

EMPLOYEE BENEFIT NOTICES	RULEMAKING COMMENTS 2d 15 DAY COMMENT PERIOD (June 18, 2015 – July 3, 2015)	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comments	<p>Commenter repeats its recommendations (made May 11 during the prior 15-day comment period) and again recommends that DWC allow the respective claim administrators to determine when and how they establish electronic communication with injured workers. Claims administrators differ in size and structure – ranging from national insurance companies to regional self-administered programs. Each administrator will have different information technology infrastructure, capacity and resources. Commenter recommends that DWC should allow for flexibility in electronic communications instead of mandating a one-size-fits-all approach.</p> <p>Commenter stresses the need to regularly update and maintain the Guidebook posted on the Department of Industrial Relation’s webpage. The current Guidebook is out of date and does not reflect many of the statutory and regulatory changes associated with the recent reforms. Additionally, commenter recommends that DWC maintain online archives of the prior</p>	Jeremy Merz Policy Advocate CalChamber July 2, 2015 Written Comment	<p>These comments are untimely and will not be addressed, as they concern regulatory text that was not proposed for modification during this comment period.</p> <p>The Administrative Director responded to a similar comment in the prior 15-day comment period, and agrees in principle with these comments, and intends to do as the commenter suggests. These comments, however, related to the substance and maintenance of the Guidebook and the</p>	<p>None.</p> <p>None.</p>

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	<p>Guidebooks. This will allow claims administrators easy reference to and a better understanding of system rule changes.</p> <p>Commenter again applauds DWC for proposing regulations that allow for the more environmental friendly and efficient electronic benefit notice delivery. Commenter encourages expansion of this policy to <i>all</i> notices and transmissions in the workers' compensation system, including medical utilization review, PAR audits and Labor Code 5816 audits.</p> <p>The commenter again urges DWC to provide a 180 day implementation period after the Office of Administrative Law has issued an approval of the regulations.</p>		<p>DWC website are outside the scope of this regulatory proceeding.</p> <p>The Administrative Director addressed this comment in the responses to the comments made during the prior 15-day comment period.</p> <p>The Administrative Director addressed this comment in the responses to the comments made during the prior 15-day comment period.</p>	<p>None.</p> <p>None.</p>
9810 General Provisions	<p>Commenter states, with respect to section 9810(c)(1), that rather than providing the claims administrator's name, he recommends providing the information for the claims department. The individual handling a claim can change for a variety of reasons. Providing potentially outdated</p>	<p>Jeremy Merz Policy Advocate CalChamber July 2, 2015 Written Comment</p>	<p>These comments are untimely and will not be addressed, as they concern regulatory text that was not proposed for modification during this comment period.</p> <p>The Administrative Director</p>	<p>None.</p>

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	<p>information will not be helpful to an injured worker, whereas identifying the claims department would allow any call or correspondence from the injured worker to be routed to the current claim administrator.</p> <p>The commenter repeats his comments (made May 11, during the prior 15-day comment period) that, with respect to section 9810(d)(2)(g), while many claims administrators continue to upgrade current system platforms, mandating bold font on the notices requires overhauling claims administrators' IT infrastructure - a costly process that would require outside specialists to upgrade systems.</p> <p>Commenter states that any de minimis benefits the bold font adds to the notice are significantly outweighed by the significant costs and resources necessary to upgrade the system.</p> <p>Commenter recommends that this requirement be reconsidered and removed. Commenter states that perhaps, at some future date, this requirement may be necessary, but he</p>		<p>addressed this comment, and those that follow, in the responses to the comments made during the prior 15-day comment period.</p>	

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	suggests it be removed at this time and that claims administrators be allowed to address their system improvements.			
9810 General Provisions	The commenter repeats his comments (made May 11 during the prior 15-day comment period) concerning section 9810(d)(2)(i), stating that they agree with the requirement to document their agreement to receive electronic benefit notices. However, existing secure system portals already allow employees to receive electronic benefit notices. Commenter does not believe that a separate process is necessary for attorneys. Rather, the employee may simply allow their attorney access to the portal by providing him or her with the password.	Jeremy Merz Policy Advocate CalChamber July 2, 2015 Written Comment	This comment is untimely and will not be addressed, as it concerns regulatory text that was not proposed for modification during this comment period. The Administrative Director addressed this comment in the responses to the comments made during the prior 15-day comment period.	None.
9810 General Provisions	The commenter repeats his comments (made May 11 during the prior 15-day comment period) concerning section 9810(d)(2)(n), and states that the proposed revision is contrary to the existing receipt requirements for paper notices. Commenter does not understand why	Jeremy Merz Policy Advocate CalChamber July 2, 2015 Written Comment	Except for the one new comment, as stated below, these comments are untimely and will not be addressed as they concern regulatory text that was not proposed for modification during this comment period.	None.

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	<p>the Administration is requiring a higher standard for electronic notices when these types of communications are readily retrievable. Oftentimes, the employee does not accept delivery and read receipts which, under this language, would result in the claims administrator not receiving receipt verification.</p> <p>Commenter states that, while sending something encrypted may not be an issue, ensuring the employee's end allows for the document to be unencrypted may be difficult. This also raises concern with sending medical reports via the email system, encrypted or not.</p> <p>Commenter recommends that the regulation be revisited by utilizing a secure Web Portal for communications with the employee. As one major medical system does, the sender initiates an email to the patient (in our case the employee) at the time when a notice is uploaded to the portal. As the employee accesses the portal to review the notice, the item is marked as having been read.</p>		<p>The Administrative Director addressed these comments in the responses to the comments made during the prior 15-day comment period.</p>	

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	<p>Commenter states that this Portal option solves the following issues:</p> <ol style="list-style-type: none"> 1. The Portal is secure and can be accessed only the employee with their unique password. 2. A claim or ID number is referenced and the patient (or employee) created password to facilitate access. 3. The Portal would also serve as a log – recording all items sent to the employee and tracking every accessed transaction or communication. <p>Commenter states that this Portal could also be used to house medical reports, in the event an attorney needed access to the reports. In addition, this cost effective and efficient communication Portal may preclude the need for copy service or service of records.</p> <p>Commenter states that in the future, it is foreseeable that his organization may consider using this single portal for subpoenaed medical records and</p>			
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	<p>depositions.</p> <p>In a new comment on this subdivision, commenter states that he urges DWC to extend deadline for claims administrators to provide notice by regular mail upon receipt of failed electronic delivery to five days. One day is simply not a reasonable time period for claims administrators to receive notice of failed delivery and then create, process, and mail the new notice out. A five days deadline would still provide timely notice to injured workers while balancing the operational realities of claims administration.</p> <p>The commenter repeats his comments (made May 11 during the prior 15-day comment period) and again opines that this section creates uncertainty regarding the format of email logs. It is unclear whether it mandates: (1) a single line item log of every email sent to every employee; (2) a separate log for each claim utilizing the email option in addition to a master log of all claims receiving benefit notices electronically, or (3) something else</p>		<p>The Administrative Director does not accept this new comment.</p> <p>Upon receipt of failed electronic delivery, the notice can easily be reprinted for mailing within one business day. This process can more than likely be automated.</p>	None.

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	entirely. Commenter requests that DWC provide clarity.			
9812 Benefit Payment and Notices	<p>Commenter states that with respect to section 9812(e), he would still raise his original argument that this Regulation specifically contradicts an existing Labor Code.</p> <p>Labor Code 4650(b)(1) states:</p> <p>If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity. When the last payment of temporary disability indemnity has been made pursuant to subdivision (c) of Section 4656, and regardless of whether the extent of permanent disability can be determined at that date, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined, until that amount</p>	Dennis Knotts, Workers’ Compensation Consultant June 25, 2015 Written Comment	<p>This comment is untimely and will not be addressed, as it concerns regulatory text that was not proposed for modification during this comment period.</p> <p>The Administrative Director addressed this comment in the responses to the comments made during the prior comment periods.</p>	None.

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	<p>has been paid. [Emphasis added]</p> <p>Regulation 9812 (e) violates not only the spirit of Labor Code 4650 (b)(1) but it also violates the wording of the Labor Code. As such, the Administrative Director lacks the jurisdiction to make this Regulation.</p> <p>“Regardless of whether the extent of permanent disability can be determined at that date, the employer nevertheless SHALL commence the timely payment required by this section...”</p> <p>The Labor Code cannot be any more clear than this. There is no ambiguity in the wording. It is clear. Giving the words their usual and customary meaning and reading the Labor Code in its context forbids delaying the permanent disability benefit on the grounds that the level of permanent disability is not known or cannot be determined at that time.</p> <p>With the creation of a 104 week cap on Temporary Disability Benefits under SB 899, there will be times</p>			

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	<p>when the employee will no longer be entitled to Temporary Disability Benefits and still not be able to return to work. Therefore, the employee will have no source of income other than the Permanent Disability Advances.</p> <p>Further, the creation of Labor Code 4650 (b)(2) by SB 863 shows the Legislative Intent in that the Permanent Disability benefit cannot be delayed. It can only be deferred. It can only be deferred if the employer can show that the employee has a source of income sufficient to replace the lost wages.</p> <p>The practice of Delaying Permanent Disability Benefits has been allowed by the Administrative Director, but clearly is it not allowed per SB899 versions of Labor Code 4650 (b) and not SB 863 Labor Code 4650 (b)(1) and (b)(2).</p> <p>The Administrative Director needs to delete the option of Delaying Permanent Disability Advances – especially based solely on the fact the level of Permanent Disability is not</p>			

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	known at the date Temporary Disability Benefits end. In its place the Deferral of Permanent Disability Benefits should be added and available only when the employer can document the appropriate level of income by the employee.			
9812 Benefit Payment and Notices	<p>Commenter notes that section 9812(g)(3) is in conflict with the Labor Code.</p> <p>Commenter states that the following proposed Regulation is confusing and may, in fact, be contradicting to Labor Code 4060, 6061 and 4062.</p> <p>Commenter states that we are talking about the Delay of the Claim, not the Denial of the Claim. As noted, per Labor Code 5402, the employer must provide medical treatment up to \$10,000. Per Labor Code 4060 the reports of the treating physician are admissible.</p> <p>The structure of Labor Code 4060, 4061 and 4062 is to allow the employer to obtain an initial medical opinion before the PQME process or AME process is used to dispute it.</p>	Dennis Knotts, Workers’ Compensation Consultant June 25, 2015 Written Comment	This comment is untimely and will not be addressed, as it concerns regulatory text that was not proposed for modification during this comment period.	None.

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	<p>THERE MUST BE A MEDICAL OPINION IN PLACE before you can dispute the medical opinion.</p> <p>Regulation 9812 (g), (g)(1) and (g)(2) are in compliance with Labor Codes 4060, 4061 and 4062. It is a (g)(3) where the Regulation is now suggesting that the issue of AOE/COE should be referred to a PQME or AME. That is NOT a provision of the Labor Code. There is no Labor Code giving that authority and so these two subparagraphs are not supported by Labor Code.</p> <p>Subparagraphs (g)(3) and (g) (4) would more properly be moved to 9812 (h) the Denial of the Claim. Here the decision has been made. In (g) no decision has been made. You cannot dispute what has not been made. There must always be a medical opinion in place, and then 4060, 4061 and 4062 provide for PQME and AME as the dispute resolution process.</p>			
9810 General Provisions	Commenter states that the proposed modifications to subdivision (c)(2) (a provision that where the claims	Michael McClain General Counsel	The Administrative Director does not accept this comment.	None.

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	<p>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) will add to the administrative burdens and complexity of benefit notices, and will create other unnecessary problems:</p> <ul style="list-style-type: none"> • It will be difficult and costly for some claims administrators to automate the inclusion of each individual claims adjuster's name, telephone number and address in the notices. • Adding individualized documentation of a security concern for an adjuster's personal safety will add expense and delay • Claims adjuster assignments can change frequently; not only because of personnel 	<p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p> <p>California Workers' Compensation Institute (CWCI) July 3, 2015 Written Comment</p>	<p>The requirement for notices to clearly identify the name and telephone number and mailing address of the individual claims examiner responsible for the payment and adjusting of the claim is a provision of the existing regulations, and the Administrative Director has received no complaints that it has imposed any undue burdens on claims administrators.</p> <p>The provision being added - that a claims administrator with 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, may identify an alternate but specific claims department name and telephone number in lieu of the claims examiner's name and telephone number" - was added at the request of State Compensation Insurance</p>	

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	<p>changes, but also to improve outcomes and facilitate claims. Examiner assignments may change depending on the type or status of a claim (for example, some adjusters only open new claims, others specialize in medical-only claims, TD claims or PD claims, or in claims involving back, knee, or shoulder surgery. These modifications will discourage this type of specialization to the detriment of the employee.</p> <ul style="list-style-type: none"> • If the name of the adjuster on a claim has changed by the time the employee seeks to contact him or her, communications may be delayed • This new requirement may also become fodder for new legal disputes and penalties. <p>The commenter states that, if an outdated adjuster's name and telephone appears on any notice, the employee may attempt to communicate with that adjuster. If a claims administrator is allowed to</p>		<p>Fund.</p> <p>The Administrative Director is aware of multiple incidents of threats against claims examiners after which claims have been reassigned and restraining orders obtained to protect the claims examiners.</p>	

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	<p>continue to direct employees to a more central point of contact, unnecessary delays can be avoided since time won't be wasted in routing to the person who was the adjuster at the time of an old notice, but no longer assigned to the claim.</p> <p>The commenter points out that language in 9810(e) permits claims administrators to direct employees with questions to the name and telephone number of either the specific adjuster, or a specific claims department. For all the reasons above, the commenter supports this flexibility and recommends keeping 9710(c) consistent with the language in 9710(e).</p>			
9810 General Provisions	<p>Commenter notes that section 9810(e) contains inadvertent typographical errors or minor oversights, as shown below, and that their correction is necessary for consistency and accuracy.</p> <p>(e) Every benefit notice, excepting those mandatory notices that have been set forth in statute or where a</p>	<p>Michael McClain General Counsel</p> <p>Brenda Ramirez Claims & Medical Director</p> <p>Robert Young Communications Director</p>	The Administrative Director agrees with this comment, and these errors will be corrected in the final regulations as adopted.	Minor and inadvertent typographical errors have been corrected in the final regulations as adopted.

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	<p>specific notice form has been adopted as a regulation, shall include a mandatory statement of employee's (or claimant's) remedies, as follows: (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:</p> <p>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 <u>[insert either me, the adjuster's name or a specific claims department name and telephone number]</u>.</p> <p>For information about the workers' compensation claims process and your rights and obligations, go to www.dwc.ca.gov or contact an</p>	<p>California Workers' Compensation Institute (CWCI) July 2, 2015 Written Comment</p>		

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	<p>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.</p> <p>(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:</p> <p>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],</p>			

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	<p>the ombudsperson, or mediator.</p> <p>NOTE: For employees subject to an alternative dispute resolution (ADR) program under Labor Code section 3201.5, the claims administrator may include the following language if appropriate under the provisions of the ADR program:</p> <p>In accordance with the [insert union name] agreement, active participation by an attorney is not allowed in the Ombudsman and Mediation stages of the ADR workers' compensation process. However, you have the right to consult with an attorney and your right to obtain legal advice is not limited and you may obtain such at your own expense at any time. If the Ombudsman and Mediation stages of dispute resolution are unsuccessful and a written request for Arbitration has been timely filed, attorney participation is allowed.</p> <p>For information about the workers' compensation claims process and your rights and obligations, contact an information and assistance (I&A)</p>			
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	<p>officer of the state Division of Workers' Compensation. Be sure to inform the I&A officer that your claim is subject to an alternative dispute resolution program. For a list of offices, go to www.dwc.ca.gov or call (800) 736-7401.</p>			
<p>General Comments</p>	<p>The commenter states that DWC's proposed regulations do not include a revised Benefit Notice Instruction Manual. The current version is dated December 2009, and is thus out of date.</p> <p>Given the multitude of changes to requirements for benefit letters, the absence of an updated benefit manual will make it difficult for employers and claims administrators to efficiently update letters. Doing so would help claims administrators comply with regulations in preparation of DWC's expected implementation date of January 1, 2016.</p> <p>State Fund believes it would be helpful if DWC released the benefit letter package and instruction manual</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund July 3, 2015 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The sample benefit notice manual has never been a part of the regulations. The sample benefit notice manual is just that, a sample of benefit notices, drafted as a courtesy to the regulated public to show what the Administrative Director considers compliance with the benefit notice regulations.</p> <p>The Administrative Director anticipates having the revised benefit notice manual available well before the effective date of the regulations.</p>	<p>None.</p>

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	<p>as soon as possible. This will allow claims administrators to initiate development and necessary programming changes for benefit letters.</p> <p>As DWC notes in its introduction to the manual itself, “The purpose of this manual is to present advice for accurate and timely completion of benefit notices and mandatory forms that meet the requirements of the Administrative Director’s regulations.”</p> <p>In addition, DWC has yet to specify the effective date of the regulations.</p>		<p>Concerning the effective date of the regulations, the amended regulations will have an effective date of January 1, 2016.</p>	None.
9810 General Provisions	<p>DWC’s proposed language in § 9810(c)(2), states:</p> <p><u>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</u></p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund July 3, 2015 Written Comment</p>	<p>The Administrative Director does not accept this comment.</p> <p>The Administrative Director believes that the proposed requirement (of clear documentation of a reason to believe that disclosure of the</p>	None.

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	<p><u>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.</u></p> <p>Though it is unique to State Fund and the agencies for which we administer benefits, workers' compensation claims filed by inmates necessitate a level of immediate anonymity for the claims examiner to ensure their safety. Such claims should not require a documented event to support this level of protection, which is reasonable and necessary to initiate anonymity from the onset of the claim versus following a specific documented incident or threat.</p> <p>State Fund recommends that inmate claims be exempt from the requirement to individually specify a documented reason. In the alternative, we recommend that a process be put in place to request a global exemption from DWC on any unique situations.</p>		<p>claims examiner's name presents or may present a security concern towards the personal safety of the claims examiner) sets a reasonable threshold standard.</p> <p>With respect to State Fund's unique role as the adjuster for both the California Department of Corrections and Rehabilitation and prison inmates, the Administrative Director believes that documenting that a claim was filed by a prison inmate would, in and of itself, satisfy that standard.</p>	

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