

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

SECOND AMENDED FINAL STATEMENT OF REASONS

Subject Matter:

Workers' Compensation – CLAIM FORM AND NOTICE OF POTENTIAL ELIGIBILITY; NOTICE TO NEW EMPLOYEES POSTER; AND WRITTEN NOTICE TO NEW EMPLOYEES

Title 8, California Code of Regulations Sections 9810 et seq.

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 133, 138.4, 3550, 3551, 3600, 5307.3 and 5401, has adopted following amendments to Title 8, California Code of Regulations:

Amended Section 9810	General Provisions
Amended Section 9880	Written Notice to New Employees
Amended Section 9881	Posting of Notice to Employees
Proposed Section 9881.1	Notice to Employees Poster
Repealed Section 9882	Written Notice to Injured Employees; Pamphlet Contents
Amended Section 9883	Publication of Information, Approval, Spanish Translation
Repealed Section 10117	Claim Form
Proposed Section 10117.1	Claim Form and Notice of Potential Eligibility for Benefits
Repealed Section 10118	Form
Proposed Section 10118.1	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code §11346.9(d), the Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. In addition to the references cited previously, Assembly Bill 227 repealed and added §139.5 to the Labor Code, and added §§4658.5 and 4685.6 to the Labor Code (effective January 1, 2004). These sections provide for a new benefit entitled supplemental job displacement benefits and remove the entitlement to vocational rehabilitation. Senate Bill 228 added §4604.5 to the Labor Code (effective January 1, 2004), which limits the amount of chiropractic visits and physical therapy visits. Senate Bill 899 amended Labor Code §4604.5 (effective April 19, 2004) to limit the amount of allowable occupational therapy visits. It also repealed and added Labor Code §139.5. The effect of this change was to maintain vocational rehabilitation benefits for injured workers with a date of injury prior to January 1, 2004. The supplemental job disability benefit is still authorized by Labor Code §4658.5. Senate Bill 899 also amended Labor Code §5401 to require employers to authorize treatment (up to \$10,000) within one working day of the filing of a claim form until

liability of the claim is accepted or rejected. Finally, Senate Bill 899 amended Labor Code §4600 and added Labor Code §4616 (effective 1/1/05). These changes make an employee's right to switch doctors after 30 days dependent on whether the employer has established a medical provider network.

The proposed regulation changes are summarized below.

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (MARCH 15, 2004 - MARCH 31, 2004)

Modifications to Section 9880

Written Notice to New Employees

Section 9880 is modified to include a requirement that the written notice to new employees include information on the right to obtain supplemental job displacement benefits. Assembly Bill 227 added to the Labor Code sections 139.5, 4658.5 and 4685.6 (effective January 1, 2004). These sections provide for a new benefit entitled supplemental job displacement benefits. Section 9880 was also amended to add these new Labor Code sections as references. The Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) regarding these changes.

Modifications to Section 9881

Posting of Notice to Employees

Section 9881 is modified to include a requirement that the Notice to Employees Poster include information on the right to obtain supplemental job displacement benefits. Assembly Bill 227 added to the Labor Code sections 139.5, 4658.5 and 4685.6 (effective January 1, 2004). These sections provide for a new benefit entitled supplemental job displacement benefits. Section 9880 was also amended to add these new Labor Code sections as references. The Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) regarding these changes.

Modifications to Section 9881.1

Notice to Employees Poster

Section 9881.1 is modified to include language explaining the employee's right to supplemental job displacement benefits. Assembly Bill 227 added to the Labor Code sections 139.5, 4658.5 and 4685.6 (effective January 1, 2004). These sections provide for a new benefit entitled supplemental job displacement benefits. Senate Bill 228 added section 4604.5 to the Labor Code (effective January 1, 2004), which limits the amount of chiropractic visits and physical therapy visits. This limitation has also been included in the Notice of Potential Eligibility. The Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) regarding these changes. On the Spanish version of the poster, a few grammatical corrections were made. Section 9881.1 was also amended to add these new Labor Code sections as references.

Modifications to Section 10118.1**Workers' Compensation Claim Form (DWC 1)
and Notice of Potential Eligibility**

Section 10118.1 is modified to include language explaining the employee's right to supplemental job displacement benefits. The language is included in the Notice of Potential Eligibility. Assembly Bill 227 added to the Labor Code sections 139.5, 4658.5 and 4685.6 (effective January 1, 2004). These sections provide for a new benefit entitled supplemental job displacement benefits. Senate Bill 228 added section 4604.5 to the Labor Code (effective January 1, 2004), which limits the amount of chiropractic visits and physical therapy visits. This limitation has also been included in the Notice of Potential Eligibility. Section 10118.1 was also amended to add the new Labor Code sections as references. The Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) regarding these changes.

The heading "Beneficios de Muerte" (on page two of the Spanish section of the Notice of Potential Eligibility) has been changed to "Beneficios por Muerte" to correct the syntax of the sentence. Additionally, in order to correct the grammar in the English section of the Notice of Potential Eligibility, three commas have been added after introductory phrases.

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE COMMENT PERIOD ENDING MARCH 31, 2004 AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (APRIL 27, 2004 - MAY 12, 2004)**Modifications to Section 9881.1****Notice to Employees Poster**

Senate Bill 899 (effective April 19, 2004) amended Labor Code §4604.5 to also place a limit on occupational therapy visits. It now states that "an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury." Section 9881.1 is modified to alert the injured employee that for injuries on or after 1/1/04, there is a limit on some medical services. In addition, the poster's effective date is changed to July 1, 2004.

Modifications to Section 10118.1**Workers' Compensation Claim Form (DWC 1)
and Notice of Potential Eligibility**

Senate Bill 899 (effective April 12, 2004) amended Labor Code §4604.5 to also place a limit on occupational therapy visits. It now states that "an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury." The "medical care" section of the Notice of Potential Eligibility part of Section 10118.1 is modified to alert the injured employee that for injuries on or after 1/1/04, there is a limit on some medical services.

In response to a comment, a check box is added to the bottom of the claim for the employee's temporary receipt copy and the instructions to the employee are modified to notify the employee

that he or she should receive a signed and dated copy of the claim form back from the employer. In addition, the claim form's effective date is changed to July 1, 2004.

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE COMMENT PERIOD ENDING MARCH 31, 2004 AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (May 5, 2004 - MAY 20, 2004)

Modifications to Section 9881.1

Notice to Employees Poster

Senate Bill 899 (effective April 19, 2004) amended Labor Code §4600 regarding the injured worker's right to predesignate a physician and to be treated by a physician of his or her own choice after the first 30 days. The sections of Section 9881 entitled "Naming Your Own Physician Before Injury" and "See Your Primary Treating Physician(PTP)" are modified to reflect these changes.

Modifications to Section 10118.1

Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

Senate Bill 899 (effective April 19, 2004) amended Labor Code §4600 regarding the injured worker's right to predesignate a physician and to be treated by a physician of his or her own choice after the first 30 days. The section entitled "The Primary Treating Physician (PTP)" on the NOPE is modified to reflect these changes.

In addition, the margins of the top sections of the Claim Form were aligned.

THE FOLLOWING NON-SUBSTANTIVE / CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD

Proposed Section 9881.1

Notice to Employees Poster

The text of the Notice to Employees Poster has been changed to conform to statutory changes. The changes to Labor Code Sections 4600 and 4616, effective 1/1/05, will make an employee's right to switch doctors after thirty days dependent on whether the employer has established a medical provider network. In order to conform to the statutory directives in Labor Code Section 4600(c) and 4616, the words "or after 1/1/05, has a medical provider network." has been added to section entitled "See Your Primary Treating Physician (PTP)." The reference to Labor Code §4616 has also been added.

The text of the Poster has been changed to conform to the statutory directive in Labor Code Section 5402(c)(effective April 19, 2004). After the last sentence in the section entitled "2. Report Your Injury," the following statutory language has been added: "Within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand

dollars (\$10,000).” (The same change has been made to the Spanish version.) Also, the date has been changed from 7/1/04 to 8/1/04 to allow sufficient time for OAL approval of the rulemaking.

Proposed Section 10118.1

**Workers’ Compensation Claim Form (DWC 1)
and Notice of Potential Eligibility**

The text of the NOPE has been changed to conform to the statutory directive in Labor Code Section 5402(c). The second paragraph under the heading “The Primary Treating Physician (PTP)” has been deleted and replaced with the statutory language. It now states: “Within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).” In addition, the changes to Labor Code Sections 4600 and 4616, effective 1/1/05, will make an employee’s right to switch doctors after thirty days dependent on whether the employer has established a medical provider network. In order to conform to the statutory directives in Labor Code Section 4600(c) and 4616, the words “or after 1/1/05, has a medical provider network” has been added to the first paragraph of the “The Primary Treating Physician (PTP)” section. The reference to Labor Code §4616 has also been added.

UPDATE OF MATERIAL RELIED UPON / DOCUMENTS ADDED TO RULEMAKING FILE

In addition to the documents identified in the Initial Statement of Reasons the following documents were relied upon by the Division and were made available to the public as required by Government Code Section 11347.1.

Title of Document Added to Rulemaking File**Dates of Availability for Public Comment**

<p>Print outs of emails dated October 10, 2003 through November 12, 2004 to and from various interested parties. Following the withdrawal of the rulemaking file from OAL and after Senate Bill 228 and Assembly Bill 227 amended the Labor Code, DWC requested input from various parties (including the Commission on Health, Safety and Workers' Compensation) regarding conforming the withdrawn regulations to the new statutory requirements. This input was requested prior to the First 15 day comment period.</p>	<p>March 15, 2004 through March 31, 2004.</p>
<p>Comments received by the Division of Workers' Compensation concerning the Division's proposed changes.</p>	<p>March 15, 2004 through March 31, 2004. April 27, 2004 through May 12, 2004 May 5, 2004 through May 20, 2004</p>

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. The proposed amendments do not apply to 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 and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.

The public comment period was as follows:

Initial 45-day comment period on proposed regulations:

May 29, 2003 through July 15, 2003.

First 15-day comment period on modifications to proposed text:

March 15, 2004 through March 31, 2004.

Second 15-day comment period on modifications to proposed text:

April 27, 2004 through May 12, 2004.

Third 15-day comment period on modifications to proposed text:

May 5, 2004 through May 20, 2004.