

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

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

Subject Matter of Regulations: Workers' Compensation Employee Benefit Notices

Title 8, California Code of Regulations, Sections 9810, 9811, 9812, 9813, 9814, 9815, 9881.1, and 10139.

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 138.3, 138.4, 139.5, 4061, 4616, 4636, 4637, 4658.5, and 5307.3, has adopted and amended regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9810, relating to Benefit Notices; Claims Administrator's Duties and Responsibilities; Claim Form and Notice of Potential Eligibility for Benefits; Regulatory Authority of the Administrative Director, Article 8.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations commencing with section 9881.1 (DWC 7 Rev. July 2014), relating to Employee Information, and Article 9, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10139 relating to the Workers' Compensation Claim Form (DWC 1 Rev. July 2014) and Notice of Potential Eligibility.

Amend section 9810	General Provisions;
Amend section 9811	Definitions;
Amend section 9812	Benefit Payment and Notices;
Repeal section 9813	Vocational Rehabilitation Notices;
Amend section 9814	Salary Continuation;
Amend section 9815	Corrected Notice;
Amend section 9881.1	Notice to Employees Poster (DWC 7); and
Amend section 10139	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility.

UPDATE OF INITIAL STATEMENT OF REASONS AND UPDATED INFORMATIVE DIGEST

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations is initially proposed, the necessity for the amendments to existing regulations and adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as adopted.

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

REQUEST FOR EFFECTIVE DATE OF JANUARY 1, 2016

The Division of Workers' Compensation hereby requests that, in the event that the Office of Administrative Law files the amended text of the regulations and forms prior to August 31, 2015, the amendments be made effective January 1, 2016 pursuant to Government Code section 11343.4(b)(2). This will allow adjusting agencies time to train their staffs on the new required content of the subject matter of the regulations and update the programming used to generate benefit notices in their computer systems.

Allowing the modifications to the text and forms to be effective January 1, 2016, will allow the regulated public sufficient time to train their staffs and modify their operating processes to conform to the regulations.

THE FOLLOWING SUBDIVISIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD:

1. Amendments to Existing § 9810: General Provisions.

In response to comments received, the proposed section was modified.

Subsection (c) was broken apart with the last paragraph being re-numbered as subsection (d).

The remainder of subsection (c) was organized into three separate, numbered subdivisions.

Subdivision (c)2 was added to provide that where the claims administrator has a clearly documented reason to believe that disclosure of the claims examiner's name presents or may present a security concern towards the personal safety of the claims examiner, the claims administrator may identify an alternate but specific claims department name and telephone number in lieu of the claims examiner's name and telephone number.

A grammatical correction was made in subdivisions (c)1 and (c)2, replacing the word "are" with "is".

Subdivision (d) was amended to require that each benefit notice refer the employee (by chapter number and internet url) to the appropriate chapter of the publication "Workers' Compensation in California: A Guidebook for Injured Workers" that addresses the benefit(s) to which the notice pertains, and advise the employee that a complete copy of the Guidebook may be obtained on the Division of Workers' Compensation's website at: <http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html>, or by contacting an information and assistance (I&A) officer of the Division of Workers' Compensation.

All following subsections are being renumbered accordingly.

Subdivisions (e)(1) and (e)(2) were amended (in conformity with the above described amendment to subdivision (c)(2)) to provide that notices may be sent either to the claims adjuster or a specific claims department name, as appropriate.

As a result of a comment received from a member of the regulated public during the second public comment period on proposed revisions to the regulatory language, corrections to minor and inadvertent typographical errors in subdivision (e)(1) were made for consistency and accuracy.

The Administrative Director believes that June 18, 2015 notice of further modification to the text of the proposed regulations was sufficiently clear to put the regulated community on notice that the inadvertently omitted language shown below was clearly intended to be added, and its omission was merely a typographical error.

(e)(1) For claims not subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7, the following language shall be used:

“You have a right to disagree with decisions affecting your claim. If you have any questions about the information provided to you in this notice, please call ~~me~~, [insert either me, the adjuster's name or a specific claims department name and telephone number]. You also have the right to be represented by an attorney of your choice. However, if you are represented by an attorney, you should call your attorney, not ~~me~~ [insert either me, the adjuster's name or a specific claims department name and telephone number].

“For information about the workers’ compensation claims process and your rights and obligations, go to www.dwc.ca.gov or contact an information and assistance (I&A) officer of the state Division of Workers’ Compensation. For recorded information and a list of offices, call (800) 736-7401.”

(2) For claims subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7, the language in paragraph (1) shall be used to the extent that it is consistent with the provisions of the ADR agreement, and the following language shall be substituted in its place to the extent appropriate according to the ADR agreement:

“You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call ~~me~~, [insert either me, the adjuster's name or a specific claims department name and telephone number], or [insert name, title,

and telephone of ombudsperson or mediator]. However, if you are represented by an attorney, you should call your attorney, not [insert me, or the specific claims department name], the ombudsperson, or mediator.

The fourth paragraph of subdivision (e)(2) was amended to specifically state that the injured worker has the right to consult an attorney.

Subdivision (i) was amended to clarify that electronic service of benefit notices is only available where the claims administrator offers that option, and that the written agreement of the attorney is required.

Subdivision (m) was amended to clarify that electronic service of benefit notices is only available where the claims administrator offers that option, that the written agreement of the employee is required, and that electronic service of notices under this subdivision only applies to the employee.

New subdivision (n) was adopted to provide that when the method of service of the benefit notice is electronic, in lieu of regular mail, service shall be through the use of a secure, encrypted email system. The claims administrator will be required to maintain a log of service dates, and receipt acknowledgements, for each benefit notice sent electronically on each claims file, and will be required to produce this log, upon demand, to the employee, the employee's attorney, if represented and the DWC Audit Unit. If the claims administrator receives notice that an electronic benefit notice was not delivered to the email address provided by the employee, or the employee's attorney, if represented, the claims administrator will be required to send the benefit notice to the employee and attorney by regular mail within one (1) business day of receipt of the failed electronic delivery notice.

New subdivision (o) was adopted to provide that electronic delivery of benefit notices by a claims administrator does not constitute consent to accept electronic service of any communications sent to the claims administrator.

2. Amendments to Existing § 9811: Definitions.

In response to comments received, the proposed section was modified.

Subdivision (g) was amended to correct an erroneous cross reference, changing it from subdivision (d) of section 9810 to subdivision (e).

3. Amendments to Existing § 9812: Benefit Payment and Notices.

In response to comments received, the proposed section was modified.

Subdivision (a)(2)(A)2. was amended to provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:

i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or

ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

The requirement to provide the QME panel request form and include specific notice language was deleted.

Subdivision (a)(3)(A)1. was amended to include the phrase “and the employee disputes the results of the evaluation” and provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:

i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or

ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

Subdivision (a)(3)(A)2. was amended to include the phrase “and the employee disputes the results of the evaluation” and provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:

i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or

ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

Subdivision (a)(3)(A)3. was amended to delete the requirement to provide the QME panel request form and provide that if no comprehensive medical evaluation has taken place, the notice shall advise the employee that, if he or she disagrees with the results of the evaluation, the employee must either:

i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or

ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

Subdivision (c) was amended to clarify that the notice may be given before or at the same time as a new payment.

Subdivision (d)(1)(A) was amended to include the phrase “and the employee disputes the results of the evaluation”.

Subdivision (d)(1)(B) was amended to delete the phrase “and the claims administrator agrees with those findings” and provide that, if no comprehensive medical evaluation has taken place, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:

i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or

ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

Subdivision (d)(1)(B) was also amended to include as a final sentence “If the claims administrator’s determination is based on a medical report, the notice shall be provided within the applicable time limit prescribed in Labor Code section 4062(a), notwithstanding the 14 days required by this subdivision”.

Subdivision (d)(1)(C) was deleted.

Subdivision (d)2. was amended to correct the numbering from 2. to (2).

Subdivision (e)(2)(A)1. was amended to provide that if the determination is based on a comprehensive medical evaluation, the notice shall advise the employee that if he or she disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.

Subdivisions (e)(2)(A)1. and 2. are being renumbered as (e)(2)(A)(2) and (e)(2)(A)(3), respectively.

Subdivision (e)(2)(A)(3) was amended to delete subdivision (e)(2)(A)(3)(ii), and provide instead that if the claims administrator's determination is based on an evaluation by a treating physician, the notice shall advise the employee that if he or she disagrees with the results of the evaluation, the employee must either:

- i. contact the claims administrator within the applicable time limit prescribed in Labor Code section 4062(a) to obtain the form prescribed by the DWC Medical Unit to request assignment of a panel of Qualified Medical Evaluators, or
- ii. within the applicable time limit prescribed in Labor Code section 4062(a), download the form to request assignment of a panel of Qualified Medical Evaluators from the DWC website. (**Note:** the notice is required to provide the employee with the url to enable the employee to download the applicable form.)

However, if the employee has already received a comprehensive medical evaluation, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation, if possible.

Subdivision (g)(3) was amended to provide that if the employee informs the claims administrator of his or her choice but does not arrange the appointment, the claims administrator will arrange the appointment; if the employee does not inform the claims administrator of his or her choice, the claims administrator may choose the QME who will examine the employee, and may arrange the appointment.

Subdivision (g)(4)(i) was amended to provide that if the employee informs the claims administrator of his or her choice but does not arrange the appointment, the claims administrator will arrange the appointment; if the employee does not inform the claims administrator of his or her choice, the claims administrator may choose the QME who will examine the employee and may arrange the appointment.

Subdivision (h)(1) was amended to provide that where the employee is not represented by an attorney, and the determination is related to a medical issue, the notice shall advise the employee using one of two alternatives.

Subdivision (h)(1)(A) was amended to provide that if the determination is based on a comprehensive medical evaluation, and the employee disputes the results of the evaluation, the employee may file an Application for Adjudication of Claim with the WCAB.

Subdivision (h)(1)(B) was amended to add a final sentence stating that if the employee has already received a comprehensive medical evaluation and he or she disagrees with the decision to deny the claim, the notice may instead advise the employee to contact the claims administrator to arrange for the employee to return to that same medical evaluator for a new evaluation if possible.

Subdivision (h)(3) was amended to advise the employee to immediately send in their medical bills for consideration of payment.

4. Amendments to Existing section 9881.1: Notice to Employees Poster.

In response to comments received, the proposed section was modified.

Under the heading “Benefits”, the sentence concerning the Supplemental Job Displacement Benefit was amended by adding the phrase “your injury causes permanent disability”. The amended sentence will read: “A nontransferable voucher, if you are injured on or after 1/1/2004, your injury causes permanent disability, and your employer does not offer you regular, modified, or alternative work.”

Under the heading “Report your injury”, the last sentence was amended to improve its readability, by including a reference to the claims administrator as well as the employer, and by relocating the reference to the limit of ten thousand dollars on medical treatment.

The amended sentence reads “Within one working day after you file a claim form, your employer or claims administrator must authorize the provision of all treatment, up to ten thousand dollars, consistent with the applicable treatment guidelines, for your alleged injury.”

Under the heading “Medical Provider Networks”, the word “selected” was replaced with “designated”. The bold font was removed from the sentence “If you have predesignated a personal physician or medical group prior to your work injury, then you may go there to receive treatment from your predesignated doctor.” The sentence “If you have not predesignated and your employer is using a MPN, you are free to choose an appropriate provider from the MPN list after the first medical visit directed by your employer” was deleted.

The effective date of the revised poster has been amended to January 1, 2016.

5. Amendments to Existing section 10139: Workers’ Compensation Claim Form (DWC 1) and Notice of Potential Eligibility.

Changes to the Notice of Potential Eligibility:

In response to comments received, the proposed section was modified.

In the final sentence of the first paragraph, the phrase “lose time from work” was replaced with “file a claim”. The amended sentence reads “If you file a claim, the claims administrator, who is responsible for handling your claim, must notify you within 14 days whether your claim is accepted or whether additional investigation is needed”.

In the paragraph headed “Medical Care”, the word “for” was added to the first sentence. The amended sentence reads “Your claims administrator will pay for all reasonable and necessary medical care for your work injury or illness.”

In the second sentence, the phrase “are subject to approval and” was added. The amended sentence reads “Medical benefits are subject to approval and may include treatment by a doctor, hospital services, physical therapy, lab tests, x-rays, and medicines, equipment, and travel costs.”

In the third sentence, the phrase “of approved medical services” was added. The amended sentence reads “Your claims administrator will pay the costs of approved medical services directly so you should never see a bill.”

In the section referring to “The Primary Treating Physician (PTP)”, in the final bulleted point item, the phrase “be able to” was added. The amended sentence reads “If your employer has not put up a poster describing your rights to workers’ compensation, you may be able to be treated by your personal physician right after you are injured.”

In the final paragraph of the section, references to the employer were added as an alternative to three references to the claims administrator. The amended paragraph reads:

Within one working day after you file a claim form, your employer or the claims administrator must authorize up to \$10,000 in treatment for your injury, consistent with the applicable treating guidelines until the claim is accepted or rejected. If the employer or claims administrator does not authorize treatment right away, talk to your supervisor, someone else in management, or the claims administrator. Ask for treatment to be authorized right now, while waiting for a decision on your claim. If the employer or claims administrator will not authorize treatment, use your own health insurance to get medical care. Your health insurer will seek reimbursement from the claims administrator. If you do not have health insurance, there are doctors, clinics or hospitals that will treat you without immediate payment. They will seek reimbursement from the claims administrator.

A typographical error in the area code for the alternative contact number for the Employment Development Department was corrected from (800) to (866).

The effective date of the revised Notice of Potential Eligibility was amended to January 1, 2016.

Changes to the Workers' Compensation Claim Form (DWC 1)

The second paragraph of the instructions to the employee was amended to clarify that electronic service of benefit notices is only available if the employee's claims administrator offers that option.

Item 8 was amended to provide a place for the employee to check a box if he or she agrees to receive benefit notices only by email. The employee will be advised that if they choose not to receive benefit notices by email, or their claims administrator does not offer an electronic service option, they will receive benefit notices by regular mail.

The employee's signature line was renumbered as item 9.

In the Spanish language translation of the instructions to the employer at the bottom of the form, two typographical errors were corrected. (The words "compañía" and "reclamos" were inadvertently hyphenated during the editing and formatting of the form.)

The effective date of the revised claim form was amended to January 1, 2016.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these

regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the charts contained in the rulemaking binder.

The public comment periods were as follows:

Initial 45-day comment period:	July 18, 2014 – September 3, 2014
First 15-day comment period:	April 24, 2015 – May 11, 2015
Second 15-day comment period:	June 18, 2015 – July 3, 2015

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