

<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
10139 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Liability	<p>Commenter notes that the proposed modification to the first paragraph adds a 14 day deadline for a claims administrator to notify an employee of whether their claim is accepted or whether additional investigation is needed. Commenter points out that this modification does not state which event triggers this 14 day deadline. Does the 14 day period begin to run after the employee files a workers' compensation claim with their employer? Or is the 14 day period triggered by the first day the employee loses time from work? Or is there some other event that triggers the above 14 day period?</p> <p>Commenter recommends that this language be amended to clearly state which event starts the 14-day period.</p>	Kristyn Lum, Esq. Aderant August 13, 2014 Written Comment	The Administrative Director accepts this comment.	<p>The proposed language has been revised to clarify that filing a claim triggers the 14 day period.</p> <p>The revised language has been distributed for public comment.</p>
10139 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Liability	<p>Commenter notes that the last paragraph under "The Primary Treating Physician (PTP)" section replaces the term "employer" with the term "claims administrator."</p> <p>Commenter alleges that replacing "employer" with "claims</p>	Kristyn Lum, Esq. Aderant August 13, 2014 Written Comment	The Administrative Director accepts this comment.	<p>The proposed language has been revised to add a reference to the employer.</p> <p>The revised language has been distributed</p>

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	<p>administrator” is inconsistent with Labor Code Section 5402(c), which states:</p> <p>Within one working day after an employee files a claim form under Section 5401, the employer shall authorize the provision of all treatment, consistent with Section 5307.27, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).</p>			for public comment.
9881.1 Notice to Employees Poster	<p>Commenter states that replacing “employer” with “claims administrator” in item 2 “Report Your Injury” is inconsistent with Labor Code Section 5402(c), which states:</p> <p>Within one working day after an employee files a claim form under Section 5401, the employer shall authorize the provision of all treatment, consistent with Section</p>	Kristyn Lum, Esq. Aderant August 13, 2014 Written Comment	The Administrative Director accepts this comment.	<p>The regulatory language has been revised to add a reference to the claims administrator.</p> <p>The revised language has been distributed for public comment.</p>

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	<p>5307.27, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).</p> <p>To avoid confusion and promote consistency, commenter recommends updating item 2 “Report Your Injury” under the “If You Get Hurt” section of 8 CCR 9881.1, the Notice to Employees Poster to change “employer” to “claims administrator.” Commenter states that if the terms “employer” and “claims administrator” are meant to be interchangeable, references to both the employer and the claims administrator (i.e. “employer/claims administrator”) should be included to remain consistent with Labor Code Section 5402(c).</p>			
9812 (multiple sections)	Commenter opines that the language describing the 10 day rule in the QME process is overreaching and misleading. Commenter notes that the language assures (promises) the	Martin Brady August 21, 2014 Written Comment	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

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	<p>employee that the examiner will be taking actions that are not required and will not likely be taken. Commenter states that the requirements placed upon the claims administrator in the 10 day paragraph are greater than the requirements under Labor Code section 4062.1 which states:</p> <p>If the employee has requested a panel, and if the employee has notified the administrator of the QME selection within 10 days of the assignment of the QME panel but does not follow through with the actual scheduling of the appointment within that same 10 day period, then the administrator will schedule the appointment for the employee (with the QME he/she selected within the 10 day period.)</p> <p>Commenter notes that the first portion of the regulatory language is accurately stated. It advised that the claims administrator has the right to request a QME if the employee fails to do so. Commenter notes that the regulation then goes on to state that the claims administrator will schedule</p>			

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	<p>the appointment with the QME (regardless of whether or not they were notified of the selection within 10 days of the assignment).</p> <p>Commenter states that this suggests that the claims administrator will always take action whenever the employee fails to do so. Commenter notes that the language in the regulation also advises that the claims administrator will choose the QME if the employee receives the panel and does nothing. Commenter states that the claims administrator is not required to exercise that right. Commenter states that the claims administrator is not required to force the QME process when relying on the admissible treating physician reports.</p> <p>Commenter recommends that this section be modified to be consistent with Labor Code section 4062.1 by replacing the term “will” with “may” wherever “may”; is appropriate by statute.</p>			
9812 (multiple sections)	Commenter notes that under the existing regulations that are currently	Rhonda Hoglen August 22, 2014	The Administrative Director accepts this comment in part.	Revised language has been distributed for

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	<p>in use, the claims administrator is not currently required to attach a QME Panel Request Form with a claim denial sent to the injured worker.</p> <p>Commenter requests that this requirement be removed and made consistent with the current process and that that process be applied to all other notices under the proposed regulations. Commenter notes that with other notices, the employee has to express disagreement with the determination and request the form.</p>	Written Comment		public comment.
General Comment	<p>Commenter thanks the division for its work on the regulations, and acknowledges the pre-rulemaking process and work put in by the CHSWC and AB 335 by Jose Solorio. Commenter states that that consensus was that there was too much information being provided to the injured workers at one time which was leading to more confusion and disputes. Commenter would like the Division to keep this in mind while moving forward with these regulations.</p>	<p>Jason Schmelzer CCWC September 3, 2014 Oral Comment</p> <p>Jeremy Merz CalChamber September 3, 2014 Oral Comment</p>	The Administrative Director thanks the commenter for these comments.	None.

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	<p>Commenter states that in AB 335, there was a discussion of a booklet that would be available, both in hard copy and online containing information for the injured worker that would be referenced in the benefit notices. Commenter supports this idea.</p>			
<p>General Comment – Implementation Time</p>	<p>Commenter states that the proposed regulations on benefit notices will require claims administrators to complete a substantial amount of preparation, training, and computer reprogramming in order to ensure compliance.</p> <p>Commenter notes that revisions to the benefit notice regulations were last adopted by the DWC on December 11, 2007, but the effective date for benefit notices was not until April 9, 2008. This gave claims administrators approximately 120 days to complete system upgrades and workforce training necessary to ensure compliance.</p> <p>Commenter requests that the Division provide claims administrators at least</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 3, 2014 Oral Comment September 2, 2014 Written Comment</p>	<p>The Administrative Director accepts this comment.</p>	<p>The amended regulations will have an effective date of January 1, 2016.</p>

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	120 days to implement the proposed regulatory changes once they have been adopted.			
9810(h) and (i)	<p>Commenter notes that both of these sections indicate that a claims administrator is to send benefit notices electronically to the injured worker and applicant attorney upon their documented agreement. Commenter is concerned that the language in these sections would require a claims administrator to provide for electronic delivery of benefit notices even in situations where they are not capable of doing so.</p> <p>Commenter requests that these sections be modified to indicate that benefit notices can be delivered electronically “upon documented agreement of the parties” to ensure that this is only required when both parties consent.</p> <p>Commenter is concerned that the applicant and injured workers that opt for electronic delivery of benefit notices under these sections may also believe that they can respond to those benefit notices electronically.</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p> <p>September 3, 2014 Oral Comment</p>	<p>The Administrative Director accepts this comment in part.</p> <p>In response to the comments submitted by the State Compensation Insurance Fund, the regulations have been clarified to state that electronic notices may be received only when the claims administrator offers the service, and upon the documented written agreement of the employee.</p> <p>The Administrative Director accepts this comment. The regulatory language has been revised to provide that electronic delivery of benefit notices by a claims</p>	<p>Revised language has been distributed for public comment.</p> <p>Revised language has been distributed for public comment.</p>

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	<p>Commenter notes that claims administrator may be prepared to deliver benefit notices electronically, but may not be equipped to receive and process responses.</p> <p>Commenter requests that the Division revise the regulations to clarify that they facilitate electronic delivery of benefit notices, but that injured workers and applicants’ attorneys need to follow standard protocols for all communications and requests sent to the claims administrators.</p> <p>Commenter notes that some benefit notices are required to be served along with medical reports and that the electronic delivery for these medical reports required by this section have potential HIPPA concerns.</p> <p>Commenter requests that the Division clarify the regulations to specify if medical reports accompanying benefit notices are to also be served electronically and what obligations the parties have to protect privacy. Commenter requests that if medical records are not to be delivered</p>		<p>administrator does not constitute consent to accept electronic service of any communications sent to the claims administrator.</p> <p>The Administrative Director accepts this comment in part.</p> <p>Although HIPAA does not apply to workers’ compensation matters, the regulatory language has been revised to require 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.</p>	<p>Revised language has been distributed for public comment.</p>

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	electronically that the regulation should specify how they are to be delivered, i.e. to be mailed under separate cover.			
9811(d)	<p>Commenter states that the definition of “dependent” used is too broad and should be revised. Commenter recommends that the last sentence that includes the phrase “the parent or legal guardian of a minor dependent child” be eliminated because that description alone does not qualify someone as a dependent.</p> <p>The commenter suggests amending the section as follows:  (d) “Dependent” means any person who may be or is claimed to be entitled to workers’ compensation benefits as a result of an employee’s death (including compensation which was accrued and unpaid to an injured employee before his or her death). <del>); and includes the parent or legal guardian of a minor dependent child.</del></p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p> <p>September 3, 2014 Oral Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The benefit notice regulations do not affect the determination of who is a dependent, only who is entitled to receive benefit notices, and the mandatory content of those notices. Determinations of dependency are a legal issue for determination by the WCAB.</p>	None.
9811(j)	Commenter notes that the definition of “medical issue” in the proposed regulations differentiates between	Jason Schmelzer CCWC	The Administrative Director acknowledges this comment, and will revise the definition if	None.

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	<p>certain labor code sections. Commenter does not oppose the definition as drafted, but notes that the definition may need to be revised depending upon how <i>Dubon v. World Restoration, Inc.</i> is resolved by the courts.</p>	<p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	<p>it should prove necessary.</p>	
9812(d)	<p>Commenter requests that the Division add language that a copy of the medical report be attached “if not previously provided.” Commenter opines that if the notice is related to stopping PD that it would be possible that the medical report would have been sent before when PD was started or with the notice that PD exists.</p> <p>Commenter recommends that language requiring the attachment of medical records should be modified throughout the regulations to be “upon request.”</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>Injured workers do not always have immediate access to their medical reports. For those notices where attachment of the report is required, the injured worker needs immediate access to the report, and may not have the time to find their copy or request a replacement copy.</p>	None.
9812(e)(1)	<p>Commenter alleges that the first sentence of this paragraph incorrectly states that claims administrators are responsible for sending this notice “at the same time” as the last payment of temporary disability indemnity.</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014</p>	<p>The Administrative Director does not accept this comment.</p> <p>The existing regulation requires that the notice be sent “together with” the last TD</p>	None.

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	<p>Commenter notes that the current state of the law is that this notice must be sent within 14 days of the last payment of temporary disability indemnity.</p> <p>Commenter requests that the division revised this section to properly indicate that the notice must be sent within 14 days of the last payment of temporary disability indemnity, not “at the same time.”</p>	Written Comment	payment. The regulation is being amended, at the request of claims administrators, to permit it to be given “at the same time as” the last payment of temporary disability indemnity to accommodate claims administrators that mail their notices and checks from separate locations, often in different states.	
9812(e)(3)	<p>Commenter claims that the first sentence in this paragraph reads awkwardly and is unclear. Commenter recommends the following revised language:</p> <p>Notice That No Permanent Disability Exists. <del>In cases where the employee has sustained compensable lost time from work, if the claims administrator alleges that the injury has caused no permanent disability in a case where either the employee has received payment of temporary disability indemnity or the employee claims permanent disability, the claims administrator shall advise the employee that no permanent disability</del></p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	The Administrative Director does not accept this comment, and believes that the language is clear.	None.

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	<p><u>indemnity is payable. Where the employee has received payment of temporary disability indemnity or the employee claims permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable if the claims administrator alleges that the injury has caused no permanent disability.</u> This notice shall be sent 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. <del>If the claims administrator's determination is based on a medical report, a copy of the medical report(s) shall be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.</del></p>		<p>The Administrative Director does not accept this portion of the comment.</p> <p>Injured workers do not always have immediate access to their medical reports. For those notices where attachment of the report is required, the injured worker needs immediate access to the report, and may not have the time to find their copy or request a replacement copy.</p>	None.

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9812(e)(4)	<p>Commenter states that the first sentence of this paragraph incorrectly states that claims administrators are responsible for sending this notice “at the same time” as the first payment of permanent disability indemnity. Commenter notes that the current state of the law is that this notice must be sent within 14 days of the last payment of temporary disability indemnity.</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The existing regulation requires that the notice be sent “together with” the last TD payment. The regulation is being amended, at the request of claims administrators, to permit it to be given “at the same time as” the last payment of temporary disability indemnity to accommodate claims administrators that mail their notices and checks from separate locations, often in different states.</p>	None.
9812(h)(3)	<p>Commenter requests that the Division revise this section so that employers are also required to notify injured workers of the applicable 18-month statute of limitations to ensure that injured workers have the appropriate information in a timely fashion.</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	<p>The Administrative Director accepts this comment in part.</p> <p>Rather than refer to a specific time frame, the language will be revised to advise that the bills should be submitted “immediately”.</p>	Revised language has been distributed for public comment.
10139 – Notice of Potential Eligibility	<p>Commenter states that this proposed notice is far too long and confusing for most injured workers to actually read and absorb. Commenter agrees with</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz</p>	<p>The Administrative Director does not accept this comment.</p> <p>The proposed amendments to</p>	None.

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	CHSWC in their assertion that benefit notices and other communications to the injured worker contain only the information necessary for the injured worker <i>at that time</i> . Commenter opines that the proposed Notice of Potential Eligibility is far too long and contains information that could be more appropriately communicated in the “booklet” (hard copy and electronic) required by AB 335 (Solorio, 2011).	CalChamber September 2, 2014 Written Comment	the Notice of Potential Eligibility were drafted in collaboration with CHSWC, and set forth the essential information the Administrative Director and CHSWC believe an injured worker needs to know at the time of injury.	
9881.1 Notice to Employees Poster	<p>Commenter states that under “Benefits,” the description of “Supplemental Job Displacement Benefit” should be altered to reflect the need to have permanent disability in order to be eligible for this benefit.</p> <p>Commenter states that this clarification would better inform the injured worker and reduce confusion and dispute.</p>	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.
9881.1 Notice to Employees Poster	Commenter states that their coalition believes that paragraph 3 of the section on page 1 titled “If You Get Hurt” could be made clearer by modifying the last sentence to be explicit that the \$10,000 in medical treatment is only provided until the	<p>Jason Schmelzer CCWC</p> <p>Jeremy Merz CalChamber September 2, 2014 Written Comment</p>	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

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	claim has been officially accepted or denied.			
General Comment	Commenter recommends that the Division give the insurer at least 150 or 180 days to come into compliance with these regulations once the final version has been adopted by the Office of Administrative Law.	Jason Schmelzer CCWC  Jeremy Merz CalChamber September 3, 2014 Oral Comment	The Administrative Director accepts this comment.	The amended regulations will have an effective date of January 1, 2016
9881.1 Notice to Employees Poster	<p>Commenter references the section “If You Get Hurt” and recommends the following revised language to item number four as follows:</p> <p>4. Medical Provider Networks. Your employer may be using an MPN, which is a group of health care providers <del>selected</del> <b>designated</b> to provide treatment to workers injured on the job. <b><u>If your employer is using a MPN, a MPN notice should be posted next to this poster to explain how to use the MPN.</u></b> <del>If you have predesigned a personal physician or medical group prior to your work injury, then you may go there to receive treatment from your predesignated doctor. If you have not predesignated and your employer is using a MPN, you are free to choose</del></p>	Jason Schmelzer CCWC  Jeremy Merz CalChamber September 3, 2014 Oral Comment	<p>The Administrative Director accepts this comment in part.</p> <p>The Administrative Director agrees that “designated” is a better choice of words than “selected”.</p> <p>The requirement to post a separate MPN notice (referred to in the comment as “lines 2 and 3” and “the second sentence”) was repealed.</p> <p>The Administrative Director agrees that the third and fourth sentences are redundant.</p>	<p>Revised language has been distributed for public comment.</p> <p>None.</p> <p>Revised language has been distributed for public comment.</p>

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	<p><del>an appropriate provider from the MPN list after the first medical visit direct to your employer. If you are treating with a non-MPN doctor for an existing injury, you may be required to change to a doctor within the MPN.</del> For more information, see the MPN contact the information below:</p> <p>Commenter recommends changing “selected” to “designated” to more accurately describe the situation.</p> <p>Commenter recommends keeping the second sentence.</p> <p>Commenter recommends striking the third, fourth and fifth sentences.</p> <p>Commenter notes that the Notice to Employees is not bolded anywhere except the sentence regarding predesignation and he recommends not bolding this sentence because bolding appears to suggest that predesignation is preferred.</p>		<p>The Administrative Director does not agree that the fifth sentence is redundant.</p> <p>The Administrative Director agrees that bolding the predesignation language is unnecessary.</p>	<p>None.</p> <p>Revised language has been distributed for public comment.</p>
9810(c), 9810(d)(1), 9810(d)(2)	Commenter notes that this subdivision requires that all benefit notices clearly identify the claims adjuster’s name, telephone number, and mailing	Peggy Thill Claims Operations Manager State Compensation	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

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	<p>address. Commenter states that DWC is proposing to revise the “employee’s remedies” language such that it instructs the employee to “please call me” (alongside the adjuster’s name and telephone number) if the employee has any questions. Commenter recommends language that allows the claims administrator to safeguard or protect the identity of the claims adjuster when it has reason to believe that disclosure may endanger the adjuster’s personal safety.</p> <p>Commenter recommends the following revised language:</p> <p>(c) Benefit notices, excepting those notices whose language or format <del>are</del><u>is</u> set forth in statute or where a specific notice form has been adopted as a regulation, may be produced on the claims administrator's letterhead. All notices shall identify the claims administrator's name, mailing address, telephone number and website address if available, the employee's name, employer's name, the claim number, the date the notice was sent to the employee, and the date of injury. All</p>	<p>Insurance Fund September 3, 2014 Written Comment</p>		

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	<p>notices shall clearly identify the name, <del>and</del> telephone number, and mailing address of the individual claims examiner responsible for the payment and adjusting of the claim, <del>and</del>. <u>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.</u> All notices shall include a notation if one or more attachments are being sent with the notice. All notices shall clearly state that additional information may be obtained from an Information and Assistance officer with the Division of Workers' Compensation, or on the Division's website: <a href="http://www.dwc.ca.gov">www.dwc.ca.gov</a>. If the employer offers additional disability benefits in addition to those provided by law under workers' compensation, the claims administrator may incorporate the information within the notices</p>			
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	<p>required by these regulations. A single benefit notice may encompass multiple events. 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 shall advise the employee that the check is being mailed separately.</p> <p>(d)... (1)... ‘You have a right to disagree with decisions affecting your claim. If you have any questions about the information provided to you in this notice, please call <del>me</del>, <i>[insert either ‘me, adjuster’s name’ or a specific claims department name, and telephone number]</i>. You also have the right to be represented by an attorney of your choice. However, if you are represented by an attorney, you should call your attorney, not <del>me</del> <i>[insert ‘me’ or a specific claims department name]</i>...</p> <p>(d)... (2)... ‘You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call <del>me</del>, <i>[insert either ‘me, adjuster’s name or</i></p>			
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	<p><i>a specific claims department name, and telephone number], or [insert name, title, and telephone of ombudsperson or mediator]. However, if you are represented by an attorney, you should call your attorney, not [insert ‘me’ or the specific claims department name], the ombudsperson, or mediator...</i></p>			
9810(h), 9810(l)	<p>Commenter notes that these subsections propose to allow sending benefit notices via email where there is documented agreement from either the employee or the applicant’s attorney to receive the notices electronically. Commenter recommends that the language be amended to make clear that the claims administrator offers the service and states that this would allow for the benefit notices to be sent electronically only when there has been a mutual agreement of the parties.</p> <p>Commenter recommends the following revised language</p> <p>(h) The claims administrator shall</p>	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

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	<p>send a copy of each benefit notice, and any enclosures not previously served on the attorney, concurrently to the attorney of any represented employee. Upon the documented <u>written agreement of the attorney and where the claims administrator offers the service</u>, 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.</p> <p>(l) Upon the documented <u>written agreement of the employee and where the claims administrator offers the service</u>, 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 e-mail 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 form in which he or she receives benefit notices by giving written notice to the claims</p>			
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EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and inform <del>me</del><u>us</u> of your choice and appointment time. If you inform <del>me</del><u>us</u> of your choice but you do not arrange the appointment, we will arrange the appointment. If you do not inform <del>me</del><u>us</u> of your choice, we will choose the QME who will examine you and we will arrange the appointment.’</p> <p>§ 9812(a)(3)(A)(3), (d)(1)(C), (e)(2)(A)(2)(ii), (e)(3)(A)(2)(ii), and (g)(3)</p> <p>...’Enclosed is a form that you must submit to the state Division of Workers’ Compensation (DWC) within <b>10 days</b> to request a panel of three Qualified Medical Evaluators (QMEs). If you do not submit the form within <b>10 days</b>, we will have the right to submit the form. In addition, within <b>10 days</b> after the DWC sends you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and inform <del>me</del><u>us</u> of your choice and appointment time. If you inform <del>me</del><u>us</u></p>		<p>The Administrative Director accepts this comment.</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>of your choice but you do not arrange the appointment, we will arrange the appointment. If you do not inform <del>me</del> <u>us</u> of your choice, we will choose the QME who will examine you and we will arrange the appointment.’...</p> <p>9812(h)(1)</p> <p>...’If you disagree with the decision to deny your claim and wish to obtain a comprehensive medical evaluation, enclosed is a form that you must submit to the state Division of Workers’ Compensation (DWC) within <b>10 days</b> to request a panel of three Qualified Medical Evaluators (QMEs). If you do not submit the form within <b>10 days</b>, we will have the right to submit the form. In addition, within <b>10 days</b> after the DWC sends you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and inform <del>me</del> <u>us</u> of your choice and appointment time. If you inform <del>me</del> <u>us</u> of your choice but you do not arrange the appointment, we will arrange the appointment. If you do not inform <del>me</del> <u>us</u> of your choice, we will choose the</p>			
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<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	QME who will examine you and we will arrange the appointment.’			
9812(a)(3)(A)(1) 9812(d)(1)(A) 9812(e)(3)(A)(1)	<p>Commenter notes that several benefit notices are required to include a description of the panel QME process for an unrepresented employee. The required language varies depending on the specifics of the claim.</p> <p>Commenter notes that where the claims administrator’s determination is based on a comprehensive medical evaluation, the proposed language advises the unrepresented employee that he or she may file the WCAB application, regardless of whether or not the employee accepts the basis and decision for the claims administrator’s determination. However, as it is in the interest of the disagreeing party to file the application, commenter recommends qualifying the language accordingly.</p> <p>Commenter recommends the following revised language:</p> <p>“(1) If the denial is based on a comprehensive medical evaluation,</p>	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>and the employee disputes the results of the evaluation,</u> the employee may file an Application for Adjudication of Claim with the WCAB.”</p> <p>§ 9812(d)(1)(A)</p> <p>(A) If the termination of benefits is based on a comprehensive medical evaluation, <u>and the employee disputes the results of the evaluation,</u> the employee may file an Application for Adjudication of Claim with the WCAB.</p> <p>§ 9812(e)(3)(A)(1)</p> <p>(1) If the determination is based on a comprehensive medical evaluation, <u>and the employee disputes the results of the evaluation,</u> the employee may file an Application for Adjudication of Claim with the WCAB.</p>			
9812(e)(2)(A)(2)(i) 9812(e)(3)(A)(2)(i)	Commenter notes that where the claims administrator’s determination is based on the treating physician’s evaluation and the claims administrator agrees with those findings, the proposed language	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014	The Administrative Director accepts this comment.	Revised language (integrated with revisions suggested by another commenter) has been distributed for public

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>advises the unrepresented employee that he must contact the claims administrator if he or she disagrees with the results of the evaluation. Commenter recommends amending the following language to include the time frame within which the employee must submit his or her objection, thus also making the language consistent with those of sections 9812(a)(3)(A)(2) and 9812(d)(1)(B).</p> <p>Commenter recommends the following revised language:</p> <p>§ 9812(e)(2)(A)(2)(i)</p> <p>i. If the claims administrator agrees with the treating physician's evaluation of the employee's permanent disability status, 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 <u>within the applicable time limit prescribed in Labor Code section 4062(a)</u> to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical</p>	Written Comment		comment.

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	<p>Evaluators. However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation if possible.</p> <p>§ 9812(e)(3)(A)(2)(i)</p> <p>i. If the claims administrator agrees with the treating physician's evaluation of the employee's permanent disability status, 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 <u>within the applicable time limit prescribed in Labor Code section 4062(a)</u> to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same</p>			
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<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	medical evaluator for a new evaluation if possible.			
9812(a)(3)(A)(3) 9812(d)(1)(C) 9812(e)(2)(A)(2) (ii) 9812(e)(3)(A)(2) (ii)	Commenter notes that where the claims administrator’s determination is based on the treating physician’s evaluation and the claims administrator disagrees with those findings, sections 9812(e)(2)(A)(2)(ii) and 9812(e)(3)(A)(2)(ii) require provision of the notice either at the same time as the last payment of temporary disability or within 14 days after knowledge that permanent disability does or does not exist, whichever is later. However, for the purposes of disputing the treating physician’s findings in unrepresented claims, Labor Code section 4062(a) allows a longer 30 days (from receipt of the medical report) within which the objecting party may notify the other of his or her objection. As this proposed language would be used when the claims administrator disagrees with the treating physician’s findings, commenter recommends amending the language to allow for the time limit permitted under Labor Code section 4062(a), thus also	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment	The Administrative Director does not accept this comment (which partially overlaps with comments from CWCI, and for which the language this comment addresses has been revised).	None.

<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>making the language consistent with that of sections 9812(a)(3)(A)(3) and 9812(d)(1)(C).</p> <p>Additionally, where the unrepresented employee has already received a comprehensive medical evaluation, the proposed language requires the claims administrator to await contact from the employee first before proceeding with the comprehensive medical evaluation process.</p> <p>Commenter recommends that the language be modified to allow the claims administrator, who is the disagreeing party, to proceed with instructing the employee how he may return to the same medical evaluator for a new evaluation if possible.</p> <p>Commenter recommends the following revised language:</p> <p>§ 9812(a)(3)(A)(3)</p> <p>3. If the denial is based on the treating physician’s evaluation of the employee’s temporary disability status and the claims administrator disagrees with those findings, the notice shall</p>			

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	<p>advise the employee that the claims administrator disputes the result of the evaluation. If the claims administrator’s determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the 14 days required by this subdivision. The notice shall <del>advise the employee that the claims administrator disputes the results of the evaluation, and shall be</del> accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. When providing the form to request a panel of Qualified Medical Evaluators, the notice shall include.... However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee <del>to contact</del> <u>that</u> the claims administrator <del>to</del> <u>will</u> arrange for the employee to return to that same medical evaluator for a new evaluation if possible.</p> <p>§ 9812(d)(1)(C)</p>			

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	<p>(C) If the termination of benefits is based on the treating physician’s evaluation of the employee’s temporary or permanent disability status and the claims administrator disagrees with those findings, the notice shall advise the employee that the claims administrator disputes the results of the evaluation. If the claims administrator’s determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the 14 days required by this subdivision. The notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators. <del>However, if the employee received a previous comprehensive medical evaluation, the notice may instruct the employee on how to return to that same medical evaluator for a new evaluation if possible.</del> When providing the form to request a panel of Qualified Medical Evaluators, the notice shall include.... However, if the employee has already received a comprehensive medical evaluation,</p>			

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	<p>the notice may instead advise the employee <del>to contact</del> that the claims administrator <del>to</del> <u>will</u> arrange for the employee to return to that same medical evaluator for a new evaluation if possible.</p> <p>§ 9812(e)(2)(A)(2)(ii)</p> <p>ii. If the claims administrator disagrees with the treating physician’s evaluation of the employee’s permanent disability status, the notice shall advise the employee that the claims administrator disputes the results of the evaluation. <u>If the claims administrator’s determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the time limits required by this subdivision.</u> The notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of.... However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee <del>to contact</del> that the claims administrator <del>to</del> <u>will</u></p>			
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EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>arrange for the employee to return to that same medical evaluator for a new evaluation if possible.</p> <p>§ 9812(e)(3)(A)(2)(ii)</p> <p>ii. If the claims administrator disagrees with the treating physician's evaluation of the employee's permanent disability status, the notice shall advise the employee that the claims administrator disputes the results of the evaluation. <u>If the claims administrator's determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the time limits required by this subdivision.</u> The notice shall be accompanied by the form prescribed by the DWC Medical Unit to request assignment of.... However, if the employee has already received a comprehensive medical evaluation, the notice may instead <del>instruct the employee on how</del> <u>advise the employee that the claims administrator will arrange for the employee to return to that same medical evaluator for a new evaluation</u></p>			

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	if possible.			
9812(c)	<p>Commenter states that a change in the benefit rate results either from an increase in the statutory amount used in calculating the benefit rates or from receipt of corrected or additional earnings information. Commenter states that when it is the latter, oftentimes the adjuster's date of knowledge is not the same as the date the employee's next indemnity payment is due. Commenter recommends that this subdivision retain the option to send the notice <i>before</i> the new payment.</p> <p>Commenter recommends the following revised language:</p> <p>(c) Notice of Changed Benefit Rate, Payment Amount or Schedule (TD, PD). When the claims administrator changes the benefit rate, payment amount or benefit payment schedule for temporary disability indemnity, or permanent disability indemnity, the claims administrator shall advise the employee, as applicable, of the amount of the new benefit rate and the</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment</p>	<p>The Administrative Director accepts this comment.</p>	<p>Revised language has been distributed for public comment.</p>

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	reason the rate is being changed, or of the new benefit payment schedule. Notice shall be given <u>before or-at</u> the same time as the new payment.			
9812(d)(2)	<p>Commenter states that the number format for this subdivision is not aligned appropriately with subdivision 9812 (d)(1). State Fund recommends the following change.</p> <p>Commenter recommends the following revised language:</p> <p><del>2-</del>(2) If the employee is represented by an attorney, the notice shall instruct the employee to contact the attorney with any questions.</p>	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.
9812(e)(2)(A)	Commenter notes that this subdivision covers language explaining the comprehensive medical evaluation process applicable when injury is found to have caused permanent disability. Commenter opines that although the proposed text enumerated under paragraph (A) addresses the required language where the claims administrator's determination is based on the treating physician's evaluation, additional language is necessary to	Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>address instances where the determination is based on a comprehensive medical evaluation.</p> <p>Commenter recommends the following revised language:</p> <p><u>1. If the determination is based on a comprehensive medical evaluation, the notice shall advise the employee that if he or she disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.</u></p> <p><del>2.</del> If the claims administrator's determination is based on an evaluation by a treating physician, the notice shall inform the employee whether or not the claims administrator is requesting a rating from the Disability Evaluation Unit. If the claims administrator is not requesting a rating from the Disability Evaluation Unit, the notice shall advise the employee that he or she may contact an Information and Assistance office to have the treating physician's evaluation reviewed and rated by the Disability Evaluation</p>			

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	<p>Unit.</p> <p>23. If the claims administrator’s determination is based on an evaluation by a treating physician, the notice shall advise the employee one of the....</p>			
9812(e)(3)	<p>Commenter opines that in the use of the phrases “where the employee has sustained compensable lost time from work” and “where the employee has received payment of temporary disability indemnity”, DWC appears to apply this notice requirement to “indemnity” claims only, and not to “medical-only” claims. If such is the case, commenter states that there is no need to make a distinction between cases in which the employee has received temporary disability indemnity and cases in which the employee claims permanent disability. Commenter recommends that the language be modified to avoid confusion and remove redundancy.</p> <p>Commenter recommends the following revised language:</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>This notice can be required in cases where temporary disability has not been paid.</p>	<p>None.</p>

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(3) Notice That No Permanent Disability Exists. In cases <u>only</u> where the employee has sustained compensable lost time from work, if the claims administrator alleges that the injury has caused no permanent disability <del>in a case where either the employee has received payment of temporary disability indemnity or the employee claims permanent disability,</del> the claims administrator shall advise the employee that no permanent disability indemnity is payable. This notice shall be sent...</p>			
9812(h)(1)	<p>Commenter notes that this subdivision covers language explaining the comprehensive medical evaluation process applicable where the unrepresented employee has not previously received a comprehensive medical evaluation. Commenter states that additional language is necessary to address instances where (a) the determination to deny the claim is based on a comprehensive medical evaluation and (b) the employee has previously received a comprehensive medical evaluation.</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund September 3, 2014 Written Comment</p>	<p>The Administrative Director accepts this comment.</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>Commenter recommends the following revised language:</p> <p><u>(1) Where the employee is not represented by an attorney, and the determination is related to a medical issue, the notice shall advise the employee of one of the following:</u></p> <p><u>(A) If the determination is based on a comprehensive medical evaluation, and the employee disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.</u></p> <p><del>(1) For employees who are not represented by an attorney, where the determination is related to a medical issue, and</del> <u>(B) If</u> the employee has not previously received a comprehensive medical evaluation for this 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. The notice shall contain the following statement (with the phrase “<b>10 days</b>” in bold font as shown): “If you disagree with the decision to deny</p>			
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	<p>your claim and wish to obtain a comprehensive medical evaluation, enclosed is a form that you must submit to the state Division of Workers' Compensation (DWC) within <b>10 days</b> to request a panel of three Qualified Medical Evaluators (QMEs). If you do not submit the form within <b>10 days</b>, we will have the right to submit the form. In addition, within <b>10 days</b> after the DWC sends you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and inform <u>me</u> of your choice and appointment time. If you inform me of your choice but you do not arrange the appointment, we will arrange the appointment. If you do not inform <u>me</u> of your choice, we will choose the QME who will examine you and we will arrange the appointment.”</p> <p><u>However, if the employee has already received a comprehensive medical evaluation and he or she disagrees with the decision to deny the claim, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same</u></p>			
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<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<u>medical evaluator for a new evaluation if possible.</u>			
General Comment – Archiving of Materials	<p>Commenter recommends that the Division state in these regulations that the Division of Workers’ Compensation shall:</p> <ol style="list-style-type: none"> <li>1) Maintain the current complaint versions of the notices on its website; and</li> <li>2) Archive and make accessible on its website prior versions with their effective dates.</li> </ol> <p>Commenter observes that while it is important to move from the fact sheets to an electronic reference, because many claims administrators incorporate the information developed by the Division into their own notices, it is essential that whenever DWC makes a change, claims administrators are notified and given a grace period to update their systems and to begin distributing the revised information.</p> <p>Commenter states that it is not unusual for disputes to arise regarding specific information that injured employees</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers’ Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>While prior versions of benefits notices are maintained by the Division as a matter of practice, it is not necessary to formalize this practice by incorporating it in to regulation.</p>	None.

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	<p>did or did not have at specific points in time. Commenter states that if the DWC website is to become a prime informational resource, then every revised version must be archived and accessible, and the effective date for using the information must be noted to establish the information in effect at any given point in time.</p> <p>Commenter cautions the Division to be judicious in determining what changes are needed to the posting notice, as under Labor Code section 3551(a), required information on the posting notice must also be included in the time of hire pamphlet, so any substantive changes to the posting notice could have a ripple effect, impacting notices which were just updated and took effect July 1 of this year.</p>		<p>The Administrative Director accepts this comment in part, and believes that the proposed revisions, which were drafted in consultation with CHSWC, are necessary at this time.</p>	<p>None.</p>
<p>General Comment – Claims Administrators and Implementation Period</p>	<p>Commenter recommends that the Division clarify in these regulations that claims administrators:</p> <p>1) shall not be subject to audit penalties or adverse rulings for use of information obtained from the DWC website if DWC has not</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young</p>	<p>The Administrative Director does not accept this comment.</p> <p>While as a matter of practice, claims administrators are not subject to audit penalties for use of information obtained from the DWC website if</p>	<p>None.</p>

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	<p>notified the community that the information has been changed; and</p> <p>2) shall be allowed a grace period of at least 120 from the date when DWC posts a Newsline announcing the changes in order to update their systems and begin distributing the revised information.</p> <p>Commenter notes that in several proposed regulations, DWC requires the claims administrator to refer the injured worker to the I&amp;A Office and/or the DWC website for additional information. Commenter states that on multiple occasions, DWC has posted revised notice information on its website without notifying the community of the changes. The most recent example was on July 10th of this year, when the Division issued Newsline 2014-58 announcing it had posted a corrected version of the Spanish version of its Time of Hire pamphlet on its website because the version posted two weeks earlier did not include the required SB 863 changes. Yet when an additional error</p>	<p>Communications Director</p> <p>California Workers' Compensation Institute (CWCI)</p> <p>September 3, 2014</p> <p>Written Comment</p>	<p>DWC has not notified the community that the information has been changed, it is not necessary to formalize this practice by incorporating it in to regulation.</p>	

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	<p>was found the next day and a second corrected version was posted on July 11, the Division did not notify the community.</p> <p>Commenter states that most workers' compensation policies renew on January 1 or July 1 of each year. Commenter recommends that in order to avoid having to supply duplicative notices to employers within the same policy period, the grace period should be timed to coincide with the most common policy effective dates (January 1 or July 1) to minimize costs and confusion. At least 120 days is necessary to allow sufficient time for programming, training, publishing, distribution, and posting.</p>		<p>The Administrative Director accepts this comment. After their effective date, the amended benefit notice regulations will apply to all ongoing claims, regardless of policy inception date, as well as to claims made against self-insured employers.</p>	<p>The amended regulations will have an effective date of January 1, 2016</p>
<p>General Comment – QME Process</p>	<p>Commenter recommends that the Division replace the mandatory term “will” in the 10-day QME process throughout these regulations with the term “may.”</p> <p>Commenter states that if the employee fails to follow through with the QME panel process, administrators are not always required to complete it for them. Labor Code section 4062.1</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p>	<p>The Administrative Director accepts this comment.</p>	<p>Revised language has been distributed for public comment.</p>

<b>EMPLOYEE BENEFIT NOTICES</b>	<b>RULEMAKING COMMENTS 45 DAY COMMENT PERIOD (July 18, 2014 – September 3, 2014)</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	does not mandate completion of the form.	California Workers' Compensation Institute (CWCI) September 3, 2014 Written Comment		
General Comment – QME Panel Request Form	<p>Commenter recommends that the division simplify the regulatory process by requiring the QME panel request form be provided upon request in all circumstances.</p> <p>Commenter states that, as now proposed in these regulations, the QME panel request form must be provided with certain benefit letters and not with others, and, at times (a denial of a single benefit), inclusion of the form is dependent on whether or not the denial is based on an opinion from the primary treating physician. In addition, the proposed regs now add a requirement that the form must be provided with a full denial letter, when currently it is only provided upon request.</p> <p>Commenter alleges that not only do the proposed regulations fail to simplify the processing of the QME panel request form, they complicate it.</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The CHSWC benefit notice study concluded that attaching the QME panel request form to every notice leads to many unnecessary and improper panel requests.</p>	None

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General Comment – Spanish translation of benefit notices and posters	<p>Commenter recommends that the Division adopt the Spanish translations of the benefit notices, Employee Poster, and the Claim Form with NOPE concurrently with the English versions.</p> <p>Commenter notes that the Administrative Director is required to make Spanish translations of the notices, Employee Poster and Claim form with NOPE available to employers so that they may comply with statutory notice requirements, including those in Labor Code sections 3550(d) and 5401(b). Commenter states that the Spanish translations are needed for Spanish-speaking employees at the same time as they are adopted for English-speaking employees.</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers’ Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	The Administrative Director accepts this comment in part. Spanish translations will be done as soon as the final form of the regulations is established.	None.
General Comment – Implementation Date of Revised Regulations	Commenter recommends that the Division make the final regulations on the benefit notices, the Employee Poster, Claim Form and Notice of Potential Eligibility effective no fewer than 120 days after the filing with the Secretary of State, or on July 1, 2015,	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p>	The Administrative Director accepts this comment. After their effective date, the amended benefit notice regulations will apply to all ongoing claims, regardless of policy inception date, as well	The amended regulations will have an effective date of January 1, 2016

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	<p>whichever is later.</p> <p>Commenter states that most workers' compensation policies renew on January 1 or July 1 of each year. Commenter recommends that in order to avoid having to supply duplicative notices to employers within the same policy period, the effective date should be timed to coincide with the most common policy effective dates (January 1 or July 1) to minimize costs and confusion. At least 120 days is necessary to allow sufficient time for programming, training, publishing, distribution, and posting.</p>	<p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	<p>as claims made against self-insured employers.</p>	
9811(d)	<p>Commenter recommends the following revised language:</p> <p>(d) "Dependent" means any person who may be or is claimed to be entitled to workers' compensation benefits as a result of an employee's death (including compensation which was accrued and unpaid to an injured employee before his or her death), <del>and includes the parent or legal guardian of a minor dependent child.</del></p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation</p>	<p>The Administrative Director does not accept this comment.</p> <p>The benefit notice regulations do not affect the determination of who is a dependent, only who is entitled to receive benefit notices, and the mandatory content of those notices. Determinations of dependency are a legal issue for determination by the WCAB.</p>	None.

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	Commenter states that neither the parent nor a guardian of a dependent minor child is a dependent.	Institute (CWCI) September 3, 2014 Written Comment		
9812(a)(3) 9812(d) 9812(e)(2) 9812(e)(3) 9812(h)	<p>Commenter recommends deleting the following language from these subsections:</p> <p><del>If the claims administrator's determination is based on a medical report, a copy of the medical report(s) shall be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.</del></p> <p>Commenter states that Labor Code section 4061(a)(1) requires only a notice of the worker's benefit status, i.e. a notice that there is no permanent impairment, or if permanent disability is payable, "the employer shall advise the employee of the amount determined payable and the basis on which the determination was made, whether there is need for future medical care, and whether an indemnity payment will be deferred pursuant to paragraph (2) of subdivision (b) of section 4650."</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>Injured workers do not always have immediate access to their medical reports. For those notices where attachment of the report is required, the injured worker needs immediate access to the report, and may not have the time to find their copy or request a replacement copy.</p>	

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	<p>Commenter states that the statute does not require the inclusion of supporting medical evidence with every benefit decision; therefore, the Administrative Director does not have the authority to mandate it.</p> <p>Commenter states that the language used in section 9812 requires the inclusion of a medical report even when the injured employee has already received the relevant report, the applicant's attorney has been served with it, or the worker has no interest in reviewing the report.</p> <p>Section 9810(g) states: The claims administrator shall provide copies to the employee, upon request, of all medical reports, relevant to any benefit notice issued, or which are not required to be provided along with a notice and have not yet been provided to the employee other than psychiatric reports which the physician has recommended not be provided to the employee.</p> <p>Section 9810(g) requires only that a claims administrator make available to</p>			
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	<p>the employee <i>upon request</i> all copies of medical reports on which a benefit determination is based. Commenter states that the language of section 9810(g) is adequate to ensure that the injured employee receives relevant medical reports that they want to review. Commenter states that the option to provide these reports on request or to send them is, therefore, in line with the statutory authority, and will prevent redundancy and needless processing in multiple benefit notices.</p>			
9812(e)(3)	<p>Commenter recommends the following revised language:</p> <p>Notice That No Permanent Disability Exists. <del>In cases where the employee has sustained compensable lost time from work, if the claims administrator alleges that the injury has caused no permanent disability in a case where either the employee has received payment of temporary disability indemnity or the employee claims permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable. Where the</del></p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The Administrative Director believes the language of this subdivision is clear.</p>	None.

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	<p><u>employee has received payment of temporary disability indemnity, continued salary in lieu of temporary disability, or the employee claims permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable if the claims administrator alleges that the injury has caused no permanent disability.</u></p> <p>This notice shall be sent 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. <del>If the claims administrator's determination is based on a medical report, a copy of the medical report(s) shall be provided with the notice, except for psychiatric reports that the psychiatrist has recommended not be provided to the employee.</del></p> <p>Commenter recommends revision for clarity. See other comment made on Section 9812.</p>		<p>The Administrative Director does not accept this portion of the comment.</p> <p>Injured workers do not always have immediate access to their medical reports. For those notices where attachment of the report is required, the injured worker needs immediate access to the report, and may not have the time to find their copy or request a replacement copy.</p>	None.

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9881.1 – Notice to Employees Poster	<p>Commenter recommends that the Division improve the poster by:</p> <ul style="list-style-type: none"> <li>• adding to the description of the supplemental job displacement benefit that the injury must have caused permanent disability to the list of conditions necessary to qualify for the benefit</li> <li>• re-organizing the material on the form to avoid unnecessary duplication or splitting of information that addresses the same subject, particularly on the subject of predesignation</li> <li>• eliminating the unnecessary bolding in the body of a paragraph near the top of the second page</li> </ul> <p>Commenter states that if the fact that injury must have caused permanent disability to the conditions necessary to qualify for the benefit is not added to the description of the supplemental job displacement benefit, an employee may be given the false impression that he or she will receive this benefit when injured unless his or her employer offered regular, modified, or alternative work.</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers’ Compensation Institute (CWCI) September 3, 2014 Written Comment</p>	The Administrative Director accepts this comment in part.	Revised language has been distributed for public comment.

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	<p>Commenter states that the material on the form can be re-organized to add clarity and avoid confusion caused by unnecessary duplication or splitting of information that addresses the same subject. Commenter states that this is especially so on the subject of predesignation, which is addressed in four different places on the form.</p> <p>Commenter states that the bolding in the body of a paragraph near the top of the second page is unnecessary. Bolding elsewhere in the form is used only for headings. Commenter states that the employee may get the wrong impression that the bolded portion is the most important portion of the form.</p>			
10139 – Workers’ Compensation Claim Form (DWC 1) (Spanish translation)	<p>Commenter recommends the following revised language:</p> <p><i><b>Empleador:</b> Se requiere que Ud. feche esta forma y que provéa copias a su <del>com</del> <u>pañía</u> <u>compañía</u> de seguros, administrador de reclamos, o dependiente/representante de <del>recla-</del> <u>mos reclamos</u> y al empleado que</i></p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications</p>	The Administrative Director accepts this comment. The words were inadvertently hyphenated during the editing and formatting of the document.	Revised language has been distributed for public comment.

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	<p><i>hayan presentado esta petición dentro del plazo de <b>un día hábil</b> desde el momento de haber sido recibida la forma del empleado.</i></p> <p><i>EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD</i></p> <p>Commenter states that the recommended changes correct inadvertent typographical errors.</p>	<p>Director</p> <p>California Workers' Compensation Institute (CWCI)</p> <p>September 3, 2014</p> <p>Written Comment</p>		
10139 – Notice of Potential Eligibility (NOPE)	<p>Commenter recommends the following revised language:</p> <p>If you are injured or become ill, either physically or mentally, because of your job, including injuries resulting from a workplace crime, you may be entitled to workers' compensation benefits. <del>Use the attached form to file a workers' compensation claim with your employer.</del> <b>You should read all of the information below.</b> Keep this sheet and all other papers for your records. You may be eligible for some or all of the benefits listed depending on the nature of your claim. <del>If you lose time from work, the claims administrator who is responsible for</del></p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims &amp; Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI)</p> <p>September 3, 2014</p> <p>Written Comment</p>	<p>The Administrative Director accepts this comment in part.</p> <p>(NOTE: The Administrative Director has also made clarifying changes to the NOPE in response to other commenters' suggestions.)</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>handling your claim, must <u>will</u> notify you of your eligibility for benefits <del>within 14 days whether your claim is accepted or whether additional investigation is needed.</del></p> <p>Use the attached form to file a <u>workers' compensation claim with your employer.</u> <del>To file a claim,</del> eComplete the "Employee" section of the form, keep one copy and give the rest to your employer. Do this right away <del>to avoid problems with your claim.</del> <del>In some cases,</del> because benefits <del>will</del> <u>may</u> not start until you inform your employer about your injury by filing a claim form. Describe your injury completely. Include every part of your body affected by the injury. <del>If you mail the form to your employer, use first class or certified mail. If you buy a return receipt, you will be able to prove that the claim form was mailed and when it was delivered.</del> Within one working day after <del>you file</del> <u>receiving</u> the claim form, your employer must complete the "Employer" section, give you a dated copy, keep one copy, <del>and</del> send one to the claims administrator <u>responsible</u></p>			
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	<p><u>for handling your claim and authorize initial medical treatment. Your employer is responsible for up to \$10,000 in medical costs until your claim is accepted or rejected.</u></p> <p><b>Medical Care:</b> Your claims administrator will pay <u>for</u> all reasonable and necessary medical care for your work injury or illness. Medical benefits <u>are subject to approval and</u> may include treatment by a doctor, hospital services, physical therapy, lab tests, x-rays; <u>and</u> medicines; <del>equipment and travel costs.</del> Your claims administrator will pay the costs of <u>approved medical services</u> directly so you should never see a bill. <del>There are limits on chiropractic, physical therapy, and occupational therapy visits.</del></p> <p><u>Medical Provider Networks (MPNs) and Health Care Organizations (HCOs) are groups of health care providers that provide treatment to workers injured on the job. You should receive information from your employer if you are covered by an MPN or HCO. Contact your employer</u></p>			
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	<p><u>for more information. If your employer is using an MPN or HCO, in most cases you will be treated in the MPN or HCO unless you pre-designated your personal physician or medical group in writing prior to the injury. If you did pre-designate, you may be treated by your personal physician or medical group after you are injured.</u></p> <p><u>If your employer is not using an MPN or HCO, and you did not pre-designate, in most cases, the claims administrator can choose the doctor who treats you for the first 30 days after which you may switch to a doctor of your choice if you need additional medical care.</u></p> <p><b><u>The Primary Treating Physician (PTP)</u></b> is the doctor with the overall responsibility for treatment of your injury or illness.</p> <ul style="list-style-type: none"> <li>• <u>If you previously designated your personal physician or a medical group, you may see your personal physician or the</u></li> </ul>			
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	<p>medical group after you are injured.</p> <ul style="list-style-type: none"> <li>• If your employer is using a medical provider network (MPN) or Health Care Organization (HCO), in most cases, you will be treated in the MPN or HCO unless you pre-designated your personal physician or a medical group. An MPN is a group of health care providers who provide treatment to workers injured on the job. You should receive information from your employer if you are covered by an HCO or a MPN. Contact your employer for more information.</li> <li>• If your employer is not using an MPN or HCO, in most cases, the claims administrator can choose the doctor who first treats you unless you pre-designated your personal physician or a medical group.</li> </ul>			
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	<p>• If your employer has not put up a poster describing your rights to workers' compensation, you may be treated by your personal physician right after you are injured.</p> <p>Within one working day after you file a claim form, your employer shall the claims administrator must authorize up to \$10,000 in treatment for your injury, consistent with the applicable treating guidelines, for the alleged injury and shall until the claim is accepted or rejected. If the claims administrator does not authorize treatment right away, talk to your supervisor, someone else in management, or the claims administrator. Ask for treatment to be authorized right now, while waiting for a decision on your claim. If the claims administrator will not authorize treatment, use your own health insurance to get medical care. Your health insurer will seek reimbursement from the claims administrator. If you do not have health insurance, there are doctors, clinics or hospitals that will</p>			
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	<p>treat you without immediate payment. They will seek reimbursement from the claims administrator.</p> <p><b><u>Switching to a Different Doctor as Your PTP:</u></b></p> <ul style="list-style-type: none"> <li>• If you are being treated in a Medical Provider Network (MPN), you may switch to other doctors within the MPN after the first visit.</li> <li>• If you are being treated in a Health Care Organization (HCO), you may switch at least one time to another doctor within the HCO. You may switch to a doctor outside the HCO 90 or 180 days after your injury is reported to your employer (depending on whether you are covered by employer provided health insurance).</li> <li>• If you are not being treated in an MPN or HCO and did not predesignate, you may switch to a new doctor one time</li> </ul>			
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	<p>during the first 30 days after your injury is reported to your employer. Contact the claims administrator to switch doctors. After 30 days, you may switch to a doctor of your choice if your employer or the claims administrator has not created or selected an MPN.</p> <p><b><u>Disclosure of Medical Records:</u></b> After you make a claim for workers' compensation benefits, your medical records will not have the same level of privacy that you usually expect. If you don't agree to voluntarily release medical records, a workers' compensation judge may decide what records will be released. If you request privacy, the judge may "seal" (keep private) certain medical records.</p> <p><b><u>Problems with Medical Care and Medical Reports:</u></b> At some point during your claim, you might disagree with your PTP about what treatment is necessary. If this happens, you can switch to other doctors as described above. If you cannot reach agreement with another doctor, the steps to take</p>			
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	<p>depend on whether you are receiving care in an MPN, HCO, or neither. For more information, see “Learn More About Workers’ Compensation,” below.</p> <p>If the claims administrator denies treatment recommended by your PTP, you may request independent medical review (IMR) using the request form included with the claims administrator’s written decision to deny treatment. The IMR process is similar to the group health IMR process, and takes approximately 40 (or fewer) days to arrive at a determination so that appropriate treatment can be given. Your attorney or your physician may assist you in the IMR process. IMR is not available to resolve disputes over matters other than the medical necessity of a particular treatment requested by your physician.</p> <p>If you disagree with your PTP on matters other than treatment, such as the cause of your injury or how severe the injury is, you can switch to other doctors as described above. If you</p>			
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	<p>cannot reach agreement with another doctor, notify the claims administrator in writing as soon as possible. In some cases, you risk losing the right to challenge your PTP's opinion unless you do this promptly. If you do not have an attorney, the claims administrator must send you instructions on how to be seen by a doctor called a qualified medical evaluator (QME) to help resolve the dispute. If you have an attorney, the claims administrator may try to reach agreement with your attorney on a doctor called an agreed medical evaluator (AME). If the claims administrator disagrees with your PTP on matters other than treatment, the claims administrator can require you to be seen by a QME or AME.</p> <p><b><u>Payment for Temporary Disability (Lost Wages):</u></b> If you can't work while you are recovering from a job injury or illness, you may receive temporary disability payments for a limited period of time. These payments may change or stop when your doctor says you are able to return to work. These benefits are tax-free. Temporary</p>			
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	<p>disability payments are two-thirds of your average weekly pay, within minimums and maximums set by state law. Payments are not made for the first three days you are off the job unless you are hospitalized overnight or cannot work for more than 14 days.</p> <p><b><u>Stay at Work or Return to Work:</u></b>  <del>Being injured does not mean you must stop working. If you can continue working, you should. If not, it is important to go back to work with your current employer as soon as you are medically able. Studies show that the longer you are off work, the harder it is to get back to your original job and wages. While you are recovering, your PTP, your employer (supervisors or others in management), the claims administrator, and your attorney (if you have one) will work with you to decide how you will stay at work or return to work and what work you will do. Actively communicate with your PTP, your employer, and the claims administrator about the work you did before you were injured, your medical condition and the kinds of work you can do now, and the kinds of work that</del></p>			
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	<p><del>your employer could make available to you.</del></p> <p><b><u>Return to Work:</u></b> To help you to return to work as soon as possible, you should actively communicate with your treating doctor, claims administrator, and employer about the kinds of work you can do while recovering. They may coordinate efforts to return you to modified duty or other work that is medically appropriate. This modified or other duty may be temporary or may be extended depending on the nature of your injury or illness.</p> <p><b><u>Payment for Permanent Disability:</u></b> If a doctor says you have permanent disability because you will not recovered completely from your injury, <del>and you will always be limited in the work you can do,</del> you may receive additional payments. The amount will depend on the type of injury, extent of impairment, your age, occupation, date of injury, and your wages before you were injured.</p> <p><b><u>Supplemental Job Displacement</u></b></p>			
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	<p><b><u>Benefit (SJDB):</u></b> If you were injured <del>on or after 2013, 1/1/04, and</del> your injury results in a permanent disability, and your employer does not offer regular, modified, or alternative work, you may qualify for a <del>nontransferable</del> voucher to pay <del>payable</del> for retraining and/or skill enhancement. This can include <u>tuition at a state-approved school, books, tools or other resources to help you find a job.</u> If you qualify, the claims administrator will <del>pay the costs up to the maximum set by state law.</del> <u>send information on what expenses are covered, the limits, documentation requirements, and deadlines.</u></p> <p><b><u>Death Benefits:</u></b> If the injury or illness causes death, payments may be made to <del>a spouse and other relatives or household members</del> <u>individuals</u> who were financially dependent on the deceased worker.</p> <p><b><u>It is illegal for your employer to</u></b> <del>punish or fire you for having a job injury or illness, for filing a claim, or testifying in another person's workers' compensation case (Labor Code</del></p>			
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	<p>132a). If proven, you may receive lost wages, job reinstatement, increased benefits, and costs and expenses up to limits set by the state.</p> <p><b><u>Resolving Problems or Disputes:</u></b>  You have the right to disagree with decisions affecting your claim. If you have a disagreement, contact <del>your</del> <u>employer or the</u> claims administrator first to see if you can resolve it. <u>If you have a dispute over a denial or modification of medical care, you can request an independent medical review using the form that will be sent by the claims administrator.</u> If you are not receiving benefits, you may be able to get State Disability Insurance (SDI) or unemployment insurance (UI) benefits. Call the state Employment Development Department at (800) 480-3287 or (800) 333-4606, or go to their website at <a href="http://www.edd.ca.gov">www.edd.ca.gov</a>.</p> <p><u>It is illegal for your employer to punish or fire you for having a job injury or illness, for filing a claim, or testifying in another person's workers' compensation case (Labor Code</u></p>			
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	<p><u>132a). If this type of discrimination is proven, you may receive lost wages, job reinstatement, increased benefits, and costs and expenses up to limits set by the state.</u></p> <p><b><u>For Free Help and Information:</u></b>  <b><u>You Can Contact an Information &amp; Assistance (I&amp;A) Officer:</u></b> State I&amp;A officers answer questions, help injured workers, provide forms, and help resolve problems <u>for free</u>. Some I&amp;A officers hold workshops for injured workers. To obtain important information about the workers' compensation claims process and your rights and obligations, go to <a href="http://www.dwc.ca.gov">www.dwc.ca.gov</a> or contact an I&amp;A officer of the state Division of Workers' Compensation. You can also hear recorded information and a list of local I&amp;A offices by calling (800) 736-7401.</p> <p><b><u>You can consult with an attorney-:</u></b>  Most attorneys offer one free consultation. If you decide to hire an attorney, his or her fee will be taken out of <u>some of</u> your benefits. For names of workers' compensation</p>			
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	<p>attorneys, call the State Bar of California at (415) 538-2120 or go to their web site at <a href="http://www.californiaspecialist.org">www.californiaspecialist.org</a>.</p> <p>Commenter states that the recommended changes to the Notice of Potential Eligibility (NOPE) are intended to improve the flow, tone and accuracy of the notice and to delete unnecessary detail. Commenter states that the NOPE must accurately inform employees of workers' compensation benefits that are potentially available when they suffer a work injury, without overwhelming or intimidating them with so much minutiae that the notice is perceived to be "fine print" and ignored.</p> <p>Commenter has recommended changes that pare the proposed NOPE down to essential benefit information. Commenter enclosed "clean" versions of the proposed NOPE and the commenter's recommended version of the NOPE for ease of comparison. Commenter states that the proposed NOPE is almost twice the length of commenter's recommended NOPE.</p>			

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	<p>Commenter states that keeping the NOPE simple and understandable comports with the statutory mandates that “Insofar as practicable, the notice of potential eligibility for benefits required by this section and the claim form shall be a single document...” and “The notice shall be easily understandable and available in both English and Spanish.” [LC §5401 (b)]. Commenter notes that the current NOPE/DWC-1 (Rev. 6/10) accomplishes this by attaching the 1-page NOPE, printed on 2-sides in English and Spanish, as a single detachable cover sheet to the DWC-1 claim form. This format is compliant with the law and is convenient for the injured worker and the employer, and should be retained. Commenter states that barring the use of extremely small type or adding more pages to what is already a 5-page form (the NOPE plus the 4 required copies of the DWC-1) that will be extremely difficult if all of the additional detail that has been proposed is included.</p> <p>Commenter states that the commenter’s recommended NOPE</p>			

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	<p>consolidated and reorganized some information for efficiency and to improve comprehension. For example, information on getting medical treatment, including Information under the “Switching to a Different Doctor as Your PTP” is abbreviated and incorporated into the “Medical Care” section. Predesignation information is consolidated there as well. Commenter moved the language of the “It is illegal for your employer” section into the “Resolving Problems or Disputes” section.</p> <p>The information is best provided in a matter-of-fact way that will reassure and not alarm the injured employee at this stressful time of injury. Some parts of the proposed NOPE, including the following examples, alarm rather than reassure.</p> <p>Commenter states that the NOPE’s purpose is to notify employees of potential benefits; not potential disputes. Commenter observes that warning all injured employees that although the law requires it, the claims</p>			

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	<p>administrator might not authorize treatment before a decision is made on the claim is hardly reassuring and rarely occurs.</p> <p>Commenter states that suggesting the employee seek treatment for work injuries from a group health insurer is worrisome, confusing and inappropriate. The “Problems with Medical Care and Medical Reports” section also generates negative expectations that may suggest that injured employees need to adopt a confrontational attitude. Commenter believes that none of this is necessary and none of it belongs in the NOPE. Commenter states that, in the event a disagreement or dispute arises, the information on how to handle it will be sent to the injured employee, and the NOPE already provides information on where to get more information and assistance.</p> <p>Commenter states that some proposed content is inaccurate or misleading, including the following examples.</p> <p>“If you lose time from work, the</p>			

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	<p>claims administrator who is responsible for handling your claim must notify you within 14 days whether your claim is accepted or whether additional investigation is needed.” Commenter claims that this statement is misleading at best. It may give the impression that the claims administrator may not notify an injured employee whether their claim was accepted or that investigation will only occur if time is lost from work.</p> <p>Commenter opines that it is not an accurate statement even for all employees who have lost time from work because of a work injury, since employees who lose fewer than three days of work are usually not entitled to TD payments and are therefore not subject to the requirements of CCR 9812(a), where a 14-day requirement resides.</p> <p>Commenter states that the last bullet under the proposed “The Primary Treating Physician (PTP)” section is incorrect. As a result of an SB 863 change to Labor Code section 4616.3(b), failure to post the “Notice</p>			

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	<p>to Employee” poster is no longer a basis for an employee to treat outside a Medical Provider Network with his or her personal physician, unless it is shown that the failure to provide notice resulted in a denial of medical care.</p> <p>Commenter states that payment for permanent disability is no longer predicated on always being “limited in the work you can do.”</p> <p>Commenter states that the proposed “Death Benefits” section does not accurately describe who is entitled to death benefit payments. Death benefit payments may be made to individuals who were financially dependent on the deceased worker.</p> <p>Commenter states that the notice must include information required by statute, including basic descriptions of workers’ compensation benefits, what to do and expect when filing a claim, and where to find additional information, but commenter believes that the proposed version of the notice includes unnecessary detail. It need</p>			

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	<p>not include mechanical and technical details, details of processes or the law, or information that will be supplied later.</p> <p>Commenter recommends removing nonessential information such as mailing details, details on HCOs and all of the details added under “The Primary Treating Physician (PTP)” and “Switching to a Different Doctor as Your PTP” headings, none of which is necessary or required as a result of SB 863 changes. Commenter opines that this much minutiae adds unnecessary verbiage, which dilutes the basic information that is required, makes the notice too long and complex, and runs counter to the statutory requirement in LC 5401(b) that “the notice shall be easily understandable.”</p>			
General Comment	<p>Commenter thanks the division for working so hard this past year on drafting these proposed regulations. Commenter states that she has just celebrated her one year anniversary as Director of Policy Implementation for CAAA.</p>	<p>Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA)</p>	<p>The Administrative Director thanks the commenter for these comments.</p>	<p>None.</p>

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		September 3, 2014 Oral Comment		
General Comment	<p>Commenter states that any amendments to the Employee Benefit Notice regulations must conform to the provisions of AB 335, a 2011 bill that amended Labor Code §138.4, as follows:</p> <p>(c) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall prescribe reasonable rules and regulations, including notice of the right to consult with an attorney, where appropriate, for serving on the employee (or employee's dependents , in the case of death), the following:</p> <p>(1) Notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, supplemental job displacement, and death benefits.</p> <p>(2) 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</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) September 3, 2014 Written Comment</p>	<p>The Administrative Director accepts this comment.</p> <p>Section 9810 has been revised to provide that each benefit notice shall refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers' Compensation in California: A Guidebook for Injured Workers" that addresses the benefit(s) to which the notice pertains, and shall advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers' Compensation's website at <a href="http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html">http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html</a> or by contacting an information and assistance (I&amp;A) officer of the Division of Workers' Compensation.</p>	Revised language has been distributed for public comment.

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	<p>benefits paid.</p> <p>(3) 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.</p> <p>(d) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall develop, make fully accessible on the department's Internet Web site, and make available 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.</p> <p>(e) Each notice prescribed by the administrative director shall be written in plain language, shall reference the informational material described in subdivision (d) to enable employees to understand the context of the notices, and shall clearly state the Internet</p>			

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	Web site address and contact information that an employee may use to access the informational material.			
9810(d)(2)	<p>Commenter notes that the draft rules do include in 9810(d)(1) the mandatory statement of the employee’s remedies, which is required to be included in all benefit notices, of the right to consult with an attorney, as set forth in Labor Code section 138.4, subdivision (c).</p> <p>Commenter notes that in 9810(d)(2), for claims subject to an alternative dispute resolution (ADR) program, this mandatory statement is not required if it is not consistent with the terms of the ADR agreement.</p> <p>Commenter opines that while an ADR agreement may provide that active participation by an attorney is not allowed in the Ombudsman and Mediation stages of the ADR process, the mandatory notice of the right to consult an attorney must still be in the benefit notice provided to the employee.</p>	<p>Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA) September 3, 2014 Written Comment</p>	The Administrative Director accepts this comment.	Revised language has been distributed for public comment.

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	<p>Commenter recommends the following modified language:</p> <p><u>(2) For claims subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7, the language in paragraph (1) shall be used to the extent that it is consistent with the provisions of the ADR agreement, and the following language shall be substituted in its place to the extent appropriate according to` the ADR agreement:</u></p> <p><u>“You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call me, [insert adjuster's name and telephone number], or [insert name, title, and telephone of ombudsperson or mediator]. You also have the right to consult with an attorney of your choice. However, if you are represented by an attorney, you should call your attorney, not me, the ombudsperson, or mediator.”</u></p> <p><u>NOTE: For employees subject to an</u></p>			
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	<p><u>alternative dispute resolution (ADR) program under Labor Code section 3201.5, the claims administrator may include the following language if appropriate under the provisions of the ADR program:</u></p> <p><u>“In accordance with the [insert union name] agreement, active participation by an attorney is not allowed in the Ombudsman and Mediation stages of the ADR workers' compensation process. However, you have the right to consult with an attorney and your right to obtain legal advice is not limited and you may obtain such at your own expense at any time. If the Ombudsman and Mediation stages of dispute resolution are unsuccessful and a written request for Arbitration has been timely filed, attorney participation is allowed.”</u></p> <p><u>“For information about the workers’ compensation claims process and your rights and obligations, contact an information and assistance (I&amp;A) officer of the state Division of Workers’ Compensation. Be sure to inform the I&amp;A officer that your claim</u></p>			
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	<p><u>is subject to an alternative dispute resolution program. For a list of offices, go to <a href="http://www.dwc.ca.gov">www.dwc.ca.gov</a> or call (800) 736-7401.”</u></p>			
<p>General Comment – Information on Benefit Notices and the DWC website</p>	<p>Commenter notes that AB 335 did amend §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>Commenter can find no provision in these proposed rules identifying or defining what informational materials</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) September 3, 2014 Written and Oral Comment</p>	<p>The Administrative Director accepts this comment in part.</p> <p>Section 9810 has been revised to provide that each benefit notice shall refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers' Compensation in California: A Guidebook for Injured Workers" that addresses the benefit(s) to which the notice pertains, and shall advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers' Compensation's website at <a href="http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html">http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html</a> or by contacting an information and assistance (I&amp;A) officer of the Division of Workers'</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>have been developed and made available on the DWC website and district offices, no rules requiring notices to reference the available informational material, and no provision that requires notices to include instructions to the employee on how to access the informational material. Commenter states that these draft rules do not comply with the requirements of §138.4 and must be significantly revised.</p> <p>Commenter recognizes that the “Notice to Employees- Injuries Caused by Work” poster, and the five page informational material set forth in revised section 10139 may partially comply with this statutory mandate. Commenter notes that §138.4, subdivision (e), prescribes that <b>each notice</b> must reference the informational material to enable employees to understand the context of the notices. Commenter alleges that simply stating “All notices shall clearly state that additional information may be obtained from an Information and Assistance officer with the Division of Workers’</p>		Compensation.	

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	<p>Compensation, or on the Division’s website: <a href="http://www.dwc.ca.gov">www.dwc.ca.gov</a>” as set forth in section 9810, subdivision (c), completely ignores the statutory mandate of §138.4, subdivision (e). Commenter states that each benefit notice must stand on its’ own to meet this notification requirement.</p> <p>Commenter states that historically, benefit notices have been designed to help injured workers understand the entire claims process, inform them of their rights and obligations, and instruct them on steps to take at particular stages of their claim.</p> <p>Commenter states that it is unrealistic to contend that one notice at the beginning of a claim or a poster in a lunchroom is sufficient notice to an injured worker who has been off work for several months, or unable to return to their job.</p> <p>Commenter states that many claims are open for years and injured workers must receive timely notice of events, obligations, and rights throughout their entire claim. This is recognized in the requirement that “<b>each notice</b>”</p>			

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	<p>references informational material to enable the injured worker to understand the context of the notices.</p> <p>Commenter states that a “Guidebook for Injured Workers” is an excellent resource and believes that its availability on the internet will help many employees in their efforts to navigate this complex and difficult system. Commenter states that if it is the intent that this booklet will be at least part of the "informational materials" available to injured employees, the rules should mandate that every notice inform injured employees of the existence and availability of this document.</p> <p>Commenter opines that this requires much more than inclusion of a simple statement that additional information may be obtained at the Division’s website, as currently set forth in section 9810 (c).</p> <p>Commenter states that if informational material is to be provided through the internet, the rules must set out <i>an easily accomplished process</i> for</p>		<p>The Administrative Director accepts this comment in part. The revised regulations will allow benefit notices to be sent electronically. The url to the specific chapter of the</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>employees to access this material. Simply providing a general website address that forces the employee to navigate through multiple screens, or requiring input of a long and complex internet address, would effectively bar many employees from accessing this critical information. Commenter opines that one way to help some employees access the proper information would be to require that all notices include a QR code (sometimes called a "scan box") that would link directly to the appropriate informational material.</p> <p>Commenter supports making as much information as possible available on the internet; however, she states that it must be recognized that significant segments of the injured employee population do not have ready access to computers and the internet. Many employees, including older workers, laborers, or farm workers, do not use computers in their jobs and have little or no familiarity with computers. Some employees have language problems, and although the booklet will be printed in Spanish, the DWC website is only in English.</p>		<p>publication "Workers' Compensation in California: A Guidebook for Injured Workers" relevant to the benefit the notice concerns will be available to click on or cut and paste into the recipient's browser.</p> <p>This portion of the comment concerning the DWC website is beyond the scope of the regulatory proceeding.</p>	None.

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	<p>Commenter opines that this will bar thousands of employees in California whose first language is other than English from accessing this information.</p>			
9883	<p>Commenter notes that Labor Code section 124(b) states that “Forms and notices required to be given to employees by the division shall be in English and Spanish.” Commenter notes that this section of the regulations require that any written notice to new employees and any notice to employees poster informing employees of their workers’ compensation rights must be available in both English and Spanish.</p> <p>Commenter opines that as these rules intend to have the DWC website become a primary source for injured workers to access information, forms, and benefit notices, there will also be a Spanish version of the website to comply with the statute and that this will ensure equal access for the large population in California of Spanish-speaking injured workers.</p> <p>Commenter alleges that, in order to comply with the statutory requirement</p>	<p>Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA) September 3, 2014 Written and Oral Comment</p>	<p>The Administrative Director accepts this comment in part.</p> <p>The injured worker pages of the DWC website are already available in Spanish.</p> <p>Section 9810 has been revised to provide that each benefit</p>	<p>Revised language has been distributed for public comment.</p> <p>None.</p> <p>Revised language has been distributed for</p>

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	that each notice must "clearly state ... contact information that an employee may use to access the informational material," the revised benefit notice rules should include a requirement that all notices include a toll-free telephone number and address for the employee to request a written copy of the informational material, as an alternative.		notice shall refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers' Compensation in California: A Guidebook for Injured Workers" that addresses the benefit(s) to which the notice pertains, and shall advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers' Compensation's website at <a href="http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html">http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html</a> or by contacting an information and assistance (I&A) officer of the Division of Workers' Compensation.	public comment.
9810(c)	Commenter notes that this section proposes that the website address of the claims administrator be added to all benefit notices. Commenter supports this change but cautions that any website address must be easily accessed by the employee. Commenter states that the general website address for an insurance	Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) September 3, 2014	The Administrative Director does not accept this comment.  Many claims administrators route all incoming email through a common mailbox and route them internally for response by the appropriate	None.

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	<p>company will be of no help to anyone. Commenter requests that this rule be amended to require that the notice also include the email address of the claim administrator. Commenter notes that the rules already require inclusion of the telephone number and address of the individual examiner responsible for adjusting the claim. Commenter states that adding a requirement to provide the email address will update the rule to reflect current business practices.</p>	<p>Written and Oral Comment</p>	<p>individual or department.</p>	
<p>9810(h) and (l)</p>	<p>Commenter agrees that electronic benefit notices to the attorney and employee are acceptable, but opines that there needs to be a method to prove service and receipt electronically should there be a dispute.</p> <p>Commenter states that claims administrators regularly use secure, encrypted emails to transmit medical information electronically, and this means of transmission may also be useful for benefit notices as a means to document that an email has been received and opened by the recipient.</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) September 3, 2014 Written and Oral Comment</p>	<p>The Administrative Director accepts this comment.</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>Commenter recommends that a new subdivision (m) be added to section 9810, to read as follows:</p> <p>(m) When the method of service of the benefit notice is electronic, in lieu of regular mail, service will be through the use of a secure, encrypted email system. The claims administrator shall maintain a log of service dates, and receipt acknowledgement, for each benefit notice sent electronically on each claims file, and will produce this log upon demand to the employee, and attorney, if represented. 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, they shall then send the benefit notice to the employee and attorney by regular mail within one (1) business day of receipt of the failed electronic delivery notice.</p> <p>Commenter recommends that section 9810, subdivision (l) be amended to clearly require consent to receive electronic notice on the claim form, and that this language be added in</p>		<p>The Administrative Director does not accept this comment. Electronic notices are required to comply with the same requirements as mailed</p>	<p>None.</p>

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	bold print " <b>You are giving up important legal rights if you agree to service electronically. You will receive benefit notices by regular mail if you do not choose the electronic service option.</b> "		notices.	
10139 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Liability	<p>Commenter states that the consent to receive electronic notice on the claim form, line 8, could be confusing to many injured workers. By placing the line for the employee's email address first, it appears that providing an email address is required, whether or not the electronic notice option is checked. Commenter recommends that line 8 of the claim form be revised to place the check box to agree to receive notices by email first, with the employee's email address to the right of the checkbox option.</p> <p>Commenter requests that the claim form be revised to have the Spanish translation set forth on line 8, rather than "(Spanish)", to be consistent with all other information on the claim form providing a Spanish translation.</p> <p>Commenter recommends that the authorization to receive electronic notice</p>	Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) September 3, 2014 Written Comment	<p>The Administrative Director accepts this comment in part.</p> <p>The Administrative Director accepts this comment.</p> <p>The Administrative Director does not accept this comment.</p>	<p>Revised language has been distributed for public comment.</p> <p>Revised language has been distributed for public comment.</p> <p>None.</p>

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	should only be valid for one year from the date of consent by the employee, and should terminate upon death of the person signing the agreement.			
9812(a)(3)(A)(2)	<p>Commenter is concerned that many injured employees could lose important rights under these proposed rules because they are not informed of statutory time limits and other requirements relating to requests for QME panels. Under this section, commenter notes that the notice no longer requires the following warning in not less than 12 point font at the top of the first page: <u>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.</u></p> <p>Commenter opines that where an employee may lose an important right due to a statutory time limit, these rules should clearly spell this out for the injured employee, and not hide this information in the body of the notice. Commenter states that the above language should not be deleted from the rules, and this notice should remain at the top of all benefit notices</p>	Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA) September 3, 2014 Written and Oral Comment	<p>The Administrative Director does not accept this comment.</p> <p>The benefit notice study conducted by CHSWC concluded that this warning language was confusing and intimidating for many injured workers.</p>	None.

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	<p>related to requests for QME panels under section 9812, including when benefits are ending, and for temporary disability and permanent disability notices.</p> <p>Commenter notes that the amendments regarding the Notice of Denial of Temporary Disability it provides that <u>“If the denial is based on the treating physician’s evaluation of the employee’s temporary disability status and the claims administrator agrees with those findings, 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.”</u></p> <p>Commenter argues 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</p>		<p>The Administrative Director does not accept this comment.</p> <p>The CHSWC benefit notice study concluded that attaching</p>	<p>None.</p>

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	<p>Qualified Medical Evaluators. This notice must include at the top, as set forth above: <u>“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.”</u></p> <p>Commenter opines that the burden should never be on the injured worker to contact the claims administrator to get a form, particularly one which has a strict statutory time limit where they may lose rights to obtain a medical evaluation if they don’t act within 10 days. Commenter states that 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>Commenter recommends that, as an alternative, the notice provide an online link to request the QME panel form. Commenter states that this notice should also provide the telephone number and local address of the Information and Assistance Office.</p>		<p>the QME panel request form to every notice leads to many unnecessary and improper panel requests.</p> <p>The Administrative Director accepts this comment in part. The regulations will be revised to require provision of the url so the employee can download the form.</p>	<p>Revised language has been distributed for public comment.</p>

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	<p>Commenter recommends that in each of the situations where the claims adjuster does not agree with the physician’s evaluation, and provides notice to the employee with a copy of the form to request assignment of a QME panel, in addition to the warning to the employee printed at the top of the first page that he or she may lose important rights if no action is taken within 10 days, the proposed rules require that the language in the body of the notice be printed in bold font, or otherwise highlighted by color, type size, or underlining, and that this warning paragraph must be prominently displayed at or near the top of the form.</p> <p>For example, proposed section 9812, subdivision (a)(2), subparagraph (A)(2) only requires that “10 days” be in bold font. Commenter states that this should be required for all notices set forth in section 9812, including when benefits are ending and for temporary disability and permanent disability notices.</p>		<p>The Administrative Director does not accept this comment.</p> <p>The benefit notice study conducted by CHSWC concluded that this warning language was confusing and intimidating for many injured workers.</p>	None.
9812 various subdivisions	Commenter notes that the proposed new language in several sections refers to a claim administrator’s determination	Diane Worley Director of Policy Implementation	The Administrative Director does not accept this comment. A comprehensive medical	None.

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	based on "a medical report" or "a comprehensive medical evaluation." Commenter notes, as recognized in section 9810, subdivision (e), there can be multiple reports or evaluations that may have been relied upon. The commenter suggests that the draft language in the rules be amended to refer to "medical report(s)" and "comprehensive medical evaluation(s)" wherever this occurs.	California Applicants' Attorneys Association (CAAA) September 3, 2014 Written Comment	evaluation results in the issuance of a medical report. Including both terms would be redundant.	
General Comment	<p>Commenter states that Labor Code Section 138.4(d) requires that the Division, both on its website and at the district offices, provide material in plain language that describes the overall compensation system and the rights and obligations of employees and employers at every stage.</p> <p>Commenter states that Labor Code Section 138.4(c) states that each notice must reference this material and that this is a statutory requirement.</p> <p>Commenter does not see any provision in the propose rules that identifies or defines what informational materials have been developed and made</p>	Mark Gearheart California Applicants' Attorney Association (CAAA) September 3, 2014 Oral Comment	<p>The Administrative Director accepts this comment.</p> <p>Section 9810 has been revised to provide that each benefit notice shall refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers' Compensation in California: A Guidebook for Injured Workers" that addresses the benefit(s) to which the notice pertains, and shall advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers'</p>	Revised language has been distributed for public comment.

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	<p>available on the website or in the district offices. Commenter cannot find any rules requiring the notices to include that information or explaining how to access it.</p> <p>Commenter states that the statute makes clear that each notice has to reference informational material, and opines that it would be better if each notice had a full explanation attached or, at minimum, it was easy to access this information on the web – not a reference to the Division’s website where you then have to navigate through and perhaps find it or not.</p> <p>Commenter states that some claims go on for years and that getting a notice at the beginning of a case that has information and not being provided information again later on is not terribly helpful.</p> <p>Commenter states that all the delays from IMR and from the broken panel QME process can make claims go on for years.</p> <p>Commenter states that the injured</p>		<p>Compensation’s website at <a href="http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html">http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html</a> or by contacting an information and assistance (I&amp;A) officer of the Division of Workers’ Compensation.</p>	

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	<p>workers will need to be provided information over and over again.</p> <p>Commenter states that this is what is required by statute and he opines that the regulations require significant revision to address this concern.</p>			
<p>General Comment – Information for Spanish Speaking Injured workers</p>	<p>Commenter states that Labor Code Section 124(b) requires that all forms and notices given to employee shall be in English and Spanish and that this is not optional. Commenter states that Spanish-speaking workers are a huge part of the labor force. Commenter states that the regulations, as written, regarding the notices refer people to the DWC website for additional information.</p> <p>Commenter points out that the DWC website is all in English. Commenter states that this is not in compliance with 124(b) and is discriminatory.</p>	<p>Mark Gearheart California Applicants’ Attorney Association (CAAA) September 3, 2014 Oral Comment</p>	<p>This comment concerning the DWC website is beyond the scope of the regulatory proceeding.</p> <p>The Administrative Director, however, also notes that the injured worker pages of the DWC website are already available in Spanish.</p>	<p>None.</p>
<p>9812</p>	<p>Commenter states that the amendments to this section indicate that if the employer sends out a notice that the adjuster agrees with the treater’s decision, such as the end of</p>	<p>Mark Gearheart California Applicants’ Attorney Association (CAAA) September 3, 2014</p>	<p>The Administrative Director does not accept this comment.</p> <p>The CHSWC benefit notice study concluded that attaching</p>	<p>None.</p>

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	<p>temporary disability, the employee has the right to request a panel QME if they do not agree; however, the form is not required to be attached any longer. The injured workers must contact the claims examiner; an adverse party whom typically cannot even be reached by their own attorney.</p> <p>Commenter states that this has been his experience while practicing at the board. He speaks with the defense attorney and hears that they cannot reach the adjuster – they do not know where they are. Commenter wonders how the injured worker is going to contact the claims adjuster over the phone and why they have any motivation to send them a QME request, let alone do it on a timely basis.</p> <p>Commenter states that the QME panel request needs to be attached with instructions to that notice, otherwise the injured worker who gets the notice will try to call the claims adjuster and will never go a return call. Then they carrier will claim that they never heard</p>	Oral Comment	the QME panel request form to every notice leads to many unnecessary and improper panel requests.	

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	from the injured worker and will not do anything and the injured workers' time to request a panel will run out.			
9810(h) and (i)	<p>Commenter states that he shares the same concerns expressed by Jason Schmelzer of CCWC regarding electronic service of documents.</p> <p>Commenter believes that the Division has not thought through some of the problems with electronic service. Comments states that the mailbox rule does not apply.</p> <p>Commenter inquires as to when the 10 days (or whatever time limit) starts to run. Commenter asks how it is know when someone receives the transmission.</p> <p>Commenter asks what happens if the message is undeliverable.</p> <p>Commenter asks what the obligation of the carrier is at that point, if any.</p> <p>Commenter would like to know what happens if this information is confidential.</p>	<p>Mark Gearheart California Applicants' Attorney Association (CAAA) September 3, 2014 Oral Comment</p>	The Administrative Director accepts this comment in part.	Revised language has been distributed for public comment.

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	<p>Commenter would like to know if there will be a log of these things.</p> <p>Commenter would like to know what information can be produced on demand.</p> <p>Commenter states that he is not against electronic communications; however, he states that these factors need to be addressed.</p> <p>Commenter suggests the use of encrypted communications with a log.</p> <p>Commenter believes that without clarification, there will be litigation over whether the notice was sent, when it was sent, whether it was received, and the time frame for response. None of this has been addressed.</p> <p>Commenter is concerned that the claim form asks the injured worker to put down their e-mail address and then has a box to check after that saying that “I’ll take e-mail service instead of mail service.” Commenter claims that this is confusing.</p>			

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	<p>Commenter believes that many injured workers are going to be in the mode of filling out the form; name, address, date of injury. Oh, e-mail.</p> <p>Commenter is concerned that they will put their e-mail down before realizing that they may be agreeing to electronic service and waiving their rights to written service.</p> <p>Commenter recommends that the form make it very clear that they are opting for electronic service</p>			
General Information	<p>Commenter thanks the Division for the hard work on this issue and all the other regulations related to the Department of Industrial Relations and the Department of Workers' Compensation.</p> <p>Commenter states that she is not an attorney, perhaps an accidental attorney.</p> <p>Commenter states that she has experience in related fields like writing methods and procedures for large international corporations and</p>	Rose Turner September 3, 2014 Oral Comment	<p>The Administrative Director thanks the commenter for this comment.</p> <p>The following comments do not concern the subject of the regulatory proceeding.</p>	None.

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	<p>tariffs, which are very similar to this whole regulatory procedure.</p> <p>Commenter states that in administrative law, and in other areas, she has some experience and success in a landmark decisions in social security administrative law.</p> <p>Commenter states that she has a thank you letter from the attorney general of this state in another case where the hearing was held in this building many years ago thanking her for her help and stating they had never had a case where they had every violation proved by their investigators.</p> <p>Commenter claims that she comes from a background where problem-solving was her job, to make things work. Commenter alleges that that's not happening here.</p> <p>Commenter claims that it seems to be the last thing that happens is that anybody wants to make this work and states that this is supposed to be to help the injured worker either to return to work if they're able and when they</p>		<p>This comment concerning workers' compensation proceedings in general is outside the scope of the regulatory proceeding.</p>	

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	<p>are not, to relieve them of the consequences of their industrial injury.</p> <p>Commenter recommends that one of the first things that needs to go into the benefits notices, as it was noted earlier, is that these notices are oftentimes in workrooms and offices and that an injured worker may never return to that office.</p> <p>Commenter states that there are requirements, not only within the Labor Code but other laws within California, that require certain amount of notice and that the claims adjusters are impugned [sic] with knowledge by these statutes.</p> <p>Commenter states that there's a thing called statutory presumption. Commenter states that the workers' compensation court is not the exclusive remedy in all cases nor a small section of the Labor Code and regulations that are subject to change.</p> <p>Commenter states that it's very important, especially when the claims adjuster has knowledge that there may</p>		<p>The Administrative Director does not accept this comment. While the employee poster is required to be placed “in a conspicuous location frequented by employees during the hours of the workday”, benefit notices are sent directly to the injured worker.</p> <p>This comment concerning workers' compensation proceedings in general is outside the scope of the regulatory proceeding.</p> <p>This comment concerning alternatives to workers' compensation benefits is</p>	

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	<p>be other entitlements, that the injured worker be given that in the first letter that they get. Those are benefits, whether they are from DWC or DIR, or from another administrative department of the State of California or the federal government.</p> <p>Commenter states that while the Labor Code and the regulations mention a few presumptive disabilities, there are in fact in the State of California -- and they are across the board to federal law -- 15 presumptive disabilities. And these are recognized by the State of California and also by the Workers' Compensation Board. Commenter opines that time and time and time again attorneys, judges, they all say that oh, no, that does not apply.</p> <p>Commenter states that one could have a final award of disability, get a hundred percent disabled based on your industrial injury, before it gets adjudicated in this realm, based on the exact same evidence.</p> <p>Commenter states that when a claim gets mismanaged, there are other opportunities. Commenter opines that</p>		<p>outside the scope of the regulatory proceeding.</p> <p>This comment concerning workers' compensation proceedings in general is outside the scope of the regulatory proceeding.</p> <p>This comment concerning alternatives to workers' compensation benefits is</p>	

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	<p>when an injured worker's medical needs are not met timely, or a claim is denied with that investigation, the injured worker can go and apply for Medi-Cal and get it. They can apply for social security disability. They can apply for state disability. Commenter states that these things are not on that initial notice and there's other case law which shows that people in these positions have to give that type of notice.</p> <p>Commenter states that she has worked in a large building that had over 10,000 people in it. There were four vendor closets that had all the mandated posters in it. Commenter states that one could work in that building for 20 years and never enter one of those closets to find these notices that you were supposed to have.</p> <p>Commenter states that this is what happens to the injured worker and that some people allege that they have too much information, but commenter opines that they need to have a certain amount of information up front.</p>		<p>outside the scope of the regulatory proceeding.</p> <p>In addition, the Notice of Potential Eligibility also advises the injured worker of the possible availability of State Disability Insurance (SDI) or unemployment insurance (UI).</p> <p>The Administrative Director does not accept this comment. As stated above, while the employee poster is required to be placed “in a conspicuous location frequented by employees during the hours of the workday”, benefit notices are sent directly to the injured worker.</p> <p>This portion of the comment concerning the DWC website is beyond the scope of the regulatory proceeding.</p>	

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	<p>Commenter states that the DWC site is too hard to navigate and that it took her two hours to find the actual notice for this meeting, although she had heard about it. Commenter states that the DWC forms cannot be filled out if you're using FireFox. They can only be filled out if you are using Internet Explorer.</p> <p>Commenter notes that in EAMS, the form for expedited hearing shows 31 lines, but you could only put in roughly 400 characters and the commenter thinks that includes the spaces. Commenter states that if you are under a deadline trying to paste in the information that was required from the EAMS class that one has attended, you have to be ready but it keeps bouncing back. Commenter states that then you have to take in down and that you can only check one box.</p> <p>Commenter states that if there are two issues, a problem with the benefits notice and a problem with utilization review, that are both occurring at the same time and there are ongoing</p>		<p>This portion of the comment concerning EAMS forms is beyond the scope of the regulatory proceeding.</p>	

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	<p>problems, you can only put in one and then your other matter doesn't get heard.</p> <p>Commenter states that it's then the fault of the injured worker or the person who is assisting them if this form isn't filled out correctly.</p> <p>Regarding the notices and the time for service, commenter states that there are insurance companies and their adjusters who, several years back, made a big deal about moving out of state to Arizona so they then could have more time to serve these things so that the injured worker has ten days to respond. Commenter opines that they have 15 days to send it and they take every day of that 15 days because they're entitled to. Commenter alleges that by the time the injured worker receives it that it is already too late. Commenter states that it will be signed like it came from Bakersfield. That's in California, Kern County even. But they get their extra time and they serve it late if they serve it at all.</p> <p>Commenter notes that there was some</p>		<p>This portion of the comment concerning timelines in workers' compensation proceedings is beyond the scope of the regulatory proceeding. Timeframes for response to notices are set by the legislature in statutes.</p> <p>This portion of the comment</p>	

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	<p>language in these regulations about serving benefits notices. Commenter state that it was never served in her case and that there were a lot of decisions based on it and it wasn't correct. Commenter states that she attended three hearings regarding this. The opposing counsel never produced it. He only produced it after he lied to the judge and got a certain order. Eventually he produced it and it showed it was never served on commenter. Commenter opines that this goes on all the time. Commenter states that she believes that the letter was written until sometime later. It had the wrong information and it had vague language. I agree with your doctors. Your benefits ran out two months ago. Won't say which doctors. Don't say which reports. Don't say how they calculated it. Don't say how they estimated the permanent disability rates.</p> <p>Commenter states that sometimes she hesitates due to the fact that she was hit by a semi-truck a few years back and sometimes has problems with word finding. She stated that if she</p>		<p>concerning specific allegations regarding events in the commenter's own workers' compensation case is beyond the scope of the regulatory proceeding.</p>	

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	<p>gets emotional, that's because of the same issue. Commenter states that she has emotional liability or pseudobulbar affect. Commenter states that if she starts crying, it has nothing to do with anything other than it's because she got hit by a truck and survived.</p> <p>Commenter opines that there are a number of issues here that these notices simply don't cover. If they're going to terminate somebody's benefits, it definitely needs to specify exactly why.</p> <p>Commenter opines that there needs to be a calculator built in. So they have to fill in and say this report had a WPI of X. This one had a WPI of x. This one had a WPI of X. And they are added, not combined. or, the Applicant has a presumptive disability according to blah, blah, blah, blah, blah. That needs to be in there.</p> <p>Commenter opines that the insurer can't discontinue your benefits because they have decided to</p>		<p>The Administrative Director does not accept this comment. A notice that benefits are ending requires an explanation of the reasons therefore.</p> <p>The Administrative Director does not accept this comment. The methodology for calculating permanent disability s beyond the scope of the regulatory proceeding.</p> <p>This portion of the comment concerning specific allegations regarding events in the</p>	

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	<p>intentionally misrepresent the material facts in the case so that they can deny you your permanent disability because you couldn't be in two places at one time; attend an AME when you were having surgery. Commenter states that this is what happened with the claim.</p> <p>Not using 4658 to calculate it or to say you have 423 weeks of disability that's expired and that doesn't happen until June of 2016 or judges -- there's nothing that allows you supposedly to bring an invalid termination letter to court other than to ask for sanctions.</p> <p>Commenter states that if these items are missing, that's where it leads. It leads to abuse. Commenter opines that if there is vague language -- it's supposed to be liberally constructed in the benefit of the injured worker, not to the bottom line of the insurer.</p> <p>Commenter opines that there has to be some meat here, some teeth where you can get in and say, okay, when you don't issue a proper benefits letter that there is an expedient way for an injured worker to have their benefits</p>		<p>commenter's own workers' compensation case is beyond the scope of the regulatory proceeding.</p> <p>The Administrative Director does not accept this comment. This comment concerns matters committee by the Labor Code to the jurisdiction of the Workers' Compensation Appeals Board.</p>	

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	<p>initiated, at least on a temporary basis. In other administrative departments it's called aid paid pending. And certainly a notice should be a reasonable amount of time before the termination, not after it.</p> <p>Commenter opines that one of the other options besides electronic communications should be direct deposit. Commenter states that oftentimes an injured worker has difficulty getting back and forth to the bank. They may not have access to a computer or not want to use a computer to receive their compensation, you know. They may prefer to have direct deposit so that they can call up on the phone and find out, okay, my check's in.</p> <p>Commenter states that there is a provision in the regulations, but if you've asked for it you're told, no, they don't have it. Commenter recommends that one of the things that are in that initial letter is how do you want to receive your compensation. Do you want it by direct deposit? Do you want it by a check? Commenter</p>		<p>This comment, concerning permissible methods of payment of workers' compensation benefits, raises matters within the jurisdiction of the legislature, and is outside the scope of the regulatory proceeding.</p>	

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	<p>opines that this has to be there because a disabled person, an injured worker, they may not be able to timely manage their money.</p> <p>In reference to section 9815 on the very last page, corrected notice; commenter states that she has five on her desk regarding the same item.</p> <p>Commenter states that not a single one of the corrections on it is correct and this injured worker has been totally disabled since the date of injury.</p> <p>Commenter opines that it is an abomination that he should be denied his life pension that he's entitled to simply because the forms or the language for these benefits letters does not have any consequences associated with it or any requirements to make it clear what it is.</p> <p>Commenter states that she may provide some written comments later [NOTE: the commenter did not submit any written comments].</p>		<p>This portion of the comment concerning specific allegations regarding events in a specific individual's workers' compensation case is beyond the scope of the regulatory proceeding.</p>	