

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

**NOTICE OF FURTHER MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Audit Regulations

NOTICE IS HEREBY GIVEN, pursuant to Government Code section 11346.8(c), that the Acting Administrative Director of the Division of Workers' Compensation, proposes to modify the text of the following proposed amendments to California Code of Regulations, title 8:

Amended section 10107.1 Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.
Amended section 10111.2 Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulation will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

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

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on Friday, February 6, 2009.

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwrules@dir.ca.gov

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor,

Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the original codified regulatory text noticed for the 45-comment period are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the 45-comment period are indicated by single underlining, thus: added language.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-comment period are indicated by double strike-through: ~~~~deleted language~~~~.

Newly proposed additions to the original codified regulatory text noticed for the 45-comment period are indicated by double underlining: added language.

Proposed Text Noticed for this 15-Day Comment Period on Modified Text:

Newly proposed deletions from the original codified regulatory text and previously proposed regulatory text are indicated by bold double strike-through underlining in light grey shading: ~~~~deleted language~~~~.

Newly proposed additions to the original codified regulatory text and previously proposed regulatory text are indicated by bold double underlining in light grey shading: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10107.1(c)(3)(B) Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.

The next to last sentence of subdivision (c)(3)(B) is modified to substitute the word "required" for the word "issued". The factor set forth in subdivision (c)(3)(B), used in calculating an audit subject's profile audit review performance rating, measures an audit subject ability to timely issue the first temporary disability indemnity payment to an injured worker. Factoring in the number of randomly selected claims in which temporary disability payments or, if applicable, first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability notices, were required instead of issued provides a more accurate measure of performance under this factor; using the number of claims where such notices were issued technically excludes consideration of those claims where notices were required to be issued but the audit subject illegally failed to do so.

Modifications to Section 10111.2 Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

Subdivision (a)(10), as initially amended, is further modified to delete the phrase “or is for any other benefit or medical expenses,” as the phrase is unnecessary. The failure to pay or late pay “any other benefit or medical expense”, in violation of an award or order of the Workers’ Compensation Appeals Board, the Rehabilitation Unit, or the Administrative Director, is more appropriately the subject of an administrative penalty under subdivision (b)(24).