

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

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Proposed Amendment to Regulations:
Workers' Compensation – Workers' Compensation Information
System**

TITLE 8, CALIFORNIA CODE OF REGULATIONS SECTIONS 9700, ET SEQ.

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 133, 138.6, 138.7, and 5307.3, proposes to modify existing regulations, by amending Article 1.1, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with Section 9700, relating to the Workers' Compensation Information System.

PUBLIC HEARING

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

Date: September 13, 2002
Time: 10:00 am to 5:00 PM or conclusion of business
Place: Gov. Hiram W. Johnson State Office Building, Auditorium
455 Golden Gate Avenue
San Francisco, California 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held. The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director of the Division of Workers' Compensation, is undertaking this regulatory action pursuant to the authority vested in him by Labor Code Sections 133, 138.6, 138.7, and 5307.3 and 5307.3, to adopt regulations to implement, interpret, and make specific Labor Code Section 138.6, relating to the Workers' Compensation Information System (WCIS).

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Labor Code Section 138.6 requires the Administrative Director of the Division of Workers' Compensation to develop a cost efficient workers' compensation information system to accomplish the following purposes:

- Assist the Department of Industrial Relations to manage the workers' compensation system in an effective and efficient manner.
- Facilitate the evaluation of the effectiveness and efficiency of the benefit delivery system.
- Assist in measuring how adequately the system indemnifies injured workers and their dependents.
- Provide statistical data for research into specific aspects of the workers' compensation system.

The data collected electronically must be compatible with the International Association of Industrial Accident Boards and Commissions' Electronic Data Interchange (IAIABC EDI) system, and the data elements to be provided by claims administrators through the WCIS must be set forth in regulations.

Additionally, Labor Code Section 138.7 limits access to individually identifiable information maintained by the Division of Workers' Compensation, and requires the Administrative Director to adopt regulations governing access to this information by specified government agencies and bone fide researchers authorized by this statute to receive individually identifiable information.

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

1. Section 9701

This section defines key terms used in these regulations to ensure the meaning will be clear to the regulated public. The proposed amendments in this section will clarify terms in the current WCIS regulations and define key terms that are contained within the regulations proposed for Sections 9702 and 9703:

(a) “Bona Fide Statistical Research” is defined to clarify the purpose for which individually identifiable information will be released to individuals and private or public entities under existing Section 9703 (d).

(d) “Closed Claim” is defined to clarify an event that gives rise to a reporting obligation under Section 9702 (d).

(h) “EDI Implementation Guide, Release 2” is amended to reflect an updated version of the guide issued by the IAIABC on December 1, 1999.

(j) “EDI Trading Partner Profile” is redefined to reflect a revised trading partner profile form [Form DWC WCIS TP01 (Revised 07/02), entitled “Electronic Data Interchange Trading Partner Profile”].

(l) “International Association of Industrial Accident Boards and Commissions” is amended to reflect the association’s change of office location.

2. Section 9702

This section sets forth the electronic data reporting requirements, and provides that the submission of the specified data elements satisfies a claims administrator's statutory obligation to send to the Division copies of benefit notices. The proposed amendments in this section eliminate unnecessary data elements, add relevant data elements, and clarify reporting obligations:

(a) This subdivision is amended to clarify that claims administrators utilizing EDI Implementation Guide, Release 1, shall only transmit the data elements that are set forth in Release 1. Claims administrators utilizing EDI Implementation Guide, Release 2, shall only transmit the data elements that are set forth in Release 2.

(b) This subdivision sets forth the data elements required for the initial reporting of claim information. The amendments eliminate an unnecessary data element and accommodate the reporting of data elements under either of the two EDI Implementation Guides (Release 1 and 2) by eliminating the timeframe for utilizing various data elements.

(c) This subdivision clarifies the specific identifying data elements that must accompany each WCIS data transmission.

(d) This subdivision sets forth the data elements required for the reporting of indemnity benefit payments. The amendments eliminate irrelevant or duplicative data elements, add pertinent data elements, distinguish reporting obligations depending on the use of either of the two EDI Implementation Guides (Release 1 and 2), and clarify the interpretation of data elements.

(g) This subdivision sets forth the data elements required for the reporting of annual benefit payments on claims with a date of injury on or after July 1, 2000. The amendments modify the reporting date and add pertinent data elements.

3. Section 9703

This section sets forth the provisions governing access to individually identifiable information, as required by Labor Code section 138.7. The proposed amendments in this section expressly allow the use of individually identifiable WCIS data for research by the Division of Workers’ Compensation and the Commission of Health and Safety and Workers’ Compensation.

(b) The amendment to this subdivision specifies that the Division of Workers’ Compensation may obtain and use individually identifiable information held in the WCIS to

conduct research on the worker's compensation system in order to carry out the duties of the Division and the Administrative Director.

(d) This subdivision is added to conform this section to the Legislature's amendment of Labor Code Section 138.7 (Chapter 792, Stats. 2001), to allow access to individually identifiable information held in the WCIS by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation.

STATE REIMBURSABLE MANDATE

The Administrative Director has determined that the proposed regulations will not impose any new mandated program on local agencies and school districts. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See County of Los Angeles v. State of California (1987) 43 Cal.3d 46. The requirements imposed on all employers by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers, private and public, and not uniquely to local governments.

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS

The regulations proposed herein may, from time to time, impose costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer contribute to the funding of California's workers' compensation programs is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement on employers to contribute to the funding of California's workers' compensation programs is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California. However, the proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose minimal costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) The proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS/ABILITY TO COMPETE

The Administrative Director has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses,

including the ability of California businesses to compete with businesses in other states. The proposed regulations do not impose new fees or significant costs on claims administrators.

ECONOMIC IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations. However, the proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

The entities directly affected by WCIS regulation in terms of potential costs are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) private employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES:

The Administrative Director has determined that the proposed regulations will not have a significant impact on small businesses. The obligation to report workers' compensation claims data falls on insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Administrative Director has determined that the proposed regulations will likely have no net effect on the creation or elimination of existing businesses within California, or affect the expansion of current California businesses. However, some jobs relating to key data entry and the processing of paper reports between employers, physicians, medical bill review organizations, claims administrators, and the state may be affected based on the anticipated increase in the automated reporting of workers' compensation information.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out

the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS / INTERNET ACCESS

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

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov.

PRESENTATION OF ORAL OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral or written statements, arguments or evidence at the public hearings. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

In addition, any person may submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on September 13, 2002.

AVAILABILITY OF RULEMAKING FILE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND DOCUMENTS SUPPORTING THE RULEMAKING ACTION

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers'

Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 5:00 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

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

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

Note: In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person at the same address and telephone number as noted above: George Parisotto.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Sections 9701, 9702, and 9703.