

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
SELF INSURANCE PLANS**

**FINAL STATEMENT OF REASONS AND
UPDATED INFORMATIVE DIGEST**

Subject Matter of Regulations: Self-Insurance Regulations

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 15201,15214,15300,15400.2,15251,15405,154301,15478,15481 and 15484**

The Director of the Department of Industrial Relations, pursuant to the authority of Labor Code section 3702.10, has adopted and amended regulations within Articles 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 15201. The Department of Industrial Relations proposes to amend existing Chapter 8, Subchapter 2, Article 1, Section 15201, Article 3, Section 15214, Article 5, Section 15251, Article 6, Section 15300, Article 9, Sections 15400.2 and 15405, Article 11, Section 15430.1, and Article 13, Sections 15478, 15481 and 15484 in the California Code of Regulations.

Section 15201	Definitions.
Section 15214	Cash in Trust
Section 15251	Self Insurer's Annual Report
Section 15300	Estimating and Reporting Work Injury Claims
Section 15400.2	Maintenance of Records
Section 15405	Confidentiality
Section 15430.1	Definitions
Section 15478	Excess Insurance
Section 15481	Annual Actuarial Certification of Losses
Section 15484	Continuing Financial Capacity of Group Self Insurers

UPDATED INFORMATIVE DIGEST

The Director incorporates the Informative Digest prepared in this matter. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code §11346.9(d), the Director of the Department of Industrial Relations hereby incorporates the Initial Statement of Reasons prepared in this

matter. Unless a specific basis is stated for any modification to the regulations is initially proposed, the necessity for the amendments to existing regulations and adoption of new regulations as set forth in the Initial Statement of Reasons continue to apply to the regulations as adopted.

All modifications from the initially proposed text of the regulations are summarized below.

Article 1. Section 15201. Definitions.

In subsection (x) non substantive additions were made for consistency of terms.

Article 3. Section 15214. Cast in Trust

In subsection(a) and (b) non substantive changes were made to update banking terminology.

Subsection (c) was modified to allow for the bank or financial institution issuing and holding the certificate to be the custodian and provides that OSIP be provided with the documentary evidence.

Article 5. Section 15251. Self Insurer's Annual Report

In subsection (b)(1)(F) was modified to allow the annual report of information on employment and wages to come from whatever EDD reporting is utilized or required of the self insured by EDD.

Article 6. Section 15300. Estimating and Reporting Work Injury Claims

In subsection (a) non substantive changes were made to cite the correct sections.

In subsection (b)(1)(A)(B)(C) was modified to allow for clarity and consistency with WCIRB in reporting of medical cost containment programs. The change in date allows for consistency with annual reporting periods.

In subsection (b)(7) non substantive changes were made updating the link on our website for the Life Expectancy tables.

Article 9. Section 15400.2. Maintenance of Records

Subsection (b) was modified to allow for electronic storage of claim files and clarifies retention of original paper files.

Article 9. Section 15405. Confidentiality

Subsection (a)(3) and (c)(2)(d) was modified to allow the Manager to provide any financial information including actuarial on self insured groups without the need for a nondisclosure agreement.

Article 11. Section 15430.1. Definitions

Non substantive changes were made to update banking terminology and correction of a typographic error.

Article 13. Section 15478. Excess Insurance

Subsection (b) non substantive change was made to include a word that was previously inadvertently omitted.

Article 13. Section 15481. Annual Actuarial Certification of Losses

Subsection (c) was modified to require group administrators to provide actuarial report within 100 days of the program year.

Article 13. Section 15484. Continuing Financial Capacity of Group Self Insurers

Subsection (a) was modified to require the group self insurer to submit an-audited financial statement in addition to audited financial statement

Subsection (i) was amended to require the group administrator to file with OSIP the budget for the group’s current year together with rates of contributions from members, deviations of rates, all actuarial reports and documents supporting the rates of contribution, and minutes of meetings

Subsection (j) was amended to require the group administrator to file changes in the rates of contributors within 30 days of the change.

UPDATE OF MATERIAL RELIED UPON

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Director except that public comments received were taken into consideration when finalizing the regulations.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

CONSIDERATION OF ALTERNATIVES

The department considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Director has now determined that no alternatives proposed by the regulated public or otherwise considered by Self Insurance Plans would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The summaries and responses to comments of each organization or individual which were received during the 45-day comment period and the two 15-day comment periods are contained in the rulemaking file and are incorporated by reference herein.

SUMMARY OF COMMENTS AND RESPONSES TO COMMENTS RECEIVED DURING INITIAL NOTICE AND PUBLIC COMMENT PERIOD ON PROPOSED MODIFICATIONS TO REGULATIONS.

45-Day Comment Period

Commenter #1:

Joe Carresi, Manager, Southern California Edison
November, 18, 2010

Section 15201

COMMENT:

Do not change the definition of both an Indemnity Claim in section 15201(x)(5) and Medical-Only Claim in section 15201(cc).

RESPONSE:

The comment is accepted by the director, the text is deleted in the first notice of 15 day period to comment.

Section 15251

COMMENT:

Recommend modification to section 15251(G)(5) is identified by highlighted underline. “Open Indemnity and Medical-Only Claims Information. A list of all open indemnity and medical-only claims by reporting location by year, and alphabetically within year. This list shall:”

RESPONSE:

The Director does not accept this comment as beyond the scope of the current comment period but may be considered for further regulation.

Sections 15201(x)(5) and 15300(b)(1)

COMMENT:

References to Vocational Rehabilitation should be deleted and replaced with Supplemental Job Displacement Benefits in sections 15201(x)(5) and 15300(b)(1)

RESPONSE:

The Director does not accept this comment because the claims reported as open indemnity claims include those with dates of injuries that are subject to Vocational Rehabilitation benefits.

Commenter #2:

Philip Millhollon, California Self-Insurers Association
November 24, 2010

Sections 15201(x)(5) and (cc)

COMMENT:

Commentator recommended this section not be changes as proposed. The regulation could be changed to add Medical-Only to the section 15251(G)(5).

RESPONSE:

The Director accepts the comment that the proposed Section 15201(x)(5) and (cc) not be changed. The comment concerning Section 15251(G)(5) is beyond the scope of this comment period.

Commenter #3:

Travis Harper, Self-Insured Solutions
November 24, 2010

Section 15475.3

COMMENT:

The commenter recommends changes to the proposed maturity of investments, concentration of investments and types of investments.

RESPONSE:

The Director rejects the comments as beyond the scope of this comment period.

Commenter #4:

Jason Schmelzer, The California Coalition of Workers' Compensation
Cynthia Leon, The California Manufacturers & Technology Association
Thomas Vu, California Chamber of Commerce

Section 15201 (x) and (cc)

COMMENT:

The commenters do not believe the regulations should be modified as proposed. This would create a disincentive to modified duty and punishes the general workers' compensation community for the practices of a small number of claims administrators.

RESPONSE:

The comment is accepted by the Director; the text is deleted in the first notice of 15 day period to comment.

Section 15251

COMMENT:

The commenters support the proposed regulations.

RESPONSE:

The comment is accepted by the Director.

Section 15300 (b)(1)

COMMENT:

The commenters support the proposed regulations so long as they are on a proactive basis.

RESPONSE:

The comment is accepted by the Director.

Section 15300(b)(1)(C)

COMMENT:

The commenters recommends including pharmacy benefit networks in the list of managed care organization as they are becoming more common among self-insured employers in California.

RESPONSE:

The Director accepts this comment and incorporates the changes

Section 15300(b)(4) and (7)

COMMENT:

The commenters recommend including language to allow rated age to be used when reserving for life expectancy on future medical care as it will lead to more accurate predictions of future liability.

RESPONSE:

The Director does not accept this comment. This is beyond the scope of the current regulatory package and there has been no discussion of rated age in any of the public forums held. Life expectancy tables as compiled by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention are uniform in their application and easily ascertained while there has been no showing of such uniformity for rated age.

Section 15400.2

COMMENT:

The commentators agree with allowing electronic storage and recommend eliminating the requirement to maintain the original paper file for at least two years after the claim has been closed or become inactive. An existing requirement requires copies of claims files to be reproduced into legible paper form which negates the need for a stored paper copy which is an added cost to self-insured employers.

RESPONSE:

The Director does not accept this comment. The regulations allow for maintaining records via microfilm, electronic files, and paper files. It also specifies the retention schedule for paper files.

Section 15405(a)(3)

COMMENT:

The commentators support the proposed changes and recommend that it be explicitly stated that actuarial reports be available to SISF.

RESPONSE:

The Director accepts this comment, the statement is included in the first notice of 15 day period to comment.

Section 15405(a)(4)

COMMENT:

The commentators support the proposed changes and recommend the addition of prospective group members, to allow the group to require a nondisclosure agreement and to include any rather than current financial reports.

RESPONSE:

The Director accepts this comment. The changes are included in the first notice of 15 day period to comment.

Section 15478

COMMENT:

The commentators recommend that any document sent to a SIG member using the term “Excess Insurance” must clearly be labeled as applying in the aggregate or to individual claims.

RESPONSE:

The Director rejects this comment as beyond the scope of the current comment period but may consider this in future regulatory change.

COMMENT:

The commentators refer to a part of the Initial Statement of Reason which discusses retention level of claims and recommends the retention level be allowed to be \$1,000,000 and note this was not included in the proposed amendments. They would support such a change . . .

RESPONSE:

The Director accepts this comment that the retention level be allowed to be as high as \$1,000,000. The additional discussion supports the amendment of subsection (b) to include the word “no” which was inadvertently left out. This was not intended to change the current retention level. The text remains as in the 45 day period to comment.

Section 15481

COMMENT:

The commentator suggests this section is duplicative of proposed Section 15484 (i) as both require filing of actuarial reports in support of rates and Section 15481(c) and (d) requires both filing of actuarial and ensuring that contribution rates are based on the actuarial projection.

RESPONSE:

The Director does not accept this comment. In the experience of SIP there are two types of actuarial certifications, one is a complete analysis and the other is an analysis of rates. This section is not duplicative as the annual certification of losses(c) is filed at the completion of the program year and the actuarial reports under 15484 (i) are to be filed at the start of the year.

Section 15484

COMMENT:

The commentator recommends that a SIG’s internal financial statements be submitted to SIP by March 1 with the Current deadline of July 1 retained for audited financial statements.

RESPONSE:

The Director accepts this comment. The changes are included in the first notice of 15 day period to comment.

Commenter #5:

Philip M. Vermeulen, Governmental Relations on behalf of Acclamation Insurance Management Services
December 2, 2010

Section 15201 (x), (z) and (cc)

COMMENT:

Commenter recommends the changes will result in tremendous cost increases.

RESPONSE:

The comments are accepted by the Director; the text is deleted in the first notice of 15 day period to comment.

Section 15300 (b)(1)

COMMENT:

Commenter agrees with proposed regulations as it will reduce security deposits.

RESPONSE:

This comment is accepted by the Director in part and rejected in part as to the reasons for the change. Reduction of security deposits is not the reason for the change, conformity with other reporting is the reason for the changes. If the change results in a significant change of security deposits the computation of deposits may be changed in the future to assure deposits are adequate.

Section 15405

COMMENT:

Commenter agrees with proposed regulations.

RESPONSE:

The comment is accepted by the Director.

Commenter #6:

Clay A. Jackson, Vice President, California Alliance of Self-Insured Groups, Inc.
December 6, 2010

Section 15201

COMMENT:

The revisions to Subsections (x) and (cc) should not be made. The revisions will cause an unjustified increase in security deposits and a change in OSHA reporting.

RESPONSE:

This comment is accepted by the director; the text is deleted in the first notice of 15 day period to comment.

Section 15214, 15251, 15403.1, 15748,

COMMENT:
Commenter agrees with proposed regulations.

RESPONSE:
These comments are accepted by the director.

Section 15300

COMMENT:
Commenter concurs with the comments of California Manufactures & Technology Association.

RESPONSE:
The Directors response is the same as in the California Manufactures (Cynthia Leon).

Section 15405

COMMENT:
Commenter agrees with the proposed regulations and recommends that a potential member of a self insured group, after signing a non-disclosure agreement, be provided with a copy of the self-insured groups bylaws and other formational corporate documents, the most recent audited financial statement and actuarial reports if requested.

RESPONSE:
These comments are accepted by the director except that all financial reports will be available after signing appropriate non-disclosures in the modified text in the first notice of 15 day period to comment.

Section 15481

COMMENT:
Commenter disagrees with the proposed regulations as the timing is problematic under the current regulations.

RESPONSE:
The Director does not accept this comment as it is vague.

Section 15484

COMMENT:
Commenter objects to the proposed regulations as very onerous and cumbersome and alternatively proposes requiring a self insured group to file its internal financial statements by March 1 while maintaining the current July 1 deadline for submission of the audited financial review.

RESPONSE:

The Director accepts this comment. The changes are included in the first notice of 15 day period to comment.

Commenter #7:

Carmella Claridy, Assistant Vice President, Keenan and Associates

December 7, 2010

Section 15201

COMMENT:

The definition of medical only should remain the same. The proposed changes are unnecessary to accomplish the states regulatory purpose.

RESPONSE:

This comment is accepted by the director; the text is deleted in the first notice of 15 day period to comment.

Section 15300

COMMENT:

The effective date for a cost containment problem to be coded as allocated for claims payments on/after 01/01/11 should be changed to new claims on/after 01/01/11.

RESPONSE:

This comment is accepted by the Director in part and rejected in part. The Director accepts that the effective date should be on or after 01/01/11. The need for conformity in reporting these costs is recognized. The Director rejects the need to specify that this pertains to new claims because changing the wording does not conform with the WCIRB guidelines, as is intended in the changes proposed.

Commenter #8:

Daniel R. Sovocool, Nixon Peabody LLP, Attorneys At Law

December 7, 2010

Section 15251(b)(2)(A) and (C)

COMMENT:

We recommend that allocated loss adjustment expense (ALAE) be required when reporting the incurred liability, paid to date, and future liability for the periods required by these sub-sections.

RESPONSE:

The Director rejects this comment as it is beyond the scope of this comment period but may be considered in further regulatory action. If the change results in a significant change of security deposits the computation of deposits may be changed in the future to assure deposits are adequate.

Section 15300(b)(3)

COMMENT:

Again, we recommend that allocated loss adjustment expenses (ALAE) be required when estimating the future medical costs for the total anticipated period of treatment.

RESPONSE:

The Director rejects this comment as it is beyond the scope of this comment period but may be considered in further regulatory action. If the change results in a significant change of security deposits the computation of deposits may be changed in the future to assure deposits are adequate.

Section 15405(d)

COMMENT:

We recommend that this sub-section be modified as follows:

“Except as otherwise provided by law, information obtained from actuarial reports and groups filed by the group self insurer shall not be disclosed to any other entity or person without an order from an appropriate court or administrative subpoena from an agency of the State, with the following exceptions: The Manager may provide copies of actuarial reports to the Self Insurers’ Security Fund”.

RESPONSE:

The Director accepts the spirit this comment which is to modify the proposed regulation for clarity. The first notice of 15 day period to comment accomplishes this by deletion of unnecessary words in the proposed text.

Section 15484(b)

COMMENT:

We recommend that the following group expenses be included *in* the required reporting:

1. Director and officer compensation
2. Dividend expense

RESPONSE:

The Director rejects the comments as beyond the scope of this comment period but may be considered in further regulatory action.

Section 15484(h) but should have been stated at 15484 (i)

COMMENT:

We recommend that the due date for submitting the group’s budget to the Office of Self-Insurance Plans be November 1 of each year for the following program year. This early reporting will allow the Manager to review the proposed rates, deviations from current year rates, and whether the proposed rates provide for sufficient contribution to cover the expected losses and expenses of the program year. In addition, the group should be required to submit a report of this billed rates and contributions, *noting any deviations from the budgeted rates previously submitted to the Manager by March 1 of that program year.*

RESPONSE:

The Director rejects the change in the filing date because the change allows for filing earlier than March 1. The commenter states “The first notice of 15 day period to comment uses the date of November 1 in the proposed text.” There was no such proposed changes. The director does not accept the comment regarding subsequent filing as this is duplicative of subsection (j).

Commenter #9:

Brenda Ramirez, Claims and Medical Director, California Workers’ Compensation Institute
December 7, 2010

Section 15201

COMMENT:

Withdraw the changes now proposed to section 15201, and instead replace “Vocational Rehabilitation” with “Supplemental Job Displacement Voucher Benefits” in subsection 15201(x)(5).

RESPONSE:

The Director accepts this comment in part and rejects it in part. Proposed changes are deleted in the first notice of 15 day period to comment. The replacement of “Vocational Rehabilitation” with “Supplemental Job Displacement Voucher Benefits”, as entitlement to these benefits are dependent on the date of injury and there may be new filing of injury dates which entitles the employee to vocational rehabilitation benefits.

Commenter #10:

Lachlan Taylor, Commission on Health and Safety and Workers’ Compensation
December 10, 2010

Section 15405

COMMENT:

The commenter suggests a revision to add provisions governing disclosure of confidential information for research purposes based on L.C. 138.7 which applies only to DWC.

RESPONSE:

The Director rejects the comments as beyond the scope of this comment period but may be considered in further regulatory action.

Section 15475.3

COMMENT:

The commenter recommends changes to the proposed maturity of investments, concentration of investments and types of investments.

RESPONSE:

The Director rejects the comments as beyond the scope of this comment period but may be considered in further regulatory action.

First 15-Day Comment Period

Commenter #1:

Jason Schmelzer, California Coalition on Workers' Compensation
Cynthia Leon, California Manufacturers & Technology Association
Thomas Vu, California Chamber of Commerce
January 3, 2011

Section 15201, 15251, 15400.2, 15405

COMMENT:

Commenter agrees with proposed regulations

RESPONSE:

The Director accepts the comment.

Section 15300(b)(1)

COMMENT:

Commenter agrees with proposed regulations. Clarification is requested so that the new requirement is applied prospectively. The modification suggested includes inserting "Any report produced" before "On or after July 2, 2011 for the public self insurers and on or after January 1, 2012 for private self insurers, the medical component shall not include the cost of medical cost containment programs incurred with respect to a particular claim or which can be allocated to a particular claim whether done by an outside vendor or by the self insurer."

RESPONSE:

The Director accepts the comment in part and rejects the comment in part. The changes are meant to address any medical cost containment incurred on or after July 2, 2011 and not just any report produced.

Section 15300 (b)(4) and (7)

COMMENT:

Commenter asks that rated age be allowed.

RESPONSE:

The Director does not accept this comment. This is beyond the scope of the current regulatory package and there has been no discussion of rated age in any of the public forums held. Life expectancy tables as compiled by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention are uniform in their application and easily ascertained while there has been no showing of such uniformity for rated age.

Section 15300 (b)(7)

COMMENT:

Commenter requests for clarification on Cost of Living Adjustments to life pension cases.

RESPONSE:

The Director does not accept this comment. This is beyond the scope of the current regulatory package and the case addressing the calculation of cost of living adjustments in life pension cases is currently under review by the Supreme Court.

Section 15478

COMMENT:

Commenter requests amendment to require that when the term “Excess Insurance” is used in any document sent to a SIG member, it must be clearly labeled as applying in the aggregate or to individual claims.

RESPONSE:

The Director rejects this comment as beyond the scope of the current comment period but may consider this in future regulatory change.

Section 15481 and 15484

COMMENT:

Commenter proposes that a single date, April be used for the study in §15481(b), the actuarial report in §15481(c) and 15484(a), and all of 15484(i).

RESPONSE:

The Director does not accept this comment because the sections require submissions of different reports. 15481(b) requires submission of the analysis and results of the actuarial study. 15481(c) requires submission of the annual actuarial report itself. 15484(a) requires submission of unaudited financial statement. 15484(i) requires submission of the budget for the group’s current year. It will place undue burden to require all documents to be submitted at a single date.

Commenter #2:

Mark E. Webb, Pacific Compensation Insurance Company

December 29, 2010

Section 15201

COMMENT:

Commenter agrees with proposed regulations and further recommends that the definition of a “medical only” claim excludes an “indemnity claim” as defined in amended 8 CCR § 15201(x).

RESPONSE:

The Director accepts the comment in part and rejects in part. The Director accepts the first part of the comment wherein the commenter agreed with the proposed regulation changes. The Director rejects the need to change the definition of a “medical-only” claim, as it is redundant. If the claim does not fall under the definition of an “indemnity claim”, then it falls under the definition of “medical only” claim.

Section 15300

COMMENT:

Regulations should specify that salary continuation benefits under Labor Code §4850 should also be included within the list of benefits for which future liabilities are to be estimated under Title 8, CCR §15300(b).

RESPONSE:

The Director does not accept this comment as beyond the scope of the current comment period but may be considered for further regulation.

Section 15405(a)(4)

COMMENT:

Commenter disagrees as there is no authority for the restrictions proposed

RESPONSE:

The comment is accepted by the director, the text is deleted in the second notice of 15 day period to comment.