

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

NOTICE OF PROPOSED RULEMAKING

TITLE 8, CALIFORNIA CODE OF REGULATIONS SECTIONS 10122, 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, 139.5 and 5307.3, proposes to modify existing regulations, by amending Subchapter 1.5 of Chapter 4.5, Title 8, California Code of Regulations, commencing with Section 10106.

I. Proposed amendments to the Audit Unit regulations commencing with Section 10166.

II. The regulations concern the provision of vocational rehabilitation services as well as updated Rehabilitation Unit procedures and forms. In addition, the regulations contain necessary amendments to the fee schedule governing vocational rehabilitation services.

PUBLIC HEARING

Public hearings have 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 dates:

Date: November 12, 1997 - (Wednesday)

Time: 10:00 am to 5:00 PM or conclusion of business.

Place: 107 S. Broadway, Room 1138
Los Angeles, CA

Date: November 14, 1997 - (Friday)

Time: 10:00 am to 5:00 PM or conclusion of business.

Place: Public Utilities Commission - Auditorium
505 Van Ness Ave.
San Francisco, CA

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.

I - AUDIT UNIT REGULATIONS

TITLE 8, CALIFORNIA CODE OF REGULATIONS SECTIONS 10106, ET SEQ.

The proposed regulations concern the methodology by which the Audit Unit conducts audits of the workers' compensation claims files of insurers, self-insured employers and third-party administrators to ensure that they are in compliance with their obligations under the Labor Code and administrative regulations to provide timely and appropriate notice and benefits to injured workers.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in him by Labor Code Section 124, 129, 133, 5307.3, and 5307.4 to modify existing regulations.

INFORMATIVE DIGEST AND PLAIN ENGLISH OVERVIEW

The Administrative Director proposes to amend specified existing administrative regulations concerning the methodology by which the Audit Unit conducts audits of the workers' compensation claims files of insurers, self-insured employers and third-party administrators to ensure that they are in compliance with their obligations under the Labor Code and administrative regulations to provide timely and appropriate notice and benefits to injured workers.

These proposed regulatory amendments are intended to allow the Audit Unit to reallocate its resources and perform more audits overall while focusing its attention on audit subjects with poor performance records. The proposed amendments would allow the Audit Unit to perform approximately ten to fifteen more audits each year.

1. Section 10106 sets out the methodology by which the Audit Unit selects subjects for random and non-random audits.

The proposed regulations will provide that the Audit Unit may remove an audit subject from the pool of potential random audits subjects for a period of three years if they do not meet specified criteria for a return non-random audit.

The proposed regulations will also change the ranking system for determining which adjusting locations should be selected for non-random audits based on complaint investigations, from a ratio based on the adjusting location's case load size to a ratio based on the number of claims investigated at the adjusting location. This change will correct an anomaly that results in smaller adjusting locations being more likely to be selected for non-random audit than larger adjusting locations.

The proposed regulations will also set forth the criteria to be used by the Audit Unit in selecting claims administrators for non-random audits and repeat non-random audits on the basis of prior audit performance.

The proposed regulations will also provide that where the Audit Unit has reason to believe that a business practice exists and for which a civil penalty may be assessed, the Audit Unit may audit as many files as it deems appropriate without regard to the sample size set by the regulations, interview employees and have direct access to computer data and documents. The proposed regulations would also give the regulated public notice of the authority of the Administrative Director to issue subpoenas compelling the production of persons or documents.

2. Section 10107 sets out the procedures by which the Audit Unit selects the claim files for audit and the procedures followed during the audit.

The proposed regulations would set forth the methodology for choosing the number of indemnity claims to examine at each audit location. Indemnity claims would be sampled with a two-tiered approach. An initial sample would be examined, and if the violations identified exceeded specified performance standards, the sample would be expanded.

The proposed regulations would also set out the sampling methodology for denied and medical only claims.

The proposed regulations would provide that all claims of the audit subject in which the Audit Unit had received a complaint in the three years prior to the audit of that adjusting location would be audited.

The proposed regulations would provide that where claim files are maintained in electronic form, the claims administrator must make immediate electronic access to all data or documents concerning files selected for audit available to the Audit Unit upon request. The proposed regulations would also give the regulated public notice of the authority of the Administrative Director to issue subpoenas compelling the production of persons or documents.

The proposed regulations would incorporate into the regulations the existing Audit Unit practice of requiring an audit subject with a large error rate, but too many files to make a full audit practical, to conduct a self-audit and come into full compliance with its obligations. The audit subject would be required to keep the Audit Unit

informed of its findings and corrective actions and make the self-audited files available on demand to the Audit Unit so that full compliance may be verified. The Audit Unit will retain the right to audit these files for compliance and assess penalties for any violations found during the follow-up audit.

The proposed regulations would provide that where the Audit Unit determined that the number of randomly selected audits files with violations exceeded 20% of the audited files in which indemnity was accrued and payable, and that the average amount of unpaid indemnity exceeds \$200.00 per file in which indemnity is accrued and payable, (or, where the Audit Unit determines that unpaid compensation meets or exceeds the criteria specified in Section 10106(f)(2)(i) of the regulations) - the Audit Unit may require the audit subject to self-audit all that audit subject's open indemnity files, and/or those closed indemnity files closed not more than one year prior to the conclusion of the Audit Unit's audit of claims. The regulations would also require that the self-audit shall be completed within 45 days of the service of the audit findings on the audit subject. The proposed regulations would provide that the self-audit may be performed by the audit subject's own staff, or by obtaining an independent outside auditor. The proposed regulations would require that the results of such self-audit shall be reported to the Audit Unit within 20 days of the completion of the self-audit, together with proof of the payment of all unpaid compensation to the injured workers to whom it is owed. The proposed regulations would provide that the Audit Unit may allow additional time for the audit subject to complete the self-audit and/or report its findings to the Audit Unit upon written request and a showing of good cause by the audit subject. The proposed regulations would also provide that the Audit Unit may independently verify the results of the independent outside audit and the proper payment of the additional compensation owed.

3. Section 10108 provides the general rules applicable to all audits.

The proposed regulations would increase the incentive for timely and voluntary self-correction of errors by providing that there will be no mitigation of penalties for good faith where a violation was corrected only after the audit subject received notice of which claim files will be examined in the impending audit.

4. Section 10111.1 sets out the schedule of administrative penalties for violations concerning claim files for injuries occurring on or after January 1, 1994.

The proposed regulations will restructure the administrative penalties for failure to pay or object to a medical-legal expense to encourage and reward early self-correction of violations. The penalties are being restructured so that the lowest penalty is for early and proper correction, mid-level penalties are assessed for attempted but incomplete correction and the highest penalty is for failure to correct the violation until after the claims administrator has been notified that the file will be audited.

The proposed regulations will also restructure the administrative penalties for failure to pay or object to a medical treatment bill to encourage and reward early self-correction of violations. The penalties are being restructured so that the lowest penalty is for early and proper self correction, with mid-level penalties assessed for attempted but incomplete correction and the highest penalty assessed for failure to correct the violation until after the claims administrator has been notified that the file will be audited. The existing regulations are also being amended to delete a provision that creates an anomaly whereby an audit subject could be assessed two penalties for the late payment of a medical treatment bill and a second for the failure to pay the interest and/or penalty on the late payment, while only a single penalty would be assessed for a complete failure to pay the bill, with penalty and/or interest by the time the file is audited.

The proposed regulations will also provide for lesser penalties for late provision of the specified benefit notices than for a complete failure to issue the notices.

The proposed regulations will also provide for a lesser penalty for late provision of the required notice of determination that an injured worker is medically eligible for vocational rehabilitation than for a failure to issue the notice. The regulations will also reduce the amount of the penalty assessment for failure to send the required notice if the physician who reports that the injured worker is medically eligible is an applicant's non-panel Qualified Medical Evaluator and the injured worker's attorney has received a copy of the medical report.

The proposed regulations will also incorporate into the regulations a provision for a lower penalty amount for failure to pay an award or order of the WCAB or rehabilitation unit where the failure to pay is only partial and results from a miscalculation or oversight and all other amounts have been paid. The proposed regulations also provides that separate penalties will be assessed for both late payment and failure to pay a portion of an award or order.

The proposed regulations will also provide a \$5,000.000 penalty for backdating or falsifying a document or check, and provides further that this penalty is not subject to reduction for any reason.

The proposed regulations will also incorporate into the regulations the Audit Unit's current practice of determining the frequency of violations for mitigation purposes by using only randomly selected files and then applying the resulting frequency rate to the penalties assessed on all files audited.

The proposed regulations will also provide that a penalty for a partial late payment that is eventually paid with a subsequent payment will be considered as a late payment penalty for mitigation purposes and reduced accordingly.

The proposed regulations will also provide that the penalties for failure to issue or issue timely benefit notices will be reduced or eliminated if the claims administrator achieves specified performance standards.

5. Section 10113 sets out the procedure under which the Administrative Director may impose a civil penalty of up to \$100,000.00 if the Administrative Director has reason to believe that an employer, insurer, or third-party administrator has knowingly committed and performed any of the practices set forth in Labor Code Section 129.5(d).

The proposed regulations will give the regulated community notice that if, on the basis of two consecutive non-random audits, an audit subject qualifies for a third non-random audit of indemnity and or denied claims, the Audit Unit will refer the audit subject to the Administrative Director for the possible assessment of a civil penalty.

STATE REIMBURSABLE MANDATE

The Administrative Director of the Division of Workers' Compensation has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. 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. (*County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987)). 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 comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement on employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may, in certain situations, impose costs on State agencies. Any such costs are non-reimbursable, however, since the requirement that

employers comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, both public and private.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Administrative Director has concluded that the proposed regulations will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

ECONOMIC IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Administrative Director has determined that the proposed regulations will not have an adverse economic impact on private persons or businesses.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations will not have an impact on small businesses because the obligation to comply with the obligation of California's workers' compensation laws is imposed by statute.

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

The Administrative Director has determined that the proposed regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or affect the expansion of current California businesses.

PLAIN ENGLISH REQUIREMENTS CONCERNING SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations will not impact on small businesses. Additionally, because of the subject matter and technical nature of the regulations proposed, the Administrative Director has determined that it is not feasible to draft the regulations in plain English. However, a non-controlling plain English summary of the regulations is available from the agency contact person named in this notice.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

II - VOCATIONAL REHABILITATION REGULATIONS

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, 139.5 and 5307.3, to modify existing regulations.

INFORMATIVE DIGEST AND PLAIN ENGLISH OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend existing regulations concerning the provision of vocational rehabilitation services. Amendments are proposed which will define commonly used rehabilitation terms, and clarify entitlement of employees to living expenses, English language training, and vocational rehabilitation temporary disability or maintenance allowance during vocational rehabilitation. Additional amendments address updated Rehabilitation Unit procedures for retiring files, determining the cost effectiveness of rehabilitation plans outside of California, as well as new time frames for parties to file position statements and for the Unit to issue determinations. Lastly, the fee schedule as well as certain Unit forms are updated to comply with recently enacted amendments to Labor Code Section 139.5

1. Amendments to Section 10122

Existing regulations do not provide a specific definition for the terms "modified work" and "alternative work." Inasmuch as both terms are used extensively in the regulated community, and an employer's liability for vocational rehabilitation services terminates when there has been an offer and acceptance of modified or alternative work of a certain duration, a clear definition of both terms is needed.

2. Proposed Section 10125.2

Labor Code Section 139.5 provides that employees are entitled to "additional living expenses" necessitated by receiving vocational rehabilitation services. Current regulations are silent concerning the nature and scope of additional living expenses. Therefore, both employees and claims administrators have had to litigate disputes concerning the extent of reimbursable living expenses. The proposed Section 10125.2 will provide needed guidance to the regulated community concerning provision of living expenses.

3. Proposed Section 10125.3

Labor Code Section 139.5 mandates that employees with dates of injury prior to January 1, 1990, are entitled to vocational rehabilitation temporary disability (VRTD). Current regulations do not discuss an employee's

entitlement to VRTD, the obligations of the employee, as well as the specific situations during which VRTD must be paid. While current regulations address the vocational rehabilitation maintenance allowance (VRMA) benefit by prescribing a payment schedule and employee cooperation as a condition for benefits, there is no provision addressing the situations during which VRMA must be provided. The proposed Section will provide guidance to the regulated community and assist parties in resolving disputes concerning entitlement to VRTD or VRMA benefits.

4. Amendments to Section 10126

The proposed amendments to Section 10126 update the name of the Council for Private Post Secondary and Vocational Education, and allow providers of vocational training to be accredited by the Western Association of Schools and Colleges or certified by the Federal Aviation Administration. Existing regulations only allow for approval from the Council for Private Post Secondary and Vocational Education. By allowing providers to have accreditation or certification from additional sources, employee training choices will be expanded and equally qualified providers will not be excluded.

In addition, subsection (k) is added which provides that employees who lack English language proficiency shall be entitled to English language training during rehabilitation services. In the past, case law has made provision of English language training in certain situations. The proposed subsection will provide a clear and consistent rule governing entitlement to English language training, and will provide a uniform method for employees to waive such training.

5. Amendments to Section 10127

Section 10127 is amended to provide that, after a request for dispute resolution is filed, an opposing party shall have 20 days to forward their position with supporting documentation to the Rehabilitation Unit. Thereafter, the Unit shall have 50 days following receipt of the original request for dispute resolution to issue a determination. In addition, where a determination denying a request is issued by the Unit, any further request for dispute resolution must include an updated DWC Form RU-103. The proposed amendments to Section 10127 will make the time periods for filing of position statements and issuance of determinations consistent with the time periods provided in Labor Code Section 4639(b).

6. Amendments to Section 10128

Section 10128 is amended to state that the Rehabilitation Unit may assign an Independent Vocational Evaluator or Qualified Rehabilitation Representative, at the expense of the employer, in order to render a more informed and accurate determination concerning the cost effectiveness of rehabilitation services outside of California.

7. Amendments to Section 10131.1

Section 10131.1 is amended to reflect current Rehabilitation Unit procedures requiring the use of DWC Form RU-107A for dates of injury on or after 1/1/94 where the employee has declined rehabilitation services, and the claims administrator is concluding services.

8. Section 10132

An amendment to Labor Code Section 139.9 has revised the maximum aggregate fees which can be charged during specific phases of counseling in the course of a vocational rehabilitation plan. Accordingly, Section 10132 must be updated to conform with the revisions to the fee schedule, and to provide that the new maximum aggregate fees shall apply to employees initiating rehabilitation services on or after 1/1/98.

9. Section 10132.1

The maximum aggregate fees for specific phases of counseling during a vocational rehabilitation plan have been changed in order to comply with amendments to Labor Code Section 139.5 which become effective January 1, 1998.

10. Section 10133.1

Specific Rehabilitation Unit forms are revised in order to conform with recently enacted amendments to Labor Code Section 139.5 which revised the maximum aggregate fees for each phase of counseling. The following forms have proposed revisions: Vocational Rehabilitation Plan, DWC Form RU-102, Notice of Termination of Vocational Rehabilitation Services, DWC Form RU-105, Initial Evaluation Summary, DWC Form RU-120, and Vocational Rehabilitation Progress Report, DWC Form RU-121.

11. Section 10133.3

This section is amended to provide an orderly method for retiring Rehabilitation Unit files where no activity is reported for more than 18 months.

STATE REIMBURSABLE MANDATE

The Administrative Director of the Division of Workers' Compensation has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. 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. (*County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987)). The requirements imposed

on all employers by these proposed regulations, although not a benefit level increase, is 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.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may, in certain situations, impose costs on State agencies. Any such costs are non-reimbursable, however, since the requirement that employers contribute to the funding of California's workers' compensation programs is not unique to State agencies and applies to all employers alike, both public and private.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Administrative Director has concluded that the proposed regulations will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

ECONOMIC IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Administrative Director has determined that the proposed regulations will not have an adverse economic impact on private persons or businesses.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations will not have an impact on small businesses because the obligation to provide vocational rehabilitation benefits is imposed by statute.

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

The Administrative Director has determined that the proposed regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or affect the expansion of current California businesses.

PLAIN ENGLISH REQUIREMENTS CONCERNING SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations will not impact on small businesses. Additionally, because of the subject matter and technical nature of the regulations proposed, the Administrative Director has determined that it is not feasible to draft the regulations in plain English. However, a non-controlling plain English summary of the regulations is available from the agency contact person named in this notice.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The Administrative Director must determine that no alternative would be more effective in carrying out the purpose for which these regulations are proposed, nor would it be as effective and less burdensome to affected persons than the proposed actions.

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

Aurora Medina
Workers' Compensation Consultant
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142

Unless submitted **prior to or at the public hearing**, all written comments must be received by Ms. Medina no later than **5:00 p.m. on November 14, 1997**.

The administrative director prefers written comments to oral testimony. If you have provided a written comment, it will not be necessary to present oral testimony at the hearing.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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, 45 Fremont Street, Room 3160, San Francisco, California, between 9:00 a.m. and 4:30 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.

The contact person for the regulations and related materials is Aurora Medina, Workers' Compensation Consultant, Division of Workers' Compensation, P.O. Box 420603, San Francisco, CA 94142, telephone (415) 975-0700.

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 available for public comment for at least 15 days prior to the date on which the regulations are adopted. There are no statutory or other notice requirements other than those contained in the Administrative Procedures Act, (Government Code Section 11340, *et seq.*) applicable to the adoption of these proposed regulations.

Automatic Mailing

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

If adopted, the regulations will appear in the California Code of Regulations under Title 8.

Date:

Casey L. Young
Administrative Director

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

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations:

**Vocational Rehabilitation: Definitions,
Vocational Rehabilitation Living Expenses,
Entitlement to VRTD and VRMA,
Vocational Training Providers, English Language Training ,
Dispute Resolution Procedures,
Determination of Cost-Effectiveness for Out of State Rehabilitation Services,
Use of RU-107A Form,
Fee Schedule Update, Revised Forms,
Retiring of Unit Files.**

BACKGROUND TO REGULATORY PROCEEDING:

Labor Code Section 139.5 establishes a vocational rehabilitation benefit for qualified injured workers within the workers' compensation system. Section 139.5 also empowers the Administrative Director to promulgate regulations concerning the provision of vocational rehabilitation benefits to qualified injured employees, as well as the procedures of the Rehabilitation Unit.

(1) Section Amended: 10122

Problem Addressed:

Current regulations do not provide a definition for the terms "modified work" and "alternative work." Since both terms are used extensively within the vocational rehabilitation community, and are contained in existing regulations, it is important that a standard definition be adopted to avoid confusion and uncertainty within the regulated community.

Specific Purpose of Amendments to Section 10122:

To provide a standard definition for the terms "modified work" and "alternative work" to assist the regulated community.

Factual Basis That Amendment is Necessary

Labor Code Section 4638 provides that vocational rehabilitation plans that make use of an employee's transferable skills and experience are preferable. Section 4638 further provides that insured employers are entitled to a refund from their insurers, computed according to a prescribed formula, whenever the employer returns a qualified injured worker to modified or alternative work at the employer's place of employment for twelve

consecutive months. The statute does not provide a definition for the terms modified work and alternative work to provide guidance to employers, employees and insurers.

Furthermore, Labor Code Section 4644 provides that the liability of an employer for vocational rehabilitation services terminates whenever the employer offers, and the employee accepts, modified or alternative work of twelve months duration. The text of Section 4644 does not contain a specific definition of modified or alternative work. Since both terms are open to ambiguous interpretations, the Division has determined that it is necessary to provide a clear and specific definition for the regulated public.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(2) Section Amended: 10125.2.

Problem Addressed:

Labor Code Section 139.5 provides that in addition to vocational rehabilitation maintenance allowance, employees are entitled to “additional living expenses” necessitated by receiving vocational rehabilitation services. Current statutes and regulations do not provide guidance to the regulated public concerning the nature and scope of additional living expenses. Hence, injured workers as well as claims administrators have had to resort to the courts in order to resolve disputes concerning the extent of reimbursable expenses.

Specific Purpose of Amendment to Section 10125.2.

To provide guidance to the regulated community concerning the type and extent of “living expenses” an employee is entitled to under Labor Code Section 139.5.

Factual Basis That Amendment is Necessary

Confusion within the workers’ compensation community concerning the nature and extent of living expenses an employee is entitled to pursuant to Labor Code Section 139.5 has engendered additional work for the Rehabilitation Unit as well as the Workers’ Compensation Appeals Board. The need to litigate disputes concerning additional living expenses can foster delay in the provision of benefits to the employee, increase claims costs, as well as produce inconsistent results. The proposed regulation will provide needed

clarity and consistency, and should minimize disputes and delays in providing needed living expenses to qualified injured employees.

Business Impact

The regulation should not increase business costs since it does not expand beyond existing industry custom and case law the types of additional living expenses provided. The regulation may reduce claims costs by reducing litigation of living expense issues.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(3) Section Proposed: 10125.3

Problem Addressed:

Labor Code Section 139.5 provides that employees with dates of injury prior to January 1, 1990 are entitled to vocational rehabilitation temporary disability (VRTD) benefits. Employees with injury dates on or after January 1, 1990, receive vocational rehabilitation maintenance allowance (VRMA) benefits. Current regulations do not make reference to an employee's entitlement to VRTD, as well as outline the situations during which VRTD should be provided. Additionally, current regulations do not outline that entitlement to VRTD benefits is contingent on an employee's cooperation and availability during the vocational rehabilitation process. Current regulations do address the VRMA benefit by prescribing a payment schedule as well as the need for the employee to reasonably cooperate during rehabilitation services. These regulations however do not list the situations during which VRMA must be provided by a claims administrator.

Specific Purpose of Proposed Section 10125.3

To outline the specific periods during which VRTD and VRMA benefits must be provided to employees. Additionally, the proposed regulation specifies that entitlement to VRTD benefits is contingent upon the employee cooperating during the provision of rehabilitation services.

Factual Basis That Amendment is Necessary

Labor Code Section 139.5 makes provision for VRTD benefits for employees with dates of injury prior to January 1, 1990. Existing regulations do not discuss an employees' entitlement to VRTD, as well as the employee's responsibilities in order to continue receiving VRTD benefits. The Rehabilitation Unit has received complaints from the regulated public concerning the absence of a specific regulation addressing VRTD, which

would be of assistance in resolving disputes concerning entitlement to the benefit. In the interest of consistency and in order to avoid confusion, VRMA was also addressed in the proposed regulation.

Business Impact

The regulation will not have a significant effect on businesses since the regulation does not increase VRTD or VRMA benefits or the situations during which the benefits must be provided. The regulation merely delineates the rights and responsibilities of both employee and employer in the provision of vocational rehabilitation benefits.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative to promulgating the proposed regulation was considered viable. It was deemed inappropriate to address this issue solely in the Rehabilitation Unit Administrative Guidelines since that could constitute an unlawful exercise in rulemaking, in violation of pertinent Government Code provisions.

(4) Section Amended: 10126

Problem Addressed:

Recent legislation has changed the name of the Council for Private Post Secondary and Vocational Education to the Bureau for Private Post Secondary Education. Accordingly, the name must be revised in Section 10126. Additionally, in order to expand the vocational training choices for injured employees, and to not exclude equally qualified providers, Section 10126 is revised to include vocational training providers who are accredited by the Western Association of Schools and Colleges or certified by the Federal Aviation Administration.

Currently, many employees in the diverse California labor force who require vocational rehabilitation services lack English language proficiency. This lack of English proficiency can delay or prevent successful completion of vocational rehabilitation training and reentry into gainful employment. While case law has made provision for English language training a required provision of some rehabilitation plans, this issue should be framed in regulations to promote consistency and uniformity.

Specific Purpose of Amendment to Section 10126.

To revise the name of the Council for Private Post Secondary and Vocational Education in order to comply with recently enacted legislation. In addition, the vocational training choices of injured employees are augmented, and equally qualified providers are not excluded, by allowing providers who have accreditation or certification from the Western Association of Schools and Colleges, or certification from the Federal Aviation

Administration to provide training. Lastly, an amendment is indicated in order to clarify for the regulated community the entitlement of employees to English language training as part of their rehabilitation plan, and to provide a uniform method for employees to waive provision of English language training.

Factual Basis That Amendment is Necessary

The name of the Council for Private Post Secondary and Vocational Education must be changed to comply with the name change mandated by recently enacted law. Many employees who are entitled to vocational rehabilitation benefits pursuant to Labor Code Section 139.5, are hampered in successful completion of rehabilitation plans and job placement due to English language deficiencies. Currently, many claims administrators already provide for English language training during rehabilitation, pursuant to industry custom or case law. However, it is appropriate that access to English language training be framed in a regulation in order to promote a consistent and equitable result for all eligible employees.

Business Impact

It is anticipated that the proposed regulation will not have a significant effect on businesses. Currently, many rehabilitation plans provided by claims administrators contain English language training components. While requiring provision of necessary language training may cause claims administrators to incur additional training costs, the overall rehabilitation plan costs may actually be reduced due to more rapid job placement. Lastly, the widespread availability of low cost English as a Second Language (ESL) courses through public and non-profit private institutions, should dictate that actual training costs are minimal.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was available that would be either more effective than or equally as effective as and less burdensome than the proposed regulation.

(5) Section Amended: 10127

Problem Addressed:

Current regulations provide for procedures to be followed by either employee or claims administrator when there is a dispute concerning provision of vocational rehabilitation services. Existing Section 10127(d)(2) mandates a fifteen day period for the an opposing party to forward its position with supporting documentation to the Rehabilitation Unit. It has been determined that the fifteen day period is inconsistent with the mandate of Labor Code Section 4639(b), which affords claims administrators twenty days to inform the Rehabilitation Unit of their position concerning an employee's request for vocational

rehabilitation services. Because the period for opposing parties to forward their position to the Unit is being increased by five days, to maintain consistency, increases by five days the period of time for the Unit to issue a determination. Lastly, in order to assure the accuracy of information provided on the RU-103 form, language was added to subsection (e) requiring that an updated RU-103 form be filed when additional dispute resolution is requested after a determination denying a request has previously issued.

Specific Purpose of Amendment to Section 10127

In order to conform with Labor Code Section 4639(b), the amendment increases the period of time for a party to forward its position concerning a request for vocational rehabilitation services from 15 days to 20 days. Accordingly, the period of time for the Unit to then issue a determination is also increased by five days. In addition, in order to foster the furnishing of current case information to the Unit, provision is made requiring parties to file an updated RU-103 form when additional dispute resolution is requested following a previously denied request.

Factual Basis That Amendment is Necessary

There currently is an inconsistency between Labor Code Section 4639(b) and this regulation. Section 10127(d)(2) must be amended to conform with the twenty day period stated in Labor Code Section 4639(b) for claims administrators to inform the Rehabilitation Unit of their position on an employee's request for benefits. Since the time period for a party to furnish its position is increased by five days, the deadline for the Unit to issue a determination was accordingly increased by five days in order to be consistent.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative exists since the regulation must be amended to conform with statutory provisions.

(6) Section Amended: 10128

Problem Addressed:

Labor Code Section 4644(g) declares that employers are not liable to provide vocational rehabilitation services outside of California absent an agreement between employer and employee, or a determination by the Division of Workers' Compensation that out of state services are more cost effective than those in-state. There is no current regulation addressing how the Division is to accomplish its determination regarding cost

effectiveness. The proposed regulation would mandate that the Rehabilitation Unit may assign an Independent Vocational Evaluator or Qualified Rehabilitation Representative, at the cost of the employer, to assist the Unit in rendering a more informed and valid determination.

Specific Purpose of Amendments to Section

To provide for the assignment of an Independent Vocational Evaluator or Qualified Rehabilitation Representative to assist the Rehabilitation Unit in making determinations pursuant to Labor Code Section 4644(g) concerning the cost effectiveness of out of state rehabilitation services.

Factual Basis That Amendment is Necessary

Labor Code Section 4644(g) requires that the Rehabilitation Unit in specific situations render a determination of the cost effectiveness of providing rehabilitation services outside of California. There is no current regulation addressing how the Unit is to accomplish this determination of cost effectiveness. The proposed amendment would enable the Rehabilitation Unit to have access to the services of certain vocational rehabilitation professionals in order to reach a more informed and valid determination.

Business Impact

The regulation will enable the Rehabilitation Unit to make a more knowledgeable determination concerning whether out of state vocational rehabilitation services would be less expensive. This may actually result in a savings for California employers.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative to promulgating the proposed regulation is reasonable since procedures to accomplish a duty imposed by statute must be framed in the regulations. It was deemed inappropriate to address this issue solely in the Rehabilitation Unit Administrative Guidelines since that could constitute an unlawful rulemaking exercise, in violation of pertinent Government Code provisions.

(7) Section Amended: 10131.1

Problem Addressed:

Where an employee with a date of injury on or after January 1, 1994, has declined rehabilitation services, and the claims administrator is concluding rehabilitation services, current Rehabilitation Unit procedures require the filing of an "Employee Statement of Declination of Vocational Rehabilitation Services", DWC Form RU-107A. The current

version of Section 10131.1 does not make reference to the need to file the DWC Form RU-107A, and therefore must be amended to reflect current Unit procedures.

Specific Purpose of Amendment to Section 10131.1

To update the regulation to reflect current Rehabilitation Unit procedures requiring the use of DWC Form RU-107A for dates of injury on or after 1/1/94.

Factual Basis That Amendment is Necessary

The current language of Section 10131.1 does not make reference to the need for claims administrators to file DWC Form RU-107A when concluding rehabilitation plans for dates of injury on or after January 1, 1994, where the employee has declined services. The amendment is needed to instruct the regulated public on the current procedures to be followed.

Business Impact

It is anticipated that the amended regulation will not have a significant effect on businesses

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was available that would be either more effective than or equally as effective as and less burdensome than the proposed regulation.

(8) Section Amended: 10132

Problem Addressed:

An amendment to Labor Code Section 139.5 which changes the maximum aggregate fees which can be charged during specific phases of counseling will become effective 1/1/98. The proposed amendment to Section 10132 will provide that these new maximum aggregate fees will apply to employees who initiate rehabilitation services on or after 1/1/98.

Specific Purpose of Amendments to Section 10132:

To update the regulation to conform with changes to the maximum aggregate fees for each phase of counseling as provided for in the recent amendment to Labor Code Section 139.5

Factual Basis That Amendment is Necessary

An amendment to Labor Code Section 139.5 revising the maximum aggregate fees for each phase of counseling will become effective on 1/1/98. Accordingly, Section 10132 will have to be revised to provide for application of the new maximum aggregate fees to employees who initiate rehabilitation on or after 1/1/98.

Business Impact

The regulation will not have a significant business impact.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative to promulgating the proposed regulation is reasonable since revisions to the regulation are necessary in order to comply with amendments to Labor Code Section 139.5.

(9) Section Amended: 10132.1

Problem Addressed:

Labor Code Section 139.5 requires the Administrative Director to promulgate a fee schedule governing reasonable fees for vocational rehabilitation services. On January 1, 1998, an amendment to Labor Code Section 139.5 will take effect which will change the maximum aggregate fees which can be charged during specific phases of a vocational rehabilitation plan. The proposed amendment to Section 10132.1 will make adjustments to the fee schedule to conform with the new aggregate fee maximums for each phase of counseling contained in the Labor Code.

Specific Purpose for Amendment to Section 10132.1.

To update the vocational rehabilitation fee schedule to reflect the revised aggregate fee maximums for each phase of counseling provided for in the amendment to Labor Code Section 139.5.

Factual Basis That Amendment is Necessary

Revisions to the vocational rehabilitation fee schedule contained in Section 10132.1 are necessary in order to comply with amendments to Labor Code Section 139.5 which become effective January 1, 1998.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(10) Section Amended: 10133.1

Problem Addressed:

An amendment to Labor Code Section 139.5 revising the maximum aggregate fees for each phase of counseling will become effective on 1/1/98. Accordingly, various forms must be revised to reflect the new maximum aggregate fees for Phases A and B of the revised fee schedule. The following forms must be revised: Vocational Rehabilitation Plan, DWC Form RU-102, Notice of Termination of Vocational Rehabilitation Services, DWC Form RU-105, Initial Evaluation Summary, DWC Form RU-120, and Vocational Rehabilitation Progress Report, DWC Form RU-121.

Specific Purpose for Amendment to Section 10133.1:

To update various Rehabilitation Unit forms to conform with changes to the maximum aggregate fees for each phase of counseling which were contained in recently enacted amendments to Labor Code Section 139.5.

Factual Basis That Amendment is Necessary

On 1/1/98, an amendment to Labor Code Section 139.5 will take effect revising the maximum aggregate fees which can be charged during the different phases of counseling contained in the Fee Schedule. Consequently, various Rehabilitation Unit forms must be updated to reflect the revisions.

Business Impact

It is anticipated that the amended regulation will not have a significant effect on businesses

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was available that would be either more effective than or equally as effective as and less burdensome than the proposed regulation.

(11) Section Amended: 10133.3

Problem Addressed:

Due to the large volume of files maintained in the individual offices of the Rehabilitation Unit, a procedure for retiring files which have become inactive is necessary.

Specific Purpose for Proposed Section 10131.2

To adopt a uniform procedure for retiring inactive Rehabilitation Unit files.

Factual Basis That Amendment is Necessary

The large number of files maintained in the district offices of the Rehabilitation Unit, and the consequent demands on office space and staff, dictate that an orderly procedure be implemented to retire files that have become inactive for more than 18 months.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No more effective alternative was identified.

TITLE 8, CALIFORNIA CODE OF REGULATIONS
CHAPTER 4.5
DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1.5
INJURIES ON OR AFTER JANUARY 1, 1990
ARTICLE 7
VOCATIONAL REHABILITATION

§10122. Definitions.

The following definitions apply to this article and are in addition to those as set forth in Labor Code section 4635:

(a) Case Initiation Document. The cover sheet that provides the name and address of the party(ies) and their representatives, if any, requesting action from the rehabilitation unit.

(b) Claims Administrator. The person or entity responsible for the payment of compensation for a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(c) Correct Rehabilitation Unit District Office. The district office venue assigned by the Rehabilitation Unit.

(d) Employer. The person or entity that employed the injured worker at the time of injury.

(e) In-House Qualified Rehabilitation Representative. An employee of the insurer who is capable of developing and implementing a vocational rehabilitation plan and whose experience and regular duties involve the evaluation, counseling or placement of disabled persons, and who is familiar with this article and Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of the Labor Code.

(f) Insurer. Has the same meaning as in Labor Code Section 3211.

(g) Notices. Required notices letters generated by the claims administrator and directed to the injured worker.

(h) Parties. The employee, claims administrator and their designated representatives, if any.

(I) Rehabilitation Provider. A person or entity providing vocational rehabilitation services for a fee.

(j) Rehabilitation Unit. The unit established within the Division of Workers' Compensation.

(k) Regular Position: A position arising from the ongoing business needs of the employer which consists of defined activities that can be reasonably viewed as required or prudent in view of the company's business objectives and is expected to last at least 12 months.

(l) Represented Employee: An injured worker who has retained an attorney-at-law who is a member in good standing of the State Bar of California.

(m) Modified Work: An injured employee's usual and customary job or occupation with the same employer after modification to accommodate required work restrictions. Modification includes, but is not limited to, changing or excluding certain tasks, reducing the time devoted to certain tasks, modifying the work station, changing the work location, and providing helpful equipment or tools. Modified work shall have wages and benefits not less than those provided at the time of injury. Modified work for injuries occurring on or after 1/1/94, shall also meet the criteria of Labor Code Section 4644(a)(5).

(n) Alternative Work: A job or occupation, other than modified work, with the same employer which is compatible with the injured employee's work restrictions. Alternative work for injuries occurring on or after 1/1/94 shall also meet the criteria of Labor Code Section 4644 (a)(6).

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 124, 139.5, 4635 and 4635 4644, Labor Code.

§10125. 2. Vocational Rehabilitation Living Expenses

The Rehabilitation Unit shall require the provision of additional living expenses to an employee that are necessitated by the vocational rehabilitation services. Additional living expenses may include, but are not limited to, reasonable costs for food, lodging, transportation, clothing, and dependent care. The employee may elect to waive provision of additional living expenses provided such waiver is documented in the "Vocational Rehabilitation Plan", DWC Form RU-102.

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code. Reference: Sections 139.5 and 4641, Labor Code.

§ 10125. 3. Entitlement to Vocational Rehabilitation Temporary Disability or Vocational Rehabilitation Maintenance Allowance

An employee shall be entitled to continuous payments of vocational rehabilitation temporary disability (VRTD), or for injury dates on or after 1/1/90, vocational rehabilitation maintenance allowance (VRMA), during any period of entitlement to vocational rehabilitation services, including periods while participating in eligibility evaluation, plan development and during pendency of plan approval and implementation. However, entitlement to VRTD or VRMA payments, in addition to any other requirements, shall be contingent upon the employee's cooperation in and availability to receive vocational rehabilitation services. VRTD shall be payable in the same manner and at the same rate as temporary disability indemnity.

Note: Authority cited: Sections 133, 138.4, 139.5 and 5307.3, Labor Code.
Reference: Sections 139.5, 4642 and 4644, Labor Code.

§ 10126. Vocational Rehabilitation; Plans and Offers of Modified or Alternate Work.

- (a) For Injuries occurring prior to 1/1/94,
- (1) Within ninety (90) days after determination of the employee's vocational feasibility, the claims administrator shall either:
 - (a)(a) Submit Vocational Rehabilitation Plan, DWC Form RU-102, agreed to by the parties with appropriate attachments or;
 - (b)(b) Advise the Rehabilitation Unit of any dispute by filing a "Request For Dispute Resolution", DWC Form RU-103, to the Rehabilitation Unit, attaching a summary of the informal conference and the results thereof, including identification of the issues, issues resolved, issues pending, position of the parties and the rationale/supporting information for the position(s).
 - (2) A vocational rehabilitation plan that provides for modified or alternate work with the same employer and has been agreed to by the employer and employee shall not be subject to Rehabilitation Unit approval prior to implementation.
 - (3) Where a question arises concerning the duration of alternate plans of equal merit, the unit shall approve the plan that expedites the employee's return to suitable gainful employment.
- (b) For Injuries Occurring On Or After 1/1/94.
- (1) Offers to provide alternate or modified employment with the employer which meet the criteria of Labor Code Section 4644(a)(5), (6), or (7) do not require a written plan nor approval from the Rehabilitation Unit. The offer shall be made on DWC Form RU-94. The injured worker shall accept or reject a bona fide offer within 30 calendar days of receipt of the offer. In the event that the offer is not accepted or rejected within 30 days, the offer is deemed rejected unless the time period for reply is extended by the employer or by the terms and conditions of a collective bargaining agreement. The claims administrator shall submit a copy of the acceptance or rejection of the re-employment offer to the Rehabilitation Unit within 30 days of the acceptance or rejection.
 - (2) Plans developed for unrepresented employees or plan developed without the service of a Qualified Rehabilitation Representative require the approval of the Rehabilitation Unit. The plan must be submitted, on DWC Form RU 102, to the Rehabilitation Unit within 15 days of the agreement to the provisions of the plan.
 - (3) Agreed plans developed by a Qualified Rehabilitation Representative for represented employees do not require Rehabilitation Unit approval. The claims administrator shall submit a copy of the plan to the Rehabilitation Unit upon submission of the Notice of Termination of Vocational Rehabilitation Services at the time of completion.

(4) Plans which provide the employee with discretionary monies to be used on a non-specific and/or self-directed basis must be reviewed by the Rehabilitation Unit to determine whether the plan is in conflict with Labor Code Section 4646. Any plan found to be in conflict with Labor Code Section 4646 shall not terminate an insurer's liability to provide vocational rehabilitation services and any money expended on such a plan shall not be counted against the maximum expenditure for vocational rehabilitation services.

(5) An employee may be granted a waiver of the services of a Qualified Rehabilitation Representative if the employee has made substantial progress towards the completion of a certificate or degree program from a community college, California State University, or the University of California. Substantial progress includes but is not limited to situations where the employee can demonstrate all of the following:

(a)(a) The employee is, was, or will be enrolled as a full-time student taking 12 units or more;

(b)(b) The employee has completed 35% or more of the units necessary to complete the degree or certificate program and has attained at least a "C" grade in those courses necessary to complete the degree or certificate program;

(c)(c) The employee has produced a letter of recommendation from the school in which the employee is enrolled supporting the employee's course of study from one of the following: the Dean of Admissions, the school department head or the school counselor. Accompanying the letter shall be an outline of the courses to be taken and the estimated time frames for completion of each course.

(d)(d) The employee has identified the vocational goal to be achieved, the resources and time frames required to achieve the goal and, if the goal extends beyond the maximum expenditures and time frames allowed, the alternative resources available to the employee to complete the program.

The Rehabilitation Unit will assist the employee in completing the DWC Form RU 102.

(c) All plans must contain a description of the level of participation expected of the employee in order to continue to receive maintenance allowance. If the employee fails to adhere to the agreement, the claims administrator may petition to withhold the employee's maintenance allowance as described in Section 9813.

(d) Nothing shall preclude the claims administrator or employee from requesting the Rehabilitation Unit to approve a modification of the plan because of an unforeseen circumstance arising subsequent to the initial plan agreement.

(e) Within 15 days after the employee and claims administrator have agreed to the terms and conditions of a vocational rehabilitation plan, the plan shall be submitted to the Rehabilitation Unit for review and approval where approval is required. Within thirty (30) days of receipt of a properly submitted, documented and signed plan, the Rehabilitation Unit shall approve or disapprove the plan. If disapproval is not made within thirty (30) days of receipt of a properly submitted plan, the plan shall be deemed approved.

Notice of approval shall issue only in instances where the plan has been previously disapproved. Plan commencement shall not be deemed approval.

(f) Plans that are in conflict with Labor Code Section 139.5(h) or Section 10123.3 of these regulations shall not terminate the insurer's liability to provide vocational rehabilitation services and, for injuries occurring on or after 1/1/94, shall not be counted against the maximum expenditure for vocational rehabilitation services.

(g) A vocational rehabilitation plan is complete when the claims administrator and employee have fulfilled their respective obligations specified in the plan or when applicable maximum expenditures for vocational rehabilitation services have been reached, whichever occurs first.

(h) For injuries occurring on or after 1/1/94, a rehabilitation plan must be completed within 18 consecutive months from the date of plan approval, or, if approval is not required, from the date of plan commencement.

(i) A second vocational rehabilitation plan will not be provided where the claims administrator has fulfilled its obligations under the plan and the employee has completed, or with reasonable diligence could have completed the vocational rehabilitation plan, unless the employee can demonstrate a deterioration of his or her disability to the point where the worker is unable to meet the physical demands of the first plan.

(j) Private providers of vocational schools training selected to provide training as part of a vocational rehabilitation plan shall have either approval from the Council Bureau for Private Post Secondary and Vocational Education, accreditation from the Western Association of Schools and Colleges, or certification from the Federal Aviation Administration.

(k) Unless otherwise agreed by the parties, vocational rehabilitation plans for employees who lack English language proficiency shall include English language training when necessary to return the employee to suitable gainful employment.

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, 4638 and 4644, Labor Code.

§10127. Dispute Resolution.

When there is a dispute regarding the provision of vocational rehabilitation services, either the employee or claims administrator may request the Rehabilitation Unit to resolve the dispute. All requests for dispute resolution shall be submitted as follows:

(a) If the request for dispute resolution results from an employee's objection to the claims administrator's intention to withhold maintenance payment pursuant to section 4643:

(1) The employee shall forward to the Rehabilitation Unit request for Dispute Resolution DWC Form RU 103 to the correct Rehabilitation Unit district office with copy to all parties;

(2) The employee shall state his/her position with full explanation of his/her objection, and attach the same to the request for Rehabilitation Unit dispute resolution; copies shall be served on all parties;

(3) The Rehabilitation Unit shall schedule and hold a conference and issue a determination within ten (10) days of the date of receipt of the employee's objection.

(b) If a dispute exists regarding identification of a vocational goal for injuries occurring on or after 1/1/94, the parties may contact the Rehabilitation Unit for a telephone conference discussion. The Rehabilitation Unit Consultant will provide direction, issue a determination or schedule a conference to be held on an expedited basis within 10 days.

(c) Excluding (a) above, all other requests for Rehabilitation Unit dispute resolution shall be submitted by completing a Request For Dispute Resolution, DWC Form RU-103, and attaching all medical and vocational reports not previously submitted to the Rehabilitation Unit, along with a format summary of the Informal Conference. The format summary identifies the disputed issues and the positions of the parties, including supporting information which shall be attached. The request for dispute resolution and all attached documentation shall be served on the parties.

(d) Excluding (a) above, and in instances where an informal conference is either impossible or impractical:

(1) The requesting party shall:

(aa) Complete the request form;

(bb) Attach all pertinent medical and vocational reports not previously submitted to the Rehabilitation Unit;

(cc) Clearly identify why an informal conference is inappropriate.

(dd) Clearly state the issue(s) and identify supporting information for each issue and position;

(ee) Serve copies on all parties.

(2) Upon receipt of the request above, the opposing party shall have ~~fifteen (15)~~ twenty (20) days to forward their position with supporting information to the Rehabilitation Unit with copies to all parties.

(3) Upon receipt of all information, the Rehabilitation Unit shall either issue its determination based on the record, will ask for additional information, ~~or set the matter for formal conference.~~ or direct the parties to meet informally.

(e) Pursuant to (b), (c) and (d) above, the Rehabilitation Unit shall issue a determination within ~~forty five (45)~~ fifty (50) days of the receipt of the original request. Where a determination denying a request issues, any further requests for dispute resolution must be accompanied with an updated DWC Form RU-103.

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, 4639 and 4645, Labor Code.

§10128. Request for Order of Rehabilitation Services.

(a) If the claims administrator fails to voluntarily provide services, subsequent to the employee's written demand with substantiation of eligibility for services upon the claims administrator, the employee may, on DWC Form RU-103 "Request for Dispute Resolution", request the Rehabilitation Unit to order the

provisions of vocational rehabilitation services at the expense of the employer. A copy of the demand and copies of all medical and vocational reports including a listing of documents shall be attached with a completed Case Initiation Document, DWC form RU-101. Medical reports filed by the parties will be returned upon request.

(b) When the employee does not reside in this state, the Rehabilitation Unit may assign an Independent Vocational Evaluator (IVE) or Qualified Rehabilitation Representative (QRR), at the expense of the employer and subject to the maximum vocational rehabilitation expenditure contained in Labor Code Section 139.5, in order to determine the cost-effectiveness of providing vocational rehabilitation services outside of California.

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code. Reference: Sections 139.5 and , 4639, and 4644, Labor Code.

§10131.1 Declination of Rehabilitation

(a) A request for conclusion of rehabilitation benefits, or a notice of termination of vocational rehabilitation services on the basis that the employee has declined rehabilitation services must be made in the form and manner set forth by the Administrative Director in section 10131 of these rules by using DWC Form RB-105 or DWC Form RU-105.

(b) Absent timely objection by the employee to the “Request for Conclusion of Rehabilitation Benefits”, DWC Form RB-105 or the “Notice of Termination of Vocational Rehabilitation Services”, DWC Form RU-105, the employer’s liability for vocational rehabilitation services will be presumed terminated when:

(1) (A) The employee, with a date of injury prior to 1/1/90, received a notice of potential entitlement to rehabilitation services, immediately following the claims administrator’s knowledge of potential medical eligibility or immediately following 180 days of aggregate total disability, or

(B) The employee with a date of injury on or after 1/1/90 has received a notice of potential eligibility pursuant to Labor Code section 4637(a); and,

(2) If the injury occurred between 1/1/90 and 12/31/93, the employee has received a full explanation by a Qualified Rehabilitation Representative of his/her rights and obligations pertaining to vocational services pursuant to Labor Code section 4636(a); or

(3) If the injury occurred on or after 1/1/94, the employee has received a notice of his/her rights and obligations as required in Section 9813(d)(2).

(c) The employee and his/her representative, if any, must sign a declination of rehabilitation on the form prescribed by the Administrative Director.

(d) The claims administrator shall submit a “Request for Conclusion of Rehabilitation Benefits”, DWC Form RB-105 for employees with a date of injury prior to 1/1/90, to the correct Rehabilitation Unit district office with copies to all parties. A “Notice of Termination of Vocational Rehabilitation Services”, DWC Form RU-105, shall be submitted for employees with dates of injury on or after

1/1/90 to the correct Rehabilitation Unit district office with copies to all parties. The request shall be accompanied with the notice of potential eligibility and either (i) the signed "Statement of Decline of Rehabilitation Benefits", DWC Form RB-107, and a copy of the notice of potential eligibility for employees with dates of injury prior to 1/1/90. or (ii) For employees with dates of injury on or after 1/1/90, an "Employee Statement of Declination of Vocational Rehabilitation Services," DWC Form RU-107, for employees with dates of injury between 1/1/90 and 12/31/93 or (iii) an "Employee Statement of Declination of Vocational Rehabilitation Services", DWC Form RU-107A, for employees with dates of injury on or after 1/1/94. and a copy of notice of potential eligibility shall be submitted.

Note: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code. Reference:-
Sections 4641 and 4644, Labor Code.

§10132 Fee Schedule.

(a) The Fee Schedule promulgated by the Administrative Director shall be deemed reasonable for providers of vocational rehabilitation services pursuant to Labor Code Section 139.5. For services provided to ~~workers~~ employees injured on or after 1/1/94, the maximum aggregate permissible fees paid for evaluation, plan development and job placement may not exceed \$4500, nor may the maximum aggregate permissible fees in each phase of the fee schedule be exceeded.

(b) For injuries occurring prior to 1/1/94, ~~this~~ the fee schedule promulgated by the Administrative Director effective 1/1/94 shall be presumed reasonable for services to employees who are determined medically eligible on or after 1/1/94.

(c) For ~~injured workers~~ employees who were determined medically eligible prior to 1/1/94, the fee schedule promulgated by the Administrative Director effective 1/23/91 shall apply

(d) For employees injured on or after 1/1/94 who initiate rehabilitation services on or after 1/1/98, the fee schedule promulgated by the Administrative Director effective 1/1/98 shall apply.

~~(d)~~ (e) Rehabilitation providers and claims administrators may enter into agreements with any party to provide services at rates less than those provided by the Fee Schedule. Any agreements shall be made in writing prior to the provision of such rehabilitation services. Fees that are charged back to a file by an in-house QRR who is providing rehabilitation services shall not exceed this fee schedule and are subject to the maximum permissible fees for counseling for injuries occurring on or after 1/1/94.

~~(e)~~ (f) Charges by an insurer for the activities of an employee supervising outside rehabilitation providers shall not exceed this fee schedule and shall not be attributed to the maximum permissible fees for counseling. These charges shall be attributed as expenses

and not losses for the purposes of insurance rating pursuant to Labor Code Section 139.5(i) for injuries occurring on or after 1/1/94.

~~(f)~~ (g) Disputes pertaining to the application of the Fee Schedule shall be initially determined by the Rehabilitation Unit.

~~(g)~~ (h) Service provided by persons other than the firm in which the Qualified Rehabilitation Representative is employed must be clearly identified and billed separately.

~~(h)~~ (i) Qualified Rehabilitation Representatives appointed by the Rehabilitation Unit to act in the capacity of an Independent Vocational Evaluator shall strictly adhere to the fee schedule.

~~(i)~~ (j) All billings from vocational rehabilitation service providers are due and payable within sixty (60) days of receipt by the claims administrator unless within the sixty (60) day period an objection is filed contesting the billing or any portion thereof. Any portion of the billing not contested shall be paid within the sixty day period. Absent objection as described, billings not paid within sixty days from date of receipt are subject to penalty under Labor Code Sections 129, 129.5. A copy of each billing shall be sent to the employee, and his or her representative, if any, at the time the bill is sent to the claims administrator.

NOTE: Authority Cited: Sections 129, 129.5, 133, 139.5 and 5307.3, Labor Code.
Reference: Sections 4635, 4636, 4638 and 4639, Labor Code.

§ 10132.1 Reasonable Fee Schedule.

VOCATIONAL REHABILITATION FEE SCHEDULE

All billings for casework provided are to be itemized in tenths of an hour, unless alternative agreements are made under Section 10132(c).

Non-billable costs include: postage, clerical services, photocopies, in-house waiting time, attempted telephone contacts, and in-house staffing. If detailed documentation of these activities is required, the activity is billable at the normal hourly rate for actual time spent.

Adjustments to the Fee Schedule will be reviewed by the Administrative Director of the Division of Workers' Compensation on an annual basis. Recommendations regarding adjustments to the Fee Schedule shall be reviewed by the Rehabilitation Advisory Committee prior to public hearings.

Professional Hourly Rate

\$65.00

Vocational Evaluation Modules :

Work Sample Testing, Vocational Testing, Situational Assessment , or related activities in a group setting shall be subject to the following fee schedule. Includes report.

<i>Service Code #</i>	<i>Item Description</i>	<i>Schedule</i>
60	One Day	\$175
61	Three Day	\$375
62	Five Day	\$500
63	Eight Day	\$800
30	90 Day QRR Benefit Call	Actual time at professional hourly rate, not to exceed 5 Hours.

Includes all contacts to schedule appointments, preparation of RU-90/91, visit verification, employer contact, first physician contact. Subsequent contacts to be billed at professional hourly rate.

31	Job Analysis of Position at Time of Injury not to exceed 5 Hours.	Actual time at professional hourly rate, not to exceed 5 Hours.
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Includes contacts to schedule appointments, site visit, document completion, document review with worker/attorney, securing signatures and completed report.

PHASE ONE A: EVALUATION OF VOCATIONAL FEASIBILITY AND PLAN DEVELOPMENT MAXIMUM AGGREGATE PERMISSIBLE FEES NOT TO EXCEED \$1200 \$3000.

32	Initial Evaluation	Actual time, not to exceed 5 Hours
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Includes initial file review, scheduling contact with worker, contact with worker and representative, if any, interview, assessment of vocational feasibility and completed Initial Evaluation Summary, Form RU-120. Billing for the RU-120 shall not exceed 1.2 hours. The QRR must review with the worker the report and his or her initial recommendations regarding the worker's likely ability to benefit from the provision of rehabilitation services and regarding the nature, extent and cost of any additional services.

60,61 62, 63	Vocational/Work Evaluation Services	Appropriate module
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To be used at most appropriate module if required to assist in the evaluation of vocational feasibility.

~~PHASE TWO: — PLAN DEVELOPMENT MAXIMUM AGGREGATE PERMISSIBLE FEES NOT TO EXCEED \$2500~~

34	Vocational Testing & Report	Actual time at Professional Hourly Rate, not to exceed 5 Hours or most appropriate module (and related service code) if testing is done at a vocational/work evaluation facility.
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Includes administration and scoring of a standard battery of vocational tests.

35	Counseling & Research Service	Actual Time at Professional Hourly Rate
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Includes professional time meeting with worker, assessment of transferrable skills, guidance through vocational exploration, test interpretation with worker, labor market assessment and resource research, determination of physical appropriateness of a proposed vocational goal.

43	DWC Form RU-102	Actual time at professional hourly rate, not to exceed 1 Hour
----	-----------------	---

All required documents and cover letter completion for plans involving modified or alternate work.

44	DWC Form RU-102	Actual time at professional hourly rate, not to exceed 2 Hours
----	-----------------	--

All required documents and cover letter completion for plans involving Direct placement, OJT, Training, Self-Employment.

PHASE B: JOB PLACEMENT MAXIMUM AGGREGATE PERMISSIBLE FEES NOT TO EXCEED \$3500.

45 Plan Monitoring Actual time, by report
Includes activities necessary to oversee the employee's successful completion of the plan. May entail contacts with worker, training facility or OJT employer.

46 Plan Monitoring Report Actual time, not to exceed .5 hours

~~PHASE THREE: — JOB PLACEMENT MAXIMUM AGGREGATE PERMISSIBLE FEES NOT TO EXCEED \$2000~~

41 Job Seeking Skills Actual time, not to exceed 4 hours at \$65 hour
All activity directed to providing the worker with skills, resume preparation, and personal presentation necessary to obtain employment.

42 Job Placement Actual time at \$65/hour
Job placement services, placement follow-up and placement counseling.

INTERPHASE SERVICES (pertains to all phases, to be charged during the phase in which the activity occurs and included within the maximum aggregate expenditure for each phase)

21 Travel Rate Not to exceed \$32.50/hour plus \$0.24 per mile

51 Telephone Calls Actual time

52 File Review/New Document Review Actual Time at \$65.00

After an initial review, file review is billable activity only for re-opening or re-activation of a file, or for conference preparation purposes. Review of new medical/legal reports, or work evaluation reports, upon receipt, is billable activity.

35 Counseling & Research Services Actual Time at Professional Hourly Rate

53 Reporting
The fee for completion of the Vocational Rehabilitation Progress Report, Form RU-121, is .5 hours at Professional Hourly Rate.

For narrative reports at the request of a party unless otherwise specified, three-tenths of an hour per page, up to a one and one half hour maximum.

54 Rehabilitation Unit Conference, Informal Conference & Professional Appearance
Actual time at professional rate

Preparation time up to one hour.

Education & Training:

As between schools of equal merit, preference will be given to those schools who have reduced their tuition rates by 10% from published 1989 tuition rates, in accordance with the reduction required by Labor Code Section 139.5 (a) (4). Documentation reflecting the tuition reduction shall be available upon request. Private Vocational schools may not charge a tuition rate for rehabilitation students which is greater than the lowest rate than that given to the general public.

90 Extraordinary Services/Expenses For Dates of Injury prior to 1/1/94:

It is recognized that there can occasionally be exceptional circumstances which may require services and fees beyond those listed. Billings above the recommended fee schedule shall require additional documentation. Prior authorization for excess billings should be obtained before service delivery.

NOTE: Authority Cited: Sections 133, 139.5 and 5307.3, Labor Code.
Reference: Sections 4635, 4636, 4638 and 4639, Labor Code.

10133.1 Standardized Report Forms

(a) The Qualified Rehabilitation Representative (QRR) shall use the Initial Evaluation Summary, Form RU-120, when reporting his or her findings and recommendations following the initial evaluation of the employee.

(b) The Qualified Rehabilitation Representative (QRR) shall report to the parties on an agreed upon basis the progress of each employee receiving vocational rehabilitation services. The QRR shall use the Vocational Rehabilitation Progress Report, Form RU-121, to report such progress.

(c) Nothing in subsections (a) and (b) shall be construed to prohibit a Qualified Rehabilitation Representative who has otherwise complied with subsections (a) or (b) from preparing additional and more detailed reports at the request of a party. The costs of such additional reports shall be borne by the party who requests the reports.

Note: Authority cited: Sections 133, 138.4, 139.5, 5307.3, Labor Code.
Reference: Sections 139.5, Labor Code

§10133.3. Rehabilitation Unit File Retention.

(a) The unit shall retain its files until 90 days from the date of the filing of the "Notice of Termination of Rehabilitation Services", DWC RU 105, unless a timely objection to the notice is filed by the employee. File retention shall be extended to 90 days beyond a final decision of the appeals board on a petition which appeals a unit finding, decision or determination.

(b) If no activity on a file is reported to the Rehabilitation Unit for more than 18 months, the Unit shall retire its file.

~~(b)~~ (c) When the parties, subsequent to the time limits in subsections (a) and (b), request a determination by the unit, the unit may require the parties to provide copies of pertinent notices, reports and documents which are necessary for the unit to make its determination.

Note: Authority cited: Sections 133, 138.4, 139.5 and 5307.3, Labor Code.
Reference: Section 139.5, Labor Code.

VOCATIONAL REHABILITATION PLAN

INSTRUCTIONS: This form shall be used for submitting a vocational rehabilitation plan to the Rehabilitation Unit for injuries in accordance with L.C. §4638. For injuries prior to 1/1/94, the claims administrator shall submit the signed form with medical and vocational reports to the Rehabilitation Unit for approval. For injuries occurring on or after 1/1/94 where the employee is not represented by an attorney, the claims administrator shall submit this signed form and all medical and vocational reports, not previously submitted, to the appropriate Rehabilitation Unit office for approval. For injuries occurring on or after 1/1/94 where the employee is represented by an attorney, the claims administrator shall submit this signed form attached to a copy of the Notice of Termination to the Rehabilitation Unit within 10 days of completion. If a Rehabilitation Unit case number has not been assigned, attach a completed Case Initiation Document (DWC RU-101).

SECTION A

EMPLOYEE NAME: (LAST)	(FIRST)	(M.I.)	RU CASE #
ADDRESS: (STREET)	(CITY)	(STATE)	(ZIP)
CLAIMS ADMINISTRATOR: (FIRM)			CLAIM#
ADDRESS: (STREET)	(CITY)	(STATE)	(ZIP)

SECTION B

OCCUPATION AT INJURY:	EARNINGS AT INJURY:	DATE OF INJURY:
DESCRIBE TYPE OF INJURY AND MEDICAL LIMITATIONS: (Also identify medical report relied upon)		
SUMMARY OF EMPLOYEE'S EDUCATIONAL AND VOCATIONAL BACKGROUND AND EXPLANATION OF HOW TRANSFERABLE SKILLS HAVE BEEN USED IN SELECTION OF THE PLAN OBJECTIVE:		

INITIALS

REHABILITATION UNIT USE ONLY

SECTION C

VOCATIONAL OBJECTIVE:	ESTIMATED WEEKLY EARNING UPON COMPLETION:
-----------------------	---

TYPE OF PLAN

WITH THE SAME EMPLOYER

- 1. Modified Job
- 2. Alternate Work

WITH NEW EMPLOYER

- 3. Direct Placement
- 4. On-the-job Training
- 5. Educational Training
- 6. Self-Employment

DESCRIBE NATURE AND EXTENT OF REHABILITATION PLAN:

DATE VOCATIONAL FEASIBILITY DETERMINED: _____

PLAN COMMENCEMENT DATE: _____

EXPECTED COMPLETION DATE (Including placement assistance): _____

WEEKS OF TRAINING: _____ # OF DAYS OF PLACEMENT ASSISTANCE: _____

INITIALS

BUDGET FOR VOCATIONAL REHABILITATION PLAN EXPENDITURES

Identify incurred and estimated costs for this rehabilitation plan. For injuries on or after 1/1/94, the maximum expenditure for vocational rehabilitation expenses shall not exceed \$16,000.

RESOURCES TO EMPLOYEE

VRMA/VRTD paid to date	\$ _____/week	Total \$ _____
VRMA/VRTD to be paid every 14 days	\$ _____/week	Total \$ _____
Amount withheld for Attorney Fees, if any	\$ _____/week	Total \$ _____
Total weekly benefit payment to employee	\$ _____/week	Total \$ _____
Transportation Expenses to be paid as follows	\$ _____/_____	Total \$ _____

PLAN EXPENDITURES

Training/tuition fees, if any (specify recipient) _____	Total \$ _____
Other costs (specify type, recipient and method of payment):	
_____	Total \$ _____

FEES FOR EVALUATION, PLAN DEVELOPMENT & PLACEMENT

(List Evaluation and Plan Development fees to date and estimated fees for Plan Monitoring and Placement)

Phase I: Evaluation	\$ _____	
Phase II: Plan Development	\$ _____	
Plan Monitoring	\$ _____	
Phase III: Placement	\$ _____	Total \$ _____

TOTAL ESTIMATE OF PLAN EXPENDITURES \$ _____

ADDITIONAL RESOURCES TO EMPLOYEE

Permanent Disability Supplement paid to date:	\$ _____/week	Total \$ _____
Permanent Disability Supplement to be paid:	\$ _____/week	Total \$ _____
Other resources to be provided to employee (Identify source and amount):		
_____	\$ _____/_____	Total \$ _____
_____	\$ _____/_____	Total \$ _____

SECTION D

1. List results of vocational testing, if any, and how they support the vocational objective.

2. Describe why this employee will be employable in the vocational objective of this plan. Include assessment of labor market.

INITIALS

SECTION E

RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR: The claims administrator shall timely provide all vocational services and benefits necessitated by the agreed vocational rehabilitation plan and as required by the Labor Code. I verify that the insurer does not have a proprietary interest in the rehabilitation provider or facilities used in the development or implementation of this plan. Other: _____ <div style="text-align: right;">_____ signature</div>	
RESPONSIBILITIES OF THE EMPLOYEE: The employee shall be available and reasonably cooperate in the provision of vocational rehabilitation services. The employee shall arrive on time and participate in all scheduled activities; if for any reason the employee does not, he or she must immediately provide an explanation to the Qualified Rehabilitation Representative. The employee shall follow the requirements of all facilities and persons providing vocational rehabilitation services. The employee shall notify the Qualified Rehabilitation Representative about anything that may interfere with scheduled completion of this plan. Other: _____	

SECTION F

VERIFICATION OF THE Q.R.R.	
1. This plan was developed by me as the Qualified Rehabilitation Representative or as an Independent Vocational Evaluator. It is my opinion that the services contained in this plan will provide the employee with the opportunity to return to suitable gainful employment.	
2. The worker was not referred for services for evaluation, education or training, to a facility in which I, my spouse, my employer, or co-employee has a proprietary interest or with which I, my spouse, my employer or co-employee has a contractual relationship.	
Q.R.R. Signature: _____	Date: _____
Firm Name & Address: _____	

SECTION G

PLAN AGREEMENT		
Signature of the claims administrator and employee on this plan shall be deemed to be an agreement that the claims administrator and employee intend to comply with all of the plan's provisions.		
Failure of the claims administrator to timely provide all services required by the plan may result in the employee being entitled to additional services.		
Failure of the employee to comply with the provisions and schedules developed for this plan may result in termination of the employer's liability for rehabilitation services.		
I have read and understand all four pages of this plan and agree with all of the plan's provisions.		
NAME OF EMPLOYEE: _____	SIGNATURE: _____	DATE: _____
NAME OF EMPLOYEE REPRESENTATIVE (if any): _____	SIGNATURE: _____	DATE: _____
ADDRESS OF EMPLOYEE REPRESENTATIVE: _____		
PERSON AUTHORIZING THE PROVISION OF THIS PLAN ON BEHALF OF THE EMPLOYER:		
NAME: _____	SIGNATURE: _____	
FIRM NAME AND ADDRESS: _____		
PERSONS SIGNING THIS SECTION SHALL ALSO INITIAL THE OTHER THREE PAGES IN INITIAL BOX.		

VOCATIONAL REHABILITATION PLAN

INSTRUCTIONS: This form shall be used for submitting a vocational rehabilitation plan to the Rehabilitation Unit for injuries in accordance with L.C. §4638. For injuries prior to 1/1/94, the claims administrator shall submit the signed form with medical and vocational reports to the Rehabilitation Unit for approval.
 For injuries occurring on or after 1/1/94 where the employee is not represented by an attorney, the claims administrator shall submit this signed form and all medical and vocational reports, not previously submitted, to the appropriate Rehabilitation Unit office for approval.
 For injuries occurring on or after 1/1/94 where the employee is represented by an attorney, the claims administrator shall submit this signed form attached to a copy of the Notice of Termination to the Rehabilitation Unit within 10 days of completion.
 If a Rehabilitation Unit case number has not been assigned, attach a completed Case Initiation Document (DWC RU-101).

SECTION A

EMPLOYEE NAME:	(LAST)	(FIRST)	(M.I.)	RU CASE #
ADDRESS:	(STREET)	(CITY)	(STATE)	(ZIP)
CLAIMS ADMINISTRATOR: (FIRM)				CLAIM#
ADDRESS:	(STREET)	(CITY)	(STATE)	(ZIP)

SECTION B

OCCUPATION AT INJURY:	EARNINGS AT INJURY:	DATE OF INJURY:
DESCRIBE TYPE OF INJURY AND MEDICAL LIMITATIONS: (Also identify medical report relied upon)		
SUMMARY OF EMPLOYEE'S EDUCATIONAL AND VOCATIONAL BACKGROUND AND EXPLANATION OF HOW TRANSFERABLE SKILLS HAVE BEEN USED IN SELECTION OF THE PLAN OBJECTIVE:		

INITIALS

REHABILITATION UNIT USE ONLY

SECTION C

VOCATIONAL OBJECTIVE:	ESTIMATED WEEKLY EARNING UPON COMPLETION:
-----------------------	---

TYPE OF PLAN

WITH THE SAME EMPLOYER

- 1. Modified Job
- 2. Alternate Work

WITH NEW EMPLOYER

- 3. Direct Placement
- 4. On-the-job Training
- 5. Educational Training
- 6. Self-Employment

DESCRIBE NATURE AND EXTENT OF REHABILITATION PLAN:

DATE VOCATIONAL FEASIBILITY DETERMINED: _____

PLAN COMMENCEMENT DATE: _____

EXPECTED COMPLETION DATE (Including placement assistance): _____

WEEKS OF TRAINING: _____ # OF DAYS OF PLACEMENT ASSISTANCE: _____

INITIALS

BUDGET FOR VOCATIONAL REHABILITATION PLAN EXPENDITURES

Identify incurred and estimated costs for this rehabilitation plan. For injuries on or after 1/1/94, the maximum expenditure for vocational rehabilitation expenses shall not exceed \$16,000.

RESOURCES TO EMPLOYEE

VRMA/VRTD paid prior to plan (including attorney fees) Total \$ _____
Dates: From _____ to _____

VRMA/VRTD to be paid during plan (including attorney fees) Total \$ _____
Dates: From _____ to _____

Weekly VRMA rate: \$ _____ Withheld for atty. fees \$ _____ Payment to Employee \$ _____

PLAN EXPENDITURES

Training/tuition fees, if any (specify recipient) _____ Total \$ _____

Other costs (specify type, recipient and method of payment):

\$ _____ / _____		Total \$ _____
\$ _____ / _____		Total \$ _____
\$ _____ / _____		Total \$ _____
\$ _____ / _____		Total \$ _____

FEES FOR EVALUATION, PLAN DEVELOPMENT & PLACEMENT

(List Evaluation and Plan Development fees to date and estimated fees for Plan Monitoring and Placement)

Phase I: Evaluation	\$ _____						
Phase II: Plan Development	\$ _____						
Phase II: Plan Monitoring	\$ _____						
Phase III: Placement	\$ _____						
						Total \$ _____	

TOTAL ESTIMATE OF PLAN EXPENDITURES \$ _____

ADDITIONAL RESOURCES TO EMPLOYEE

Permanent Disability Supplement paid to date: \$ _____/week Total \$ _____
Permanent Disability Supplement to be paid: \$ _____/week Total \$ _____

Other resources to be provided to employee (Identify source and amount):

\$ _____ / _____		Total \$ _____
\$ _____ / _____		Total \$ _____

SECTION D

1. List results of vocational testing, if any, and how they support the vocational objective.

2. Describe why this employee will be employable in the vocational objective of this plan. Include assessment of labor market.

INITIALS

SECTION E

RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR:

The claims administrator shall timely provide all vocational services and benefits necessitated by the agreed vocational rehabilitation plan and as required by the Labor Code. I verify that the insurer does not have a proprietary interest in the rehabilitation provider or facilities used in the development or implementation of this plan.

Other:

_____ signature

RESPONSIBILITIES OF THE EMPLOYEE:

The employee shall be available and reasonably cooperate in the provision of vocational rehabilitation services. The employee shall arrive on time and participate in all scheduled activities; if for any reason the employee does not, he or she must immediately provide an explanation to the Qualified Rehabilitation Representative.

The employee shall follow the requirements of all facilities and persons providing vocational rehabilitation services. The employee shall notify the Qualified Rehabilitation Representative about anything that may interfere with scheduled completion of this plan.

Other:

SECTION F

VERIFICATION OF THE Q.R.R.

1. This plan was developed by me as the Qualified Rehabilitation Representative or as an Independent Vocational Evaluator. It is my opinion that the services contained in this plan will provide the employee with the opportunity to return to suitable gainful employment.

2. The worker was not referred for services for evaluation, education or training, to a facility in which I, my spouse, my employer, or co-employee has a proprietary interest or with which I, my spouse, my employer or co-employee has a contractual relationship.

Q.R.R. Signature:

Date:

Firm Name & Address:

SECTION G

PLAN AGREEMENT

Signature of the claims administrator and employee on this plan shall be deemed to be an agreement that the claims administrator and employee intend to comply with all of the plan's provisions.

Failure of the claims administrator to timely provide all services required by the plan may result in the employee being entitled to additional services.

Failure of the employee to comply with the provisions and schedules developed for this plan may result in termination of the employer's liability for rehabilitation services.

I have read and understand all four pages of this plan and agree with all of the plan's provisions.

NAME OF EMPLOYEE:

SIGNATURE:

DATE:

NAME OF EMPLOYEE REPRESENTATIVE (if any):

SIGNATURE:

DATE:

ADDRESS OF EMPLOYEE REPRESENTATIVE:

PERSON AUTHORIZING THE PROVISION OF THIS PLAN ON BEHALF OF THE EMPLOYER:

NAME:

SIGNATURE:

FIRM NAME AND ADDRESS:

PERSONS SIGNING THIS SECTION SHALL ALSO INITIAL THE OTHER THREE PAGES IN INITIAL BOX.

NOTICE OF TERMINATION OF VOCATIONAL REHABILITATION SERVICES

TO: _____ CLAIM # _____
_____ Rehab Unit # _____
_____ Social Security # _____

We have determined we no longer are required to provide Vocational Rehabilitation Services to you because:
(insert reason for Termination of Vocational Rehabilitation Services)

NOTICE TO EMPLOYEE

If you agree with the above, no further action is required on your part, and we will not be providing vocational rehabilitation services in the future.

If you disagree with our determination that we have no further liability to provide vocational rehabilitation services, you or your representative must submit your written objections and the reasons for them to the Rehabilitation Unit within 20 days of receipt of this notice. The form to use to make your objection is enclosed. Be sure to send a copy to me. The Rehabilitation Unit will then determine if you are to be given further services. Please send a copy of this notice with your objection to the Rehabilitation Unit, located at: (insert Rehabilitation Unit address)

If you have any questions about this notice, you may contact me at _____

SUMMARY OF SERVICES PROVIDED

Number of weeks of VRMA: _____	Check if employee returned to work with previous employer, either: Alternative job _____ Modified Job _____
Total Amount VRMA Paid\$: _____	Return to work other than above: yes _____ no _____
Total Amount of PD Supplement: \$ _____	Employee's New Job Title: _____
Amount Paid QRR for: Evaluation: \$ _____	Plan Type: _____
Plan Development \$ _____	Employed in plan objective Yes _____ No _____
Monitoring /Placement : \$ _____	\$ _____ per _____
Total costs of QRR services \$ _____	_____
QRR Name _____ Wages: _____	SUBMITTED BY (Name) _____
Total other costs of rehabilitation services: \$ _____	_____
Amount withheld for Employee's Representative, if any: \$ _____	FIRM NAME _____
Copies of this notice has been sent to: _____	CITY, STATE, ZIP: _____
	PHONE NUMBER _____ DATE: _____

NOTICE OF TERMINATION OF VOCATIONAL REHABILITATION SERVICES

TO: _____

CLAIM # _____
Rehab Unit # _____
Social Security # _____

We have determined we no longer are required to provide Vocational Rehabilitation Services to you because:
(insert reason for Termination of Vocational Rehabilitation Services)

NOTICE TO EMPLOYEE

If you agree with the above, no further action is required on your part, and we will not be providing vocational rehabilitation services in the future.

If you disagree with our determination that we have no further liability to provide vocational rehabilitation services, you or your representative must submit your written objections and the reasons for them to the Rehabilitation Unit within 20 days of receipt of this notice. The form to use to make your objection is enclosed. Be sure to send a copy to me. The Rehabilitation Unit will then determine if you are to be given further services. Please send a copy of this notice with your objection to the Rehabilitation Unit, located at: (insert Rehabilitation Unit address)

If you have any questions about this notice, you may contact me at _____

SUMMARY OF SERVICES PROVIDED

Number of weeks of VRMA: _____	Check if employee returned to work with previous employer, either: Alternative job _____ Modified Job _____
Total Amount VRMA Paid: \$ _____	Return to work other than above: yes _____ no _____
Total Amount of PD Supplement: \$ _____	Employee's New Job Title: _____
Amount Paid QRR for: Phase I: \$ _____	Plan Type: _____
Phase II \$ _____	Employed in plan objective ___ Yes ___ No
Phase III : \$ _____	Wages: \$ _____ per _____
Phase A: \$ _____ Phase B: \$ _____	_____
Total costs of QRR services \$ _____	_____
QRR Name _____	SUBMITTED BY (Name) _____
Total other costs of rehabilitation services: \$ _____	FIRM NAME _____
Amount withheld for Employee's Representative, if any: \$ _____	CITY, STATE, ZIP: _____
Copies of this notice has been sent to: _____	PHONE NUMBER _____ DATE: _____

MANDATORY FORMAT
STATE OF CALIFORNIA
DWC RU-105

INITIAL EVALUATION SUMMARY

Claims Administrator:

Employee:

Address:

Claim #:

DOI:

City/State/Zip:

Employer:

Contact Name:

Date of Initial Evaluation:

Reason for Referral:

Full Service Job Analysis Only Other (Explain): _____
 Evaluation Only 90-Day QRR _____

Initial Meeting and Impressions: Vocationally Feasible? Yes No Deferred (Explain)

Summary:

Recommendations:

Plan of Action:

Next Reporting Date:

QRR (Print Name):

Signature:

Date:

Attachments:

- a) Data Sheet _____
- b) _____
- c) _____
- d) _____

Copies Sent To:

- a) _____
- b) _____
- c) _____
- d) _____

INITIAL EVALUATION DATA SHEET

PERSONAL INFORMATION: Name:

Male: Female: Social Security No.: _____ DOB: _____

Phone No.: _____ CA Driver's License No.: _____ Exp. Date: _____

License Restrictions (Explain): _____

Distance willing to travel to work (one way): _____ Areas willing to drive: _____

Reliable vehicle available for transportation (full-time): Yes No

If no, what method of transportation will be used: _____

Willing to relocate? Yes No Work Shifts: All Days All Shifts M-F Only 8-5 Only

Describe issues which may interfere with worker's participation in services: _____

SOCIO-FAMILY FINANCIAL HISTORY

Marital status: Married Single Divorced Widowed Separated

Number of Dependents Living at Home: _____ Ages: _____ Child Support Payments? Yes No
Amount: \$ _____

Child care required: Yes No Estimated amount per week: \$ _____

Able to financially support self throughout duration of services: Yes No (Explain): _____

Receiving VRMA? Yes No Amount per week: \$ _____

Receiving PD Supplement? Yes No Amount per week: \$ _____

Other sources of income (explain): _____

EDUCATIONAL BACKGROUND

High School Graduate? Yes No Year: _____ Name & Location of High School: _____

If not HS graduate, GED? Yes No Year: _____ Post-HS Studies: Certificate A/AS BA/BS
Area of Study: _____ Year: _____

If No GED - Last grade completed: _____

English Language
 Speak Yes No
 Read Yes No Level _____
 Write Yes No Level _____

Other Language: _____
 Speak Yes No
 Read Yes No
 Write Yes No

Worker's List of Perceived Work Skills: _____

MILITARY SERVICE: Dates of Service: _____ Branch: _____

Special Skills: _____

VOCATIONAL HISTORY

Company, Location	Dates Employed		Title	Salary	Reason for Leaving
	From	To/Job			

MEDICAL FILE REVIEW

Treating Physician: _____ Phone: _____

Address: _____

Injury/Diagnosis: _____

Permanent & Stationary	Yes _____	No _____	Date: _____
------------------------	-----------	----------	-------------

Medical Restrictions/Limitations (specify medical report and date relied upon): _____

Current Medications (specify medical report and date relied upon): _____

Currently in Physical Therapy: _____ Yes _____ No _____ Days/Times: _____

Non-Industrially Related Medical Conditions (explain): _____

PRESENT PHYSICAL TOLERANCES (Subjective)

Sitting _____ minutes	Lifting _____ # of Pounds: _____	Reaching
Standing _____ minutes	Climb Steps: Can _____ Cannot _____	Below shoulder _____ Yes _____ No _____
Driving _____ minutes	Bending: Can _____ Cannot _____	At shoulder _____ Yes _____ No _____
Walking _____ minutes	Dominant Hand: Rt. _____ Lft. _____	Handling/Feeling _____ Yes _____ No _____
		Pushing/Pulling _____ Yes _____ No _____
Vision Restriction _____ Yes _____ No _____	Ready to Return to Work _____ Yes _____ No _____	

Supplemental Medical/Physical Information: _____

VOCATIONAL CONSIDERATIONS

Preliminary Assessment of Transferrable Skills:

Client's Expressed Interest/Expectations of Vocational Rehabilitation:

Observations (Comments on Appearance, Rapport, Cooperation, Attitude):

VOCATIONAL FEASIBILITY FACTORS

Can the employee reasonably benefit from the provision of vocational rehabilitation services?

INVESTIGATION OF MODIFIED/ALTERNATE EMPLOYMENT

<input type="checkbox"/>	Available	Contact:
<input type="checkbox"/>	Not Available	Title:
<input type="checkbox"/>	Unknown/Not Requested	Date of Contact:

EXPLANATION OF VOCATIONAL REHABILITATION PROCESS**(Check Box for all issues covered with worker)**

<input type="checkbox"/>	EE Role	<input type="checkbox"/>	Caps/Limits on VR	<input type="checkbox"/>	Termination Process
<input type="checkbox"/>	QRR Role	<input type="checkbox"/>	VRMA	<input type="checkbox"/>	Reinstatement Process
<input type="checkbox"/>	Carrier/ER Role	<input type="checkbox"/>	Dispute Resolution Process	<input type="checkbox"/>	Interruption Process
<input type="checkbox"/>	Rehab Unit Role	<input type="checkbox"/>	Effect of Delays	<input type="checkbox"/>	Allowable Costs
<input type="checkbox"/>	Help RTW Brochure	<input type="checkbox"/>	Plan Definition	<input type="checkbox"/>	Nature, Extent Added Costs
<input type="checkbox"/>	Plan Hierarchy	<input type="checkbox"/>	Plan Parameters	<input type="checkbox"/>	Other (Explain)

INITIAL EVALUATION SUMMARY

Claims Administrator:	Employee:	
Address:	Claim #:	DOI:
City/State/Zip:	Employer:	
Contact Name:	Date of Initial Evaluation:	

Reason for Referral:

Full Service Job Analysis Only Other (Explain): _____
 Evaluation Only 90-Day QRR _____

Initial Meeting and Impressions: Vocationally Feasible? Yes No Deferred (Explain)

Summary:

Recommendations:

Plan of Action:

Next Reporting Date:

QRR (Print Name): Telephone:	Signature:	Date:
---------------------------------	------------	-------

Attachments: a) <u>Data Sheet</u> _____ b) _____ c) _____ d) _____	Copies Sent To: a) _____ b) _____ c) _____ d) _____
--	---

INITIAL EVALUATION DATA SHEET

PERSONAL INFORMATION: Name:

Male: Female:	Social Security No.:	DOB:	
Phone No.:	CA Driver's License No.:	Exp. Date:	
License Restrictions (Explain):			
Distance willing to travel to work (one way):		Areas willing to drive:	

Reliable vehicle available for transportation (full-time): Yes No
 If no, what method of transportation will be used:

Willing to relocate? Yes No Work Shifts: All Days All Shifts M-F Only 8-5 Only

Describe issues which may interfere with worker's participation in services:

SOCIO-FAMILY FINANCIAL HISTORY

Marital status:	Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/>
Number of Dependents Living at Home:	Ages: Child Support Payments? <input type="checkbox"/> Yes <input type="checkbox"/> No Amount: \$
Child care required: Yes <input type="checkbox"/> No <input type="checkbox"/>	Estimated amount per week: \$
Able to financially support self throughout duration of services: <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain):	
Receiving VRMA? Yes <input type="checkbox"/> No <input type="checkbox"/>	Amount per week: \$
Receiving PD Supplement? Yes <input type="checkbox"/> No <input type="checkbox"/>	Amount per week: \$

Other sources of income (explain):

EDUCATIONAL BACKGROUND

High School Graduate? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Year:	Name & Location of High School:
If not HS graduate, GED? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Year: _____	Post-HS Studies: <input type="checkbox"/> Certificate <input type="checkbox"/> AA/AS <input type="checkbox"/> BA/BS Area of Study: _____ Year: _____
If No GED - Last grade completed:	
English Language Speak <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Read <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Level _____ Write <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Level _____	Other Language: _____ Speak <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Read <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Write <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>

Worker's List of Perceived Work Skills:

MILITARY SERVICE: Dates of Service: _____ Branch: _____

Special Skills: _____

VOCATIONAL HISTORY

Company, Location	Dates Employed		Job Title	Salary	Reason for Leaving
	From	To			

MEDICAL FILE REVIEW

Treating Physician: _____ Phone: _____

Address: _____

Injury/Diagnosis: _____

Permanent & Stationary	Yes	No	Date:
------------------------	-----	----	-------

Medical Restrictions/Limitations (specify medical report and date relied upon):

Current Medications (specify medical report and date relied upon):

Currently in Physical Therapy: _____ Yes _____ No Days/Times: _____

Non-Industrially Related Medical Conditions (explain):

PRESENT PHYSICAL TOLERANCES (Subjective)

Sitting _____ minutes	Lifting _____ # of Pounds: _____	Reaching
Standing _____ minutes	Climb Steps: Can _____ Cannot _____	Below shoulder _____ Yes _____ No
Driving _____ minutes	Bending: Can _____ Cannot _____	At shoulder _____ Yes _____ No
Walking _____ minutes	Dominant Hand: Rt. _____ Lft. _____	Handling/Feeling _____ Yes _____ No
		Pushing/Pulling _____ Yes _____ No
Vision Restriction _____ Yes _____ No	Ready to Return to Work _____ Yes _____ No	

Supplemental Medical/Physical Information:

VOCATIONAL CONSIDERATIONS

Preliminary Assessment of Transferrable Skills:

Client's Expressed Interest/Expectations of Vocational Rehabilitation:

Observations (Comments on Appearance, Rapport, Cooperation, Attitude):

VOCATIONAL FEASIBILITY FACTORS

Can the employee reasonably benefit from the provision of vocational rehabilitation services?

INVESTIGATION OF MODIFIED/ALTERNATE EMPLOYMENT

<input type="checkbox"/>	Available	Contact:
<input type="checkbox"/>	Not Available	Title:
<input type="checkbox"/>	Unknown/Not Requested	Date of Contact:

EXPLANATION OF VOCATIONAL REHABILITATION PROCESS**(Check Box for all issues covered with worker)**

<input type="checkbox"/>	EE Role	<input type="checkbox"/>	Caps/Limits on VR	<input type="checkbox"/>	Termination Process
<input type="checkbox"/>	QRR Role	<input type="checkbox"/>	VRMA	<input type="checkbox"/>	Reinstatement Process
<input type="checkbox"/>	Carrier/ER Role	<input type="checkbox"/>	Dispute Resolution Process	<input type="checkbox"/>	Interruption Process
<input type="checkbox"/>	Rehab Unit Role	<input type="checkbox"/>	Effect of Delays	<input type="checkbox"/>	Allowable Costs
<input type="checkbox"/>	Help RTW Brochure	<input type="checkbox"/>	Plan Definition	<input type="checkbox"/>	Nature, Extent Added Costs
<input type="checkbox"/>	Plan Hierarchy	<input type="checkbox"/>	Plan Parameters	<input type="checkbox"/>	Other (Explain)

VOCATIONAL REHABILITATION PROGRESS REPORT#

Claims Administrator:		Employee:	
Address:		Claim #:	DOI:
City/State/Zip:		Employer:	
Contact Name:		Report Date:	Period Covered:
Date Medical Eligibility:	Date Vocational Feasibility:		
Anticipated Plan Submission Date:	Plan Start Date:	Plan Completion Date:	
Dates of Meetings/Appointments/Classes Attended: _____ _____		Dates Missed Meetings/Appointments/Classes: _____ _____	
Services Provided:			
Summary of Activities and Comments:			
Recommendations/Plan of Action:			
Next Reporting Date: _____			
QRR (Print Name):		Signature:	Date:
Attachments: _____ _____ _____	Copies Sent To: _____ _____ _____	Phase I: _____ Phase II: _____ Phase III: _____ Cum Total: _____	
Report Preparation Time: _____ minutes			

VOCATIONAL REHABILITATION PROGRESS REPORT#

Claims Administrator:		Employee:	
Address:		Claim #:	DOI:
City/State/Zip:		Employer:	
Contact Name:		Report Date:	Period Covered:
Anticipated Plan Submission Date:		Date Vocational Feasibility:	
Plan Goal:	Plan Start Date:	Plan Completion Date:	
Dates of Meetings/Appointments/Classes Attended: _____ _____		Dates Missed Meetings/Appointments/Classes: _____ _____	
Services Provided:			
Summary of Activities and Comments:			
Recommendations/Plan of Action:			
Next Reporting Date:			
QRR (Print Name):		Signature:	Date:
Telephone Number:			
Attachments:	Copies Sent To:	Phase I	
		Phase II	
		Phase III	
		Cum Total: \$	
Report Preparation Time:Minutes		Phase A: \$	Phase B: \$

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

INITIAL STATEMENT OF REASONS

Proposed Regulations: Workers' Compensation - Audit and Enforcement.

BACKGROUND TO REGULATORY PROCEEDING:

The Division of Workers' Compensation Audit and Enforcement Unit audits the workers' compensation claims administration practices of insurers, self-insured employers and third party administrators to ensure that they have met their obligations under the Labor Code and administrative regulations to provide timely and appropriate notice and benefits to injured workers.

These regulatory amendments are intended to allow the Audit Unit to reallocate its resources and perform more audits overall while focusing its attention on audit subjects with poor performance records. The proposed amendments would allow the Audit Unit to perform approximately ten to fifteen more audits each year.

(1) Section Amended: 10106

Problem Addressed:

The existing regulations do not set forth the criteria by which the Audit Unit selects subjects for non-random return audits on the basis of prior audit results.

Specific Purpose of Amendments to Section 10106:

The proposed amendments to subsection (c) provide that the Audit Unit may remove an audit subject from the pool of potential random audits subjects for a period of three years if they do not meet any of the criteria set forth in the proposed amendments to subsection (f).

The proposed amendments to subsection (d) will move the last sentence to a newly adopted subsection (f) and expand it by adding criteria for selecting audit subjects for a return non-random audit. The present subsection (f) will be renumbered as subsection (h).

The proposed amendments to subsection (d)(2)(vi) will change the ranking system for determining which adjusting locations should be selected for non-random audits based on complaint investigations, from a ratio based on the adjusting location's case load size to a ratio based on the number of claims investigated at the adjusting location. This change will correct an anomaly that results in smaller adjusting locations being more likely to be selected for non-random audit than larger adjusting locations.

Existing subsection (f) will be renumbered subsection (h). The proposed new subsection (f) will set forth the criteria to be used by the Audit Unit in selecting claims administrators for

non-random audits and repeat non-random audits on the basis of prior audit performance.

Existing subsection (g) will be repealed as unnecessary. The proposed new subsection (g) will provide that where the Audit Unit has reason to believe that a business practice exists and for which a civil penalty may be assessed, the Audit Unit may audit as many files as it deems appropriate without regard to the sample size set by the regulations, interview employees and have direct access to computer data and documents. The proposed subsection would also give the regulated public notice of the authority of the Administrative Director to issue subpoenas compelling the production of persons or documents.

Factual Basis That Amendment is Necessary

The Administrative Director has determined that the regulated community should be given notice of the standards that are used by the Audit Unit for identifying claims administrators that will be selected for non-random audits on the basis of prior audit results, or excluded from the pool of potential random audit subjects.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(2) Section Amended: 10107

Problem Addressed:

The current methodology used by the Audit Unit to determine which adjusting locations should be audited or investigated requires the Audit Unit to allocate more of its resources than necessary to reviewing files at adjusting locations with relatively low violation rates. Additionally, the existing regulations do not provide the regulated public with notice of the random sampling methodology used by the Audit Unit in selecting the number of claims to be reviewed at an adjusting location. The existing regulations do not require audit subjects to give the Audit Unit direct computer access to electronically stored data or documents. Finally, the existing regulations do not give the regulated public notice of the Audit Unit's existing practice of requiring audit subjects with high amounts of unpaid compensation benefit payments to perform follow-up self-audits to ensure that the benefits owed are paid to the injured worker to whom they are due.

Specific Purpose of Amendments to Section 10107:

Existing subsection (c) would be renumbered as subsection (f). The proposed new subsection (c) would set forth the methodology for choosing the number of indemnity claims to examine at each audit location. Indemnity claims would be sampled with a two-tiered approach. An initial sample would be examined, and if the violations identified exceeded specified performance standards, the sample would be expanded.

Existing subsection (d) would be renumbered subsection (g). Proposed new subsection (d) would provide the sampling methodology for denied and medical only claims.

Existing subsection (e) would be renumbered subsection (h). Proposed new subsection (e) would provide that all claims of the audit subject in which the Audit Unit had received a complaint in the three years prior to the audit of that adjusting location would be audited.

Existing subsection (g) would be renumbered subsection (j). The proposed new subsection (g) would provide that where claim files are maintained in electronic form, the claims administrator must make immediate electronic access to all data or documents concerning files selected for audit available to the Audit Unit upon request. The proposed amendment would also give the regulated public notice of the authority of the Administrative Director to issue subpoenas compelling the production of persons or documents.

Existing subsection (h) would be renumbered subsection (k).

Existing subsection (i) would be renumbered subsection (l).

Existing subsection (j) would be renumbered subsection (m).

The proposed new subsection (n) would incorporate into the regulations the existing Audit Unit practice of requiring an audit subject with a large error rate, but too many files to make a full audit practical, to conduct a self-audit and come into full compliance with its obligations. The audit subject would be required to keep the Audit Unit informed of its findings and corrective actions and make the self-audited files available on demand to the Audit Unit so that full compliance may be verified. The Audit Unit will retain the right to audit these files for compliance and assess penalties for any violations found during the follow-up audit.

The proposed new subsection (o) would provide that where the Audit Unit determined that the number of randomly selected audits files with violations exceeded 20% of the audited files in which indemnity was accrued and payable, and that the average amount of unpaid indemnity exceeds \$200.00 per file in which indemnity is accrued and payable, the Audit Unit may require the audit subject to self-audit all that audit subject's open indemnity files, and/or those closed indemnity files closed not more than one year prior to the conclusion of the Audit Unit's audit of claims. The regulations would also require that the self-audit shall be completed within 45 days of the service of the audit findings on the audit subject. The proposed regulations would provide that the self-audit may be performed by the audit subject's own staff, or by obtaining an independent outside auditor. The proposed regulations would require that the results of such self-audit shall be reported

to the Audit Unit within 20 days of the completion of the self-audit, together with proof of the payment of all unpaid compensation to the injured workers to whom it is owed. The proposed regulations would provide that the Audit Unit may allow additional time for the audit subject to complete the self-audit and/or report its findings to the Audit Unit upon written request and a showing of good cause by the audit subject. The proposed regulations would also provide that the Audit Unit may independently verify the results of the independent outside audit and the proper payment of the additional compensation owed.

Factual Basis That Amendment is Necessary

The Administrative Director has determined that the Audit Unit's regulations should inform the regulated public of the Audit Unit's internal administrative practices, including sampling methodology used by the Audit Unit to select the number of claims of each type audited at each adjusting location, and the Audit Unit's current practice of requiring some audit subjects to conduct and report the results of corrective self audits.

The Administrative Director has also determined that it is necessary to clarify that the ability to effectively audit claim files requires the right to direct access to data and documents stored in electronic form.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(3) Section Amended: 10108

Problem Addressed:

The Audit Unit has learned that some audit subjects "clean up" their files in order to mitigate their exposure to penalties after receiving notice that they will be audited and which files will be examined. The proposed amendments to this section will prevent an audit subject from escaping the possibility of a follow-up non-random audit by using such tactics. Under the proposed regulation, violations that were corrected only after notice was received that the claim file would be audited will be assessed as though the required act had not been done at all, rather than as if it were merely done late.

Specific Purpose of Amendments to Section 10108:

The proposed amendment to subsection (c) would increase the incentive for timely and voluntary self-correction of errors by providing that there will be no mitigation of penalties for good faith where a violation was corrected only after the audit subject received notice of which claim files will be examined in the impending audit.

Factual Basis That Amendment is Necessary

The Audit Unit has learned that some audit subjects “clean up” their files after receiving notice that those files would be audited. The proposed amendments to this section will prevent an audit subject from escaping the possibility of a follow-up non-random audit, or reducing its liability for appropriate penalty assessments by using such tactics.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(4) Section Amended: 10111.1

Problem Addressed:

Section 10111.1 sets forth the schedule of administrative penalties for violations concerning claim files for injuries occurring on or after January 1, 1994.

The existing regulations create an anomaly whereby an audit subject could be assessed two penalties for the late payment of a medical-legal expense or medical treatment bill and a second for the failure to pay the interest and/or penalty on the late payment, while only a single penalty would be assessed for a complete failure to pay the bill, penalty and/or interest by the time the file is audited.

The existing regulations also require the same penalty for late provision of specified benefit notices as for failure to issue the notices.

The existing regulations do not provide for any penalty for falsifying or backdating documents in order to avoid a penalty.

Specific Purpose of Amendments to Section 10111.1:

The proposed amendment to subsection (a)(8) will restructure the administrative penalties for failure to pay or object to a medical-legal expense to encourage and reward early self-correction of violations. The penalties are being restructured so that the lowest penalty is for early and proper correction, mid-level penalties are assessed for attempted but incomplete correction and the highest penalty is for failure to correct the violation until after the claims administrator has been notified that the file will be audited.

The proposed amendments to subsection (a)(9) and (a)(10) will restructure the administrative penalties for failure to pay or object to a medical treatment bill to encourage and reward early self-correction of violations. The penalties are being restructured so that the lowest penalty is for early and proper self correction, with mid-level penalties assessed for attempted but incomplete correction and the highest penalty assessed for failure to correct the violation until after the claims administrator has been notified that the file will be audited. The existing regulation is also being amended to delete a provision that creates an anomaly whereby an audit subject could be assessed two penalties for the late payment of a medical treatment bill and a second for the failure to pay the interest and/or penalty on the late payment, while only a single penalty would be assessed for a complete failure to pay the bill, with penalty and/or interest by the time the file is audited.

The proposed amendments to subsections (b)(2), (b)(4), (b)(5), (b)(6), (b)(7) and (b)(8) will provide for lesser penalties for late provision of the specified notices than for a complete failure to issue the notices.

The proposed amendments to subsection (b)(3) will provide for a lesser penalty for late provision of the required notice of determination that an injured worker is medically eligible for vocational rehabilitation than for a failure to issue the notice. The amendments will also reduce the amount of the penalty assessment for failure to send the required notice if the physician who reports that the injured worker is medically eligible is an applicant's non-panel Qualified Medical Evaluator and the injured worker's attorney has received a copy of the medical report.

The proposed amendment to subsection (d)(4) will incorporate into the regulations a provision for a lower penalty amount for failure to pay an award or order of the WCAB or rehabilitation unit where the failure to pay is only partial and results from a miscalculation or oversight and all other amounts have been paid. The proposed amendment also provides that separate penalties will be assessed for both late payment and failure to pay a portion of an award or order.

The proposed addition of subsection (d)(6) will provide a \$5,000.000 penalty for backdating or falsifying a document or check, and provides further that this penalty is not subject to reduction for any reason.

The proposed amendment to subsection (e)(3) will incorporate into the regulations the Audit Unit's current practice of determining the frequency of violations for mitigation purposes by using only randomly selected files and then applying the resulting frequency rate to the penalties assessed on all files audited.

The proposed amendment to subsection (e)(3)(iv) will provide that a penalty for a partial late payment that is eventually paid with a subsequent payment will be considered as a late payment penalty for mitigation purposes and reduced accordingly.

The proposed amendments to subsections (e)(3)(vi) and (vii) will provide that the penalties for failure to issue or issue timely benefit notices will be reduced or eliminated if the claims administrator achieves specified performance standards.

Factual Basis That Amendment is Necessary

The Administrative Director has determined that the schedule of administrative penalties should be restructured to provide incentives for claims administrators to self-audit and correct their violations before they are notified which of their files will be audited, and to provide an incentive for good performance by reducing and eliminating certain penalties if specified performance standards are met.

The penalty for backdating or falsifying a document or check is being adopted because the Audit Unit has reviewed claim files in which appears that this practice has occurred. The Administrative Director considers such fraudulent conduct to undermine the effectiveness of the audit process, and has determined that deterring this conduct requires setting the amount of this penalty at the highest level provided for by the Administrative Director's statutory authority, Labor Code Section 129.5.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

(5) Section Amended: 10113

Problem Addressed:

Labor Code Section 129.5(d) provide that a civil penalty assessment of up to \$100,000.00 may be assessed by the Administrative Director against a claims administrator for knowingly committing specified prohibited practices with a frequency that suggests that those practices are a general business practice.

Specific Purpose of Amendments to Section 10113:

The proposed amendment to section 10113 will give the regulated community notice that if, on the basis of two consecutive non-random audits, an audit subject qualifies for a third non-random audit of indemnity and or denied claims, the Audit Unit will refer the audit subject to the Administrative Director for the possible assessment of a civil penalty.

Factual Basis That Amendment is Necessary

The Administrative Director has determined that the regulated community should be given notice that if an audit subject “fails” two consecutive non-random audits, the Administrative Director may issue an order to show cause why a civil penalty should not be assessed against the audit subject.

Business Impact

The regulation will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered that would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

CALIFORNIA CODE OF REGULATIONS
TITLE 8

**§ 10106 Random and Non-Random Audit Subject Selection;
Complaint/Information Investigation.**

(a) In its discretion, the Audit Unit may treat an affiliated group of insurers at a single adjusting location as individual insurers, or may combine all or any of them as a single insurer audit subject. In its discretion, the Audit Unit may treat parent and subsidiary self-insured employers at a single adjusting location as individual self-insureds, or may combine all or any of them as a single self-insured audit subject.

(b) The final selection of audit subjects shall be within the discretion of the Audit Unit. The Audit Unit may investigate information or complaints instead of, or in addition to, conducting an audit. Investigations and/or audits may be conducted if complaints or information indicate the possible existence of claims handling practices which would be assessable as a civil penalty under Labor Code Section 129.5(d).

(c) The Audit Unit shall select at least half of its audit subjects at random from any available listing of adjusting locations of workers' compensation insurers, self-insured employers, self-insured joint powers authorities, legally uninsured employers, and third-party administrators. If, after the results of an audit become final, none of the criteria qualifying an audit subject for a return non-random audit pursuant to subsection (f) of this section exist, the audit subject shall be removed from the pool of potential random audit subject selection for three years. However, eligibility under this subsection for removal from the pool for random audit subject selection shall not bar the non-random selection of the audit subject pursuant to this section or Labor Code Section 129(b).

(d) In order to establish priorities for audits pursuant to Labor Code §129(b), the Audit Unit shall review and compile complaints and information that indicate a claims administrator is failing to meet its obligations under Divisions 1 or 4 of the Labor Code or regulations of the administrative director. ~~Prior audit results may be used independently as factual information to support selection of a claims administrator for non-random audit.~~

(1) The information and complaints shall be tracked and compiled into a list of Claims Administrators Identified for Potential Non-Random Investigation as follows:

(i) Complaints or information available to the Audit Unit which indicate possible violations of the kind which, if found on audit, would be subject to the assessment of administrative penalties or issuance of notices of compensation

due shall be retained in potential audit subject files by claims adjusting locations. Factual information and complaints shall be weighted on the basis of apparent severity of the alleged violation, using the assessment categories set forth in the subsections (a) through (d) of §10111 and §10111.1 to set a point value.

An alleged violation that would fall within subsection (a) is given one point, an alleged violation that would fall within subsection (b) is given five points, an alleged violation that would fall within subsection (c) is given ten points, and an alleged violation that would fall within subsection (d) is given fifty points. When multiple violations are alleged in one complaint, each potential violation is given the appropriate point(s).

Points assigned for violations which are evidenced by decisions or findings rendered by the WCAB or Rehabilitation Unit shall be multiplied by ten.

(ii) Periodically, the audit unit shall review and analyze the complaint and information data in order to establish a list of Claims Administrators Identified for Potential Non-Random Investigation. The total number of points assigned to a claims administrator at an adjusting location shall be compared to the total number of claims reported at that claims adjusting location as indicated on the Annual Report of Inventory or the Self Insurer's Annual Report. The claims administrators shall be ranked on the list of Claims Administrators Identified for Potential Non-Random Investigation on the basis of the ratio of weighted complaints to case load size at each adjusting location. It is within the discretion of the Audit Unit to determine when new lists shall be established.

(2) The audit unit shall select any number of the highest ranking claims adjusting locations for investigation from the list of Claims Administrators Identified for Potential Non-Random Investigation.

(i) The Audit Unit shall notify the claims administrator that it will conduct an investigation, and shall specify the files it will review by providing the names of the injured workers. The Audit Unit shall give the claims administrator a minimum of three working days notice of the date of commencement of the investigation. Notice may be given by telephone. The claim files shall be made available to the Audit Unit at the time of the commencement of the investigation. The Audit Unit may examine claim files and require a claims administrator to provide documents and information.

(ii) The Audit Unit shall examine the selected files and shall assign points for each violation found in the files in accordance with the point system set forth in subsection (d)(1)(i), except that there shall be no multiplier for violations evidenced by decisions or findings of the WCAB or Rehabilitation Unit. Points shall be assigned for every violation found in the file, both violations that were alleged in the complaints and additional violations found by the audit unit.

(iii) The Audit Unit shall send a notice to the claims administrator which outlines the violations found in the files investigated. The claims administrator may request copies of the complaints relating to the files investigated. The complaints may be kept confidential by the audit unit if confidentiality is requested by the complainant.

(iv) The claims administrator may present documentation and/or argument to the Audit Unit to disprove any or all of the violations found by the audit unit in the investigated files. The documentation and argument must be post-marked or personally delivered to the Audit Unit within fourteen days of receipt of the letter outlining the violations.

(v) The Audit Unit shall consider documents and argument submitted by the claims administrator to disprove the violations found in the investigated files and determine whether there is a basis to alter any of the points previously assigned.

(vi) The adjusting locations shall be then ranked on a list of Claims Administrators Identified for Potential Non-Random Audit on the basis of the ratio of violation points assigned to ~~ease load size of~~ the number of claims investigated at each adjusting location.

(e) The Audit Unit shall select non-random audit subjects from the list of Claims Administrators Identified for Potential Non-Random Audit, and shall endeavor to give priority in scheduling audits to those administrators that have been assigned the most points. However, the audit unit may also consider the results and recency of prior audits at the adjusting location, the resources of the audit unit, and the need to conduct random audits, in scheduling investigations and audits. The Audit Unit is not required to investigate or audit every claims administrator on the list, nor is it required to investigate or audit in the order in which claims administrators appear on the list.

If the Audit Unit is able to conduct more non-random audits than the number appearing on the list of Claims Administrators Identified for Potential Non-Random Audit, it may select any number of the next highest ranking adjusting locations appearing on the list of Claims Administrators Identified for Potential Non-Random Investigation. The adjusting locations shall then be investigated and ranked according to subsection (d)(2).

(f) Prior audit results shall be used independently as factual information to support selection of a claims administrator for non-random audit.

(1) The Audit Unit shall return for a repeat non-random audit of denied files of the audit subject within one to three years of the results of an audit becoming

final if there is more than one unsupported denial and the number of unsupported denials exceeds 5% of the audited denied claims.

(2) The Audit Unit shall return for a repeat non-random audit of indemnity files of the audit subject within one to three years of the results of an audit becoming final if

(i) The number of randomly selected audited files with violations involving the failure to pay indemnity exceeds 20% of the audited files in which indemnity is accrued and payable and the average amount of unpaid indemnity exceeds \$200.00 per file in which indemnity is accrued and payable; or

(ii) The numbers of randomly selected files with violations involving the late first payments of temporary disability indemnity, permanent disability indemnity, vocational rehabilitation maintenance allowance, late subsequent indemnity payments, and late payments of death benefits, as mitigated for frequency under Section 10111.1(e)(3)(i) through (v), exceeds 30% of the audited files in which those indemnity payments have been made, and the number of audited files with violations involving the failure to issue benefit notices, as assessed under Section 10111.1(a)(7)(ii) of these regulations, exceeds 30% of the files in which there is a requirement to issue those notices.

(g) If the Audit Unit has information indicating the possible existence of claims handling practices which would be assessable as a civil penalty under Labor Code Section 129.5(d), it may conduct an investigation and audit. In such case, the Audit Unit may request claim logs pursuant to Section 10107(a) of these regulations, and no notice need be given of the claims selected for investigation and audit until the commencement of the investigation and audit. The Audit Unit may then request any number of files without regard to the numbers indicated in Section 10107 of these regulations, and the claims administrator must immediately provide to the Audit Unit all claim files requested, including direct access to electronic data and/or computer documents related to the files. In the case of such an investigation and audit, the Audit Unit may interview employees of the claims administrator and the Administrative Director may issue subpoenas for the appearance of witnesses at a deposition, and/or subpoena duces tecum for the production of documents.

~~(f)~~ (h) The Audit Unit shall send a claims administrator selected for non-random audit a Notice of Audit in accordance with §10107. The Notice of Audit for a non-random audit may be appealed as follows:

(i) Within 7 days after receiving a Notice of Audit the claims administrator may appeal its selection for audit by filing and serving a request for an appeals conference or a request for a written decision by the Administrative Director without a conference.

(ii) Within 21 days after the request for a written decision or an appeals conference is filed, the appellant shall file with the Administrative Director and serve a written statement setting forth the legal and factual basis of the appeal, and including documentation or other evidence which supports the appellant's position.

(iii) If a request for an appeals conference or a request for a written decision without conference or if the written statement and documentation are not timely filed and served under Subsections (f)(i) and (f)(ii), the claims administrator shall be deemed to have finally waived the issue of the propriety of its selection for audit. The claims administrator will be precluded from raising the issue at any subsequent appeals of Notices of Penalty Assessment or Notices of Compensation Due.

(iv) Service and filing are timely if the documents are placed in the United States mail, first class postage prepaid, or personally delivered between the hours of 8:00 a.m. and 5:00 p.m. , within the periods specified in Subsections (h)(i) and (h)(ii). The original and all copies of any filing shall attach proof of service as provided in Section 10975.

(v) The appeal process shall be governed by Section 10115.2.

~~(g) Subsections (d), (e), (f) apply only to audit subjects selected on or after April 1, 1994.~~

Note: Authority cited: Sections 59, 129.5, 133 and 5307.3, Labor Code.
Reference: Sections 7, 53, 111, 124, 129 and 129.5, Labor Code; and Sections 11180, 11181 and 11182, Government Code.

§ 10107. Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.

(a) Once a subject has been selected for an audit, the Audit Unit shall serve a Notice of Audit on the claims administrator. The Notice shall inform the administrator of its selection for audit, and shall include a request to provide the Audit Unit with a claim log or logs. The audit subject shall provide two copies of the specified claim log(s) within fourteen days of the date of the receipt of the Notice. The Audit Unit may select any or all claim files for audit.

(b) The Audit Unit shall send the audit subject a Notice of Audit Commencement identifying the files to be audited, except that no notice need be given to audit claim files which are the subject of inquiries or complaints. The audit shall commence no less than fourteen days from the date the Notice was sent, unless the audit subject agrees to earlier commencement.

(c) The Audit Unit shall randomly select separate samples of indemnity, denied, and medical-only files from two years' of the audit subject's claim logs, except that if the earliest of the last two completed years has already been the subject of an audit, claims will be randomly selected from only the last completed year.

(1) The total number of indemnity files randomly selected for audit will be determined based on the following table:

<u>Population</u>	<u>Sample Size</u>
<u>7 or less</u>	<u>all</u>
<u>8 to 12</u>	<u>1 less than total</u>
<u>13 to 16</u>	<u>2 less than total</u>
<u>17 to 20</u>	<u>3 less than total</u>
<u>25</u>	<u>20</u>
<u>50</u>	<u>33</u>
<u>75</u>	<u>42</u>
<u>100</u>	<u>49</u>
<u>200</u>	<u>66</u>
<u>300</u>	<u>74</u>
<u>400</u>	<u>78</u>
<u>500</u>	<u>82</u>
<u>600</u>	<u>84</u>
<u>700</u>	<u>86</u>
<u>800</u>	<u>87</u>
<u>900</u>	<u>88</u>
<u>1,000</u>	<u>89</u>
<u>1,500</u>	<u>91</u>
<u>2,000</u>	<u>93</u>
<u>3,000</u>	<u>94</u>
<u>3,500</u>	<u>95</u>
<u>4,500 to 10,000</u>	<u>96</u>
<u>15,000+</u>	<u>97</u>

The numbers of indemnity files randomly selected for audit shall be determined by interpolation if the numbers of files in the populations fall between numbers of files listed in the population column on the table.

(2) During the course of the audit, the Audit Unit shall calculate the frequency of files with violations as percentages of the files with exposure for violations after the following number of randomly selected indemnity files are audited:

<u>Population</u>	<u>Sample Size</u>
<u>5 or less</u>	<u>all</u>
<u>6 to 10</u>	<u>1 less than total</u>
<u>11 to 13</u>	<u>2 less than total</u>
<u>14 to 16</u>	<u>3 less than total</u>
<u>25</u>	<u>18</u>
<u>50</u>	<u>27</u>
<u>100</u>	<u>37</u>
<u>200</u>	<u>46</u>
<u>300</u>	<u>49</u>
<u>400</u>	<u>52</u>
<u>500</u>	<u>53</u>
<u>600</u>	<u>54</u>
<u>900</u>	<u>55</u>
<u>1,000</u>	<u>56</u>
<u>2,000</u>	<u>57</u>
<u>5,500</u>	<u>58</u>
<u>5,501+</u>	<u>59</u>

Numbers shall be determined by interpolation if the numbers of files in the populations fall between numbers of files listed in the population column on the table.

If it appears that none of the following criteria are met at that time, the remaining number of randomly selected indemnity files selected for audit pursuant to subsection (c)(1) of this section will not be audited:

(i) The number of randomly selected audited files with violations involving the failure to pay indemnity exceeds 20% of those files in which indemnity is accrued and payable and the average amount of unpaid indemnity exceeds \$200.00 per file in which indemnity is accrued and payable;

(ii) The numbers of randomly selected files with violations involving the late first payments of temporary disability indemnity, permanent disability indemnity, vocational rehabilitation maintenance allowance, late subsequent indemnity payments, and late payments of death benefits, as mitigated for frequency under Section 10111.1(e)(3)(i) through (v), exceeds 30% of the files in which those indemnity payments have been made;

(iii) The number of randomly selected audited files with violations involving the failure to issue benefit notices, as assessed under Section 10111.1(a)(7)(ii) of these regulations, exceeds 30% of those files in which there is a requirement to issue those notices.

The determination of whether or not to audit the number of files selected pursuant to subsection (c)(1) of this section shall not be the subject of appeal, and no preliminary report of findings need be issued to the audit subject before the determination is made.

(d) The total numbers of denied files and medical-only files randomly selected for audit will be determined based on the following table:

<u>Population</u>	<u>Sample Size</u>
<u>6 or less</u>	<u>all</u>
<u>7 to 10</u>	<u>1 less than total</u>
<u>11 to 14</u>	<u>2 less than total</u>
<u>15 to 17</u>	<u>3 less than total</u>
<u>25</u>	<u>18</u>
<u>50</u>	<u>29</u>
<u>75</u>	<u>35</u>
<u>100</u>	<u>40</u>
<u>200</u>	<u>50</u>
<u>300</u>	<u>55</u>
<u>400</u>	<u>57</u>
<u>500</u>	<u>59</u>
<u>600</u>	<u>60</u>
<u>700</u>	<u>61</u>
<u>800</u>	<u>62</u>
<u>900</u>	<u>62</u>
<u>1,000</u>	<u>63</u>
<u>1,500</u>	<u>64</u>
<u>2,000</u>	<u>65</u>
<u>3,000 to 9,000</u>	<u>66</u>
<u>10,000+</u>	<u>67</u>

The numbers of denied and medical-only files randomly selected for audit shall be determined by interpolation if the numbers of files in the populations fall between numbers of files listed in the population column on the table.

(e) In addition to randomly selected indemnity, denied, and medical-only files, the Audit Unit may also select for audit any or all files for which the Division of Workers' Compensation has received complaints within the past three years.

~~(e)~~(f) The audit subject shall pay all expenses of an audit of an adjusting location outside the State of California, including per diem, travel expense, and compensated overtime of audit personnel.

~~(d)~~(g) The audit subject shall make each of the files selected for audit available at the audit site at the time of audit commencement. If files are maintained in an electronic or other non-paper storage medium, the claims administrator shall, upon request, produce legible printed paper copies of the claim files, including all records of compensation payments. If requested by the Audit Unit, the audit subject must provide immediate direct computer access to any electronic data and/or documents related to the claim files selected for audit. The Audit Unit may also interview employees of the claims administrator to evaluate procedures and business practices of the claims administrator, and the Administrative Director may issue subpoenas for the appearance of witnesses at a deposition, and/or subpoena duces tecum for the production of documents related to the audit.

~~(e)~~(h) The Audit Unit shall have discretion to audit files in addition to those identified with the Notice of Audit Commencement. The audit subject shall make each of the additional files selected for audit available at the audit site within 14 days of receipt of written notice identifying the additional files.

~~(f)~~ (i) The audit subject shall provide the auditor(s) an adequate, safe, and healthful work space during the audit, which allows the auditors a reasonable degree of privacy. If this work space is not provided, the Audit Unit may require the audit subject to deliver the files to the nearest Audit Unit office for completion of the audit.

~~(g)~~ (j) The Audit Unit may obtain and retain copies of documentation or information from claim files to support the assessment of penalties.

~~(h)~~(k) The audit subject shall have the opportunity to discuss preliminary findings and provide additional information at a post-audit conference.

~~(i)~~(l) The Audit Unit may at any time request additional information or documentation in order to complete its audit. Such information may include documentation that, as specified by Labor Code Sections 3751(a) and 3752, compensation has not been reduced or affected by any insurance, contribution, or other benefit due to or received by or from the employee. The audit subject shall provide any requested documentation or other information within thirty days from the Audit Unit's request, unless the Audit Unit extends the time for good cause.

~~(j)~~(m) The Audit Unit shall issue a report of audit findings which may include, but is not limited to, the following: one or more requests for additional documentation or compliance, Notices of Intention to Issue Notice of Compensation Due, Preliminary Notices of Penalty Assessments, Notices of

Compensation Due, or Notices of Penalty Assessments. If any additional requested documentation is not provided within thirty days of receipt of the report, additional audit penalties may be assessed under Section 10111.1(d)(2) of these Regulations.

(n) Following an audit, the Audit Unit may require the audit subject to self-audit any number of additional files, take such remedial actions as the Audit Unit deems appropriate to comply with workers' compensation statutes and regulations, and report to the Audit Unit at regular intervals on its findings and actions. The audit subject must then make those files available for review by the Audit Unit within 14 days of a request by the Audit Unit to determine if compliance has been achieved. The review of those files may take place in addition to or instead of a return non-random audit based on the audit findings.

(o) Where the Audit Unit determines that the number of randomly selected audited files with violations involving the failure to pay indemnity exceeds 20% of the audited files in which indemnity is accrued and payable and the average amount of unpaid indemnity exceeds \$200.00 per file in which indemnity is accrued and payable, the Audit Unit may require the audit subject to self-audit all that audit subject's open indemnity files, and/or those closed indemnity files closed not more than one year prior to the conclusion of the Audit Unit's audit of claims. The self-audit shall be completed within 45 days of the service of the audit findings on the audit subject. The self-audit may be performed by the audit subject's own staff, or by obtaining an independent outside auditor. The results of such self-audit shall be reported to the Audit Unit within 20 days of the completion of the self-audit, together with proof of the payment of all unpaid compensation to the injured workers to whom it is owed. The Audit Unit may allow additional time for the audit subject to complete the self-audit and/or report its findings to the Audit Unit upon written request and a showing of good cause by the audit subject. The Audit Unit may independently verify the results of the independent outside audit and the proper payment of the additional compensation owed.

Note: Authority cited: Sections 59, 129.5, 133, 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 3751, 3752, Labor Code.

§ 10108. Audit Violations - General Rules.

The following general rules apply to audits and audit processes under Labor Code §§ 129, 129.5:

(a) If the date or deadline (including any applicable extension) to perform any act falls on a weekend or holiday, the act may be performed on the last business day before or the first business day after the weekend or holiday. A payment date which is changed under this provision shall not change the normal dates for later payments in an existing two-week payment schedule.

(b) For the purpose of imposing audit penalties, if the claims administrator does not record the date it received a document, it shall be deemed received five days after the latest date the sender wrote on the document.

(c) Unless these regulations specifically provide otherwise, the penalty for an unlawful delay of more than 30 days in performing an act is the same as the penalty for not performing the act. However, the penalty may be mitigated for good faith because the act, though late, was eventually performed. There will be no mitigation for good faith, however, if the act was performed after notification to the audit subject that the claim was selected for audit. In such cases where there is an unlawful delay of more than 30 days in performing an act and the act was performed only after the audit subject was notified that the claim was selected for audit, violations will be calculated for frequency under Section 10111.1(e)(3) as though there was a failure to perform the act rather than late performance of the act. For example, if unpaid indemnity was paid more than 30 days late only after the audit subject was notified that the claim was selected for audit, violations will be classified as failure to pay indemnity under Section 10111.1(e)(3)(xviii) of these regulations rather than late paid indemnity, and will be modified for frequency accordingly. A lawful delay is a delay permitted by law or regulation, and for which the claims administrator has given a proper and timely notice of delay when such a notice is required. Any other delay is an unlawful delay.

(d) Penalties will not be assessed during the period a claims administrator is actively investigating its liability for provision of benefits or payment of compensation, provided that a Notice of Delay has been timely and properly issued in accordance with §9812 or §9813. However, penalties shall still be issued for violations during the period of delay for: failure to object to medical treatment bills in accordance with §9792.5, or failure to object to or pay bills for medical legal expense in accordance with §9794.

(e) Penalties will not be assessed for an act or omission where an injured workers' unreasonable refusal to cooperate in the investigation has prevented the claims administrator from determining its legal obligation to perform the act.

(f) Where a penalty is provided for failure to pay mileage fees related to medical treatment or evaluation, a penalty will be imposed if payment is not made at a rate that is at least the greater of the following: (i) twenty one cents per mile, or (ii) the minimum rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for non-represented (excluded) employees at Title 2, CCR §599.631(a).

(g) Failure, delay, or refusal to pay compensation benefits or expenses shall be subject to the applicable penalties under §10111 or §10111.1 unless the legal, factual, or medical basis for the failure, refusal, or delay is documented in the claim file.

Note: Authority cited: Sections 59, 129.5, 133, 138.3, 138.4, 5307.3, Labor Code.
Reference: Sections 124, 129, 129.5, 4600, 4621, Labor Code; Sections 7, 9, 10, 11, Civil Code.

§10111.1 Schedule of Administrative Penalties for Injuries on or After January 1, 1994.

§ 10111.1(a)

(8) The penalty for each failure to pay or object to a billing for a medical-legal expense, in the manner required by Section 9794, within 60 days of receiving the bill and all reports and documents required by the Administrative Director incident to the services, is:

\$50 ~~\$25~~ for each bill which was paid more than 60 days from receipt with interest and a 10% increase;

\$75 ~~\$50~~ for each bill which was paid more than 60 days from receipt where either interest or a 10% increase was not included;

\$100 ~~\$75~~ for each bill which was paid more than 60 days from receipt where neither interest nor a 10% increase was paid.

\$100 for each bill which was not paid at the time the audit subject was notified the claim was selected for audit where no timely objection was sent.

(9) The penalty for each failure to pay or object to, within 60 days of receipt, in the manner required by law or regulation, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill remains unpaid at the time the audit subject is notified that the claim was selected for audit. For the purpose of this penalty the treating physician will be presumed chosen by the employee unless the claims administrator demonstrates otherwise:

\$25 for each bill of \$100 or less, excluding interest and penalty;

\$50 for each bill of more than \$100, but no more than \$200, excluding interest and penalty;

\$75 for each bill of more than \$200, but no more than \$300, excluding interest and penalty;

\$100 for each bill of more than \$300, excluding interest and penalty.

(10) ~~The penalty for each failure to pay or object to, within 60 days of receipt, in the manner required by law or regulation, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill was paid before the audit subject was notified that the claim was selected for audit: The penalty for each failure to include a 10% increase or interest with a late payment of any uncontested amount of a bill for medical treatment provided or authorized by the treating physician, in accordance with Labor Code Section 4603.2 is:~~

~~\$25 for each late payment made without either the 10% increase or interest;
\$50 for each late payment made with neither the 10% increase nor interest.
\$25 for each bill which included a 10% increase and interest with the late
payment of any uncontested amount of the bill, in accordance with Labor Code
Section 4603.2;~~

~~\$50 for each bill which included either a 10% increase or interest with the late
payment of any uncontested amount of the bill, in accordance with Labor Code
Section 4603.2;~~

~~\$75 for any bill which included neither a 10% increase nor interest with the
late payment of any uncontested amount of the bill, in accordance with Labor Code
Section 4603.2.~~

§ 10111.1(b)

(2) The penalty for each failure to provide information regarding the Americans with Disabilities Act, the Fair Employment and Housing Act, and workers' compensation vocational rehabilitation as required by Labor Code Section 4636(a) immediately after 90 days of aggregate temporary disability indemnity is \$100 if the information was provided or the employee returned to his or her usual and customary occupation more than 10 but not more than 20 days after 90 days of aggregate total disability, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(3) The penalty for each failure to issue notice of medical eligibility for vocational rehabilitation services (if not previously issued) within 10 days after knowledge of a physician's opinion that the employee is medically eligible, or for failure to issue notice within 10 days after 366 days of aggregate total temporary disability, is \$100 if the notice was issued not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. Where the injured worker is represented by an attorney and documentation in the claim file indicates that the injured worker's attorney has received a copy of the physician's report indicating the employee is medically eligible for vocational rehabilitation, and if the knowledge is of a physician's opinion other than the injured worker's treating physician, a physician selected from a panel provided by the Industrial Medical Council, or an agreed medical examiner, the penalty shall be assessed at 20% of the amount otherwise assessed under this subsection and shall not exceed \$100.

(4) The penalty for each failure to provide the employee with a copy of the treating physician's final report together with notice of the procedure to contest

the treating physician's determination, in accordance with Labor Code Section 4636(d), immediately upon receipt of that report, is \$100 for compliance more than 10 but not more than 20 days after receipt of the treating physician's final report, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(5) The penalty for each failure to notify an injured employee of the reasons he or she is not entitled to any, or to any further, vocational rehabilitation services, and the procedure for contesting the determination of non-eligibility, as required by Sections 9813(a)(3) and 10131, is \$100 if notification was issued more than 10 but not more than 20 days after the determination, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(6) The penalty for each failure to notify an injured employee that his or her injury may have caused permanent disability and the procedures for evaluating the permanent disability, or of the employer's position that the injury has caused no permanent disability and the employee's remedies, in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810; is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(7) The penalty for each failure to notify a claimant of the denial of all death benefits claimed by that person (except a denial limited to all or any of: burial expense, benefits which were due to the injured worker before his or her death, or medical-legal expense), in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(8) The penalty for each failure to send a notice denying liability for all workers' compensation benefits, in accordance with Title 8, California Code of Regulations, Division 4.5, Chapter 1, Article 8, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of ~~\$500~~ \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days

and was not issued at the time the audit subject was notified that the claim was selected for audit.

§ 10111.1(d)

(4) The penalty for each failure to comply in full with any final award or order of the Workers' Compensation Appeals Board or the Rehabilitation Unit within 20 days of service, allowing an additional five days for service by mail, is:

For any failure to pay all amounts payable as awarded or ordered, including interest, when partial nonpayment is due to a miscalculation or oversight and all other amounts have been paid, the penalty amount shall be determined based on the equivalent amount of unpaid indemnity as assessed under subsection (c)(3) of this section.

For late payment of an award or order, the penalty is:

\$500 for ~~full~~ compliance in more than 20 but not more than 35 days from the date of service, ~~or for any late payment or failure to pay interest due;~~

\$1,000 for ~~full~~ compliance (other than a late interest payment) in more than 35 but not more than 60 days from the date of service;

\$2,500 for ~~full~~ compliance (other than a late interest payment) in more than 60 but not more than 90 days from the date of service;

\$5,000 if there was not ~~full~~ compliance (other than failure to pay interest) within 90 days of the date of service.

Penalties will be assessed separately for both late payment and the failure to pay a portion of an award or order.

§ 10111.1(d) (6) The penalty for the backdating or fraudulent production of any document or check provided to the Audit Unit is:

\$5,000. The amount of the penalty is not subject to reduction based on frequency, history, or good faith as set forth in subsection (e) of this section.

§ 10111.1(e)(3)

(e)(3) Modification for frequency shall be considered for each type of violation. Frequency shall be determined by comparing the number of audited files which were randomly selected pursuant to Section 10107(b) of these regulations in which there is an assessment for a specific type of violation to the total number of those randomly selected audited files in which the possibility of that type of violation exists. The frequency of violations in the complaint files selected for audit pursuant to Section 10107(c) shall not be used to determine penalty amounts for these categories, except the mitigation or exacerbation of penalty amounts based on frequency of violations in the randomly selected files shall be applied to the audited complaint files.

[iv] If there are assessments involving late subsequent payments, including any payment in which all indemnity then due is not paid with that payment but is paid with a subsequent payment as assessed under subsection (a)(13) of this section. of temporary disability indemnity, permanent disability indemnity, or vocational rehabilitation maintenance allowance in 10% or less of the audited files in which these subsequent payments were made, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late subsequent payments of temporary disability indemnity, permanent disability indemnity, or vocational rehabilitation maintenance allowance exceeds 30% of the total number of audited files with subsequent payments of these benefits, the penalty amounts of these assessments will be increased by 20%.

[vi] If there are assessments involving failure to issue benefit notices (other than notices specifically mentioned elsewhere in this subsection (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.

[vii] If there are assessments involving late provision of benefit notices (other than notices specifically mentioned elsewhere in this subsection (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late issuance of these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late issuance of these notices exceeds 30% of the total number of audited files in which these notices were required and issued, the penalty amounts of these assessments will be increased by 20%.

Note: Authority cited: Sections 59, 129.5, 133, 138.3, 138.4, 139.5, 4603.5, 4627 and 5307.3, Labor Code. Reference: Sections 124, 129, 129.5, 4061, 4453, 4454, 4550, 4600, 4603.2, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4651, 4701 through 4703.5, 4706, 4706.5, 5401, 5401.6, 5402, 5800 and 5814, Labor Code; and Section 2629.1(e), (f), Unemployment Insurance Code.

ARTICLE 6
Civil Penalty

§10113 Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing.

(a) If, based on the results of two consecutive non-random audits, an audit subject qualifies for a non-random audit of indemnity and/or denied claims pursuant to Section 10106(f) of these regulations, the Audit Unit shall refer the audit subject to the Administrative Director for the possible assessment of a civil penalty pursuant to Labor Code Section 129.5(d). Nothing in these regulations shall prohibit the Audit Unit from referring any audit subject to the Administrative Director for the possible assessment of a civil penalty under Labor Code Section 129.5(d) for any other reason, regardless of whether or not the audit subject qualifies for referral for possible assessment of the civil penalty under this section of these regulations. If the Administrative Director has reason to believe that an employer, insurer, or third-party administrator has knowingly committed and performed any of the practices set forth in Labor Code Section 129.5(d), (s)he shall issue an Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing.

(b) The order shall be in writing and shall contain all of the following:

(1) Notice that a civil penalty not to exceed \$100,000 may be assessed;

(2) The basis for the assessment, including a statement of the alleged violations.-;

(3) Notice of the date, time and place of hearing, to be held not less than 60 days from the date the Order to Show Cause was served or mailed. Continuances will not be allowed without a showing of good cause.

(c) The order shall be served personally or by registered or certified mail.

Note: Authority cited: Sections 59, 129.5, 133, 5307.3, Labor Code.

Reference: Sections 7, 124, 129.5, Labor Code.