 – Notice of Potential Eligibility (NOPE)	<p>Commenter supports and recommends the retention of the modification as they increase the accuracy of the notice.</p> <p>Commenter requests the consideration of incorporating other revisions recommended by the organization in its written testimony dated September 3, 2014.</p> <p>Commenter notes that there were very few modifications to the proposed NOPE revisions. Commenter supports those modifications but continues to believe that additional improvements are necessary to improve the flow, tone, and accuracy of the notice and to delete unnecessary detail.</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers’ Compensation Institute (CWCI) May 11, 2015 Written Comment</p>	<p>The Administrative Director thanks the commenter for this comment.</p> <p>The Administrative Director does not accept this comment.</p> <p>The Administrative Director made clarifying changes to the NOPE in response to this and other commenters’ suggestions, and believes that the currently proposed version of the NOPE is clear.</p>	<p>None.</p> <p>None.</p>

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	<p>The commenter states that the recommendations will:</p> <ul style="list-style-type: none"> • improve the flow by consolidating reorganizing the information in the notice for better comprehension and provide a more succinct notice • provide information in a matter-of-fact way that will reassure and not alarm the injured employee at the stressful time of injury • focus the Notice on potential benefits as required by the statute, rather than on potential disputes • improve the accuracy of the Notice • shorten the notice and lessen its complexity by removing the nonessential detail and minutiae that is not required by statute 			
10139 – Claim Form (DWC 1)	<p>Commenter recommends the deletion of the words “only” and “solo” from item number 8 on the claim form.</p> <p>Commenter states that this change is necessary because as written in item number 8, the language implies that the employee will receive every notice electronically; however, the claims administrator may choose to offer to</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p>	<p>The Administrative Director does not accept this comment.</p> <p>Receiving some benefit notices electronically and some in paper form, at the claims administrator’s option, would be confusing to most employees. Under the regulations, claims</p>	None.

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	<p>electronically issue certain types of notices, such as MPN notices, but may not choose to offer to issue indemnity notices electronically. In addition, if the electronic transmission is returned or unsuccessful for any reason, the claims administrator will follow up by mailing the notice.</p> <p>Commenter supports, and recommends, retaining the other modifications made to this form.</p>	<p>California Workers' Compensation Institute (CWCI) May 11, 2015 Written Comment</p>	<p>administrators are not required to send benefit notices electronically. Whether or not they choose to offer an electronic service option, (absent a documented delivery failure of electronic service), they must send all notices by the same method.</p>	
<p>9810 General Provisions</p>	<p>Commenter notes that the effective date of the regulations is not specified in this or subsequent sections pertaining to Benefit Notices in Article 8. While the new DWC 1 and DWC 7 Forms indicate an effective date of January 1, 2016, the effective date of regulations is not described.</p> <p>Commenter recommends that DWC specify the effective date of benefit notice regulations. Based on DWC's changes to forms DWC 1 and DWC 7 and Newline No. 2015-37, it appears that DWC intends to make regulations effective January 1, 2016. However, that period is not specified in the</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund May 11, 2015 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>While forms bear the effective date of their revisions, regulations do not generally set forth their effective dates. That information is contained in the rulemaking notices and/or Final Statement of Reasons.</p>	<p>None.</p>

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	<p>regulations themselves. Given the extensive changes to benefit information language, commenter recommends that DWC should allow ample time for claims administrators to implement changes and ensure that correct language is included in benefit notices sent to the employee.</p>			
<p>9812 Benefit Payment and Notices</p>	<p>Commenter notes that in cases where the claims administrator makes a determination based on the findings of the treating physician, proposed revisions to the regulations (§§ 9812(a)(2)(A)(2), 9812(a)(3)(A)(3), 9812(e)(2)(A)(3), and 9812(e)(3)(A)(2)) require that the benefit notice "...advise the employee that if he or she disagrees with the results of the evaluation, the employee must contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators."</p> <p>Commenter states that the method of "contact" is not defined and it is</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund May 11, 2015 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p>	

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	<p>unclear what constitutes valid communication from the employee to the claims administrator. Commenter opines that if left undefined, this could lead to potential disputes and filings at the Workers’ Compensation Appeals Board (WCAB).</p> <p>Commenter recommends that DWC expressly indicate what constitutes employee contact in § 9812. Ideally, the employee should be required to contact the claims administrator in writing within the applicable time limits prescribed in Labor Code § 4062(a).</p> <p>Commenter notes that the proposed revisions to QME regulations abolish the QME Form 106 for dates of injury on or after January 1, 2005.</p> <p>Therefore, the noted sections of the Benefit Notice regulations are confusing because they indicate that the employee may obtain the QME Form from the claims administrator, but do not differentiate between unrepresented and represented employees.</p>		<p>The Administrative Director believes that the word “contact” is sufficiently clear as a matter of everyday usage.</p>	<p>None.</p>

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	<p>Commenter notes that since the proposed modifications to QME regulations have not been finalized, DWC should ensure that Benefit Notice regulations are in line with proposed QME regulations. This would promote consistency, avoid confusion, and eliminate the need for future revisions to either set of regulations.</p>		<p>The Administrative Director does not accept this comment.</p> <p>Until the modifications to the QME regulations are finalized, it would be premature to further amend the benefit notice regulations. Once the modifications to the QME regulations are final, the benefit notice regulations will be further amended if necessary.</p>	None.
General Comments	<p>Commenter recommends that DWC allow claim administrators to determine when and how they establish electronic communication with injured workers. Claims administrators differ in size and structure – ranging from national insurance companies to regional self-administered programs. Each administrator will have different information technology infrastructure, capacity, and resources. Commenter recommends that DWC should allow for flexibility in electronic communications instead of mandating</p>	<p>Jeremy Merz Policy Advocate CalChamber May 11, 2015 Written Comment</p>	<p>The Administrative Director does not accept these comments.</p> <p>The claims community asked for the ability to send benefit notice electronically and will benefit economically from doing so.</p> <p>The Administrative Director believes that the proposed regulations are balanced and impose reasonable procedural requirements for the protection</p>	None.

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	<p>a one-size-fits-all approach.</p> <p>Commenter stressed the need to regularly update and maintain the Guidebook posted on the Department of Industrial Relation’s webpage. The current Guidebook is out of date and does not reflect many of the statutory and regulatory changes associated with the recent reforms. Additionally, commenter recommends that DWC maintain online archives of the prior Guidebooks. This will allow claims administrators easy reference to, and a better understanding of, system rule changes.</p> <p>Commenter applauds DWC for proposing regulations that allow for the more environmental friendly and efficient electronic benefit notice delivery. Commenter encourages expansion of this policy to <i>all</i> notices and transmissions in the workers’ compensation system including medical utilization review, PAR audits and Labor Code section 5816 audits.</p>		<p>of the employees to whom benefit notices are sent while not unduly burdening claims administrators.</p> <p>The Administrative Director agrees in principle with these comments, and intends to do as the commenter suggests. The comment, however, related to the substance and maintenance of the Guidebook is outside the scope of this regulatory proceeding.</p> <p>The Administrative Director does not accept this comment.</p> <p>Comments about other workers’ compensation notices are beyond the scope of this rulemaking. The Administrative Director invites the commenter to resubmit this comment in future rulemaking</p>	<p>None.</p> <p>None.</p>

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	<p>Given the onramp time needed to make system upgrades necessary to comply with the proposed regulations, the commenter urges the DWC to provide a 180 day implementation period after the Office of Administrative Law has issued an approval of the regulations.</p>		<p>related to those topics.</p> <p>The Administrative Director accepts this comment in part.</p>	<p>The amended regulations will have an effective date of January 1, 2016.</p>
<p>9810 General Provisions</p>	<p>Commenter observes that with respect to section 9810(d)(2)(g), while many claims administrators continue to upgrade current system platforms, he feels that mandating bold font on the notices requires overhauling claims administrators' IT infrastructure - a costly process that would require outside specialists to upgrade systems. Commenter opines that any de minimis benefits the bold font adds to the notice are significantly outweighed by the significant costs and resources necessary to upgrade the system. Commenter recommends that this requirement be reconsidered and removed. Commenter states that perhaps at some future date this requirement may be necessary, but he</p>	<p>Jeremy Merz Policy Advocate CalChamber May 11, 2015 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>This is not a new or unreasonable requirement. The current benefit notice regulations already require some notices to contain mandatory language in 12 point bold font.</p>	<p>None.</p>

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	suggests that it be removed at this time and allow claims administrators to address their system improvements.			
9810 General Provisions	Commenter agrees with the requirement in section 9810(d)(2)(i) to have the employee document their agreement to receive electronic benefit notices. However, existing secure system portals already allow employees to receive electronic benefit notices. Commenter does not believe that a separate process is necessary for attorneys. Rather, the employee may simply allow their attorney access to the portal by providing him or her with the password.	Jeremy Merz Policy Advocate CalChamber May 11, 2015 Written Comment	The Administrative Director does not accept this comment. While an attorney may wish to receive benefit notices electronically, their clients may not. A separate right for an attorney to receive electronic notices is necessary. In addition, the use of an electronic portal “to allow employees to receive electronic benefit notices” is contrary to both the current and proposed regulations. The use of such a portal may expose the claims administrator to audit penalties.	None.
9810 General Provisions	Commenter states that the proposed revision to section 9810(d)(2)(n) is contrary to the existing receipt requirements for paper notices. Commenter does not understand why the Administration is requiring a	Jeremy Merz Policy Advocate CalChamber May 11, 2015 Written Comment	The Administrative Director does not accept these comments. The claims community asked for the ability to send benefit	None.

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	<p>higher standard for electronic notices when these types of communications are readily retrievable. Oftentimes the employee does not accept delivery and read receipts which, under this language, would result in the claims administrator not receiving receipt verification.</p> <p>Commenter states that while sending something encrypted may not be an issue, ensuring that the employee's end allows for the document to be unencrypted may be difficult. This also raises concern with sending medical reports via the email system, encrypted or not.</p> <p>Commenter recommends that the regulation be revisited by utilizing a secure Web Portal for communications with the employee.</p> <p>As one major medical system does, the sender initiates an email to the patient (in our case the employee) at the time when a notice is uploaded to the portal. As the employee accesses the portal to review the notice, the item is marked as having been read.</p>		<p>notice electronically and will benefit economically from doing so.</p> <p>The Administrative Director believes that the proposed regulations are balanced and impose reasonable procedural requirements for the protection of the employees to whom benefit notices are sent, while not unduly burdening claims administrators.</p> <p>The Administrative Director notes that there is no requirement for employees to acknowledge receipt of each notice, only for the claim administrator to send a hard copy if their email system reports a delivery failure.</p> <p>With respect to the use of a web portal, claims administrators are required under the Labor Code and regulations to send benefit notices to employees, not ask employees to log onto a</p>	

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	<p>Commenter states that this Portal option solves the following issues:</p> <ol style="list-style-type: none"> 1. The Portal is secure and can be accessed only the employee with their unique password. 2. A claim or ID number is referenced and the patient (or employee) created password to facilitate access. 3. The Portal would also serve as a log – recording all items sent to the employee and tracking every accessed transaction or communication. <p>Commenter observes that this Portal could also be used to house medical reports, in the event an attorney needed access to the reports. In addition, this cost effective and efficient communication Portal may preclude the need for copy service or service of records.</p> <p>In the future, commenter states that it is foreseeable that his organization may consider using this single portal for subpoenaed medical records and depositions.</p>		<p>website to retrieve them.</p>	

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	<p>Commenter states that this section creates uncertainty regarding the format of email logs. It is unclear whether it mandates: (1) a single line item log of every email sent to every employee; (2) a separate log for each claim utilizing the email option in addition to a master log of all claims receiving benefit notices electronically or; (3) something else entirely. Commenter requests that DWC provide clarity.</p>		<p>The Administrative Director does not accept this comment.</p> <p>Section 9810 currently requires that “Copies of all benefit notices sent to injured workers shall be maintained by the claims administrator in the claims file. In lieu of retaining a copy of any attachments to the notice, the claims administrator may identify the attachments by name and revision date on the notice. These copies may be maintained in paper or electronic form.”</p> <p>The Administrative Director believes that the requirement that “the claims administrator shall maintain a log of service dates, and receipt acknowledgements, <i>for each benefit notice sent electronically on each claims file</i>” is clear.</p>	