

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

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations: Workers' Compensation –
Workers' Compensation Information System**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9701 et seq.**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 138.6, and 138.7, proposes to modify existing regulations, by amending Article 1.1, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9701, relating to the Workers' Compensation information System.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to modify existing regulations, by amending Article 1.1, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9701, relating to the Workers' Compensation Information System:

Section 9701	Definitions
Section 9702	Electronic Data Reporting
Section 9703	Access to Individually Identifiable Information

PUBLIC HEARING

A public hearing has 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 22, 2005
Time: 10:00 am to 5:00 pm or conclusion of business
Place: Elihu Harris State Building, Auditorium
1515 Clay Street,
Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711

or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

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 hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on November 22, 2005**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

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

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

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 p.m. on November 22, 2005.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 138.6, and 138.7.

Reference is to Labor Code sections 129, 138.4, 138.6 and 138.7.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Labor Code section 138.6 requires the Administrative Director of the Division of Workers' Compensation to develop a cost efficient workers' compensation information system to accomplish the following purposes:

- Assist the Department of Industrial Relations to manage the workers' compensation system in an effective and efficient manner.
- Facilitate the evaluation of the effectiveness and efficiency of the benefit delivery system.
- Assist in measuring how adequately the system indemnifies injured workers and their dependents.
- Provide statistical data for research into specific aspects of the workers' compensation system.

The data collected electronically must be compatible with the International Association of Industrial Accident Boards and Commissions' Electronic Data Interchange (IAIABC EDI) system, and the data elements to be provided by claims administrators through the WCIS must be set forth in regulations.

Additionally, Labor Code Section 138.7 limits access to individually identifiable information maintained by the Division of Workers' Compensation, and requires the Administrative Director to adopt regulations governing access to this information by specified government agencies and bone fide researchers authorized by this statute to receive individually identifiable information.

These proposed regulations implement, interpret, and make specific these two sections of the Labor Code as follows:

1. Section 9701

This section is amended to define key terms used in these regulations to ensure the meaning will be clear to the workers' compensation community. The proposed amendments in this section will clarify terms in the current WCIS regulations and define key terms that are contained within the regulations proposed for sections 9702 and 9703:

(a) “Bona Fide Statistical Research” is defined to clarify the purpose for which individually identifiable information will be released to individuals and private or public entities under existing Section 9703 (d).

(b) “California EDI Implementation Guide for First and Subsequent Reports of Injury” is defined and incorporated by reference as it contains California specific reporting requirements and information excerpted from the IAIABC EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 1, issued February 15, 2002, by the International Association of Industrial Accident Boards and Commissions.

(c) “California EDI Implementation Guide for Medical Bill Payment Records” is defined and incorporated by reference as it contains the California-specific protocols excerpted from the IAIABC EDI Implementation Guide for Medical Bill Payment Records, explains the technical design and

functionality of the WCIS system, testing options for the trading partners, instructions regarding the data elements for medical billing, and copies of the required medical billing electronic forms.

(f) “Closed Claim” is defined to clarify an event that gives rise to a reporting obligation under section 9702 (d).

(g) “Data Elements” is amended to refer to the current IAIABC EDI Implementation Guide instead of Release 1 and Release 2.

Former subsection (e) and (f) are deleted as the updated IAIABC EDI Implementation Guide, Release 1 is defined in subdivision (j).

Former (g) “EDI Trading Partner Profile” is deleted because the trading partner profiles are contained within the California EDI Implementation guide and California Implementation Guide for Medical Bill Payment Records. There is no specific reference to the trading partner profiles in section 9702.

Former (h) is deleted as the IAIABC EDI Implementation Guide for Medical Bill Payment Records is defined in (k).

(i) “Health Care Organization (HCO)” is defined as the term is referenced in section 9702(e).

(j) “IAIABC EDI Implementation Guide, Release 1.” This definition replaces former subdivisions (e) and (f). It is the updated version of the IAIABC Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 1, issued February 15, 2002. Sections 4, 5, 6, and the Appendix of EDI Implementation Guide, Release 1, are linked to the Division’s Web site at <http://www.dir.ca.gov/dwc/WCIS.htm>.

(k) “IAIABC EDI Implementation Guide for Medical Bill Payment Records.” The definition for the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1, approved July 4, 2002, is added as it provides the EDI standards for medical bill payment records. Sections 1 through 3, and 6 through 14 of the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1, are linked to the Division’s Web site at <http://www.dir.ca.gov/dwc/WCIS.htm>.

Former subdivisions (i) and (j) are re-lettered (l) and (m) due to the additions and deletions listed above. Former subdivision (k) is deleted.

(n) [formerly (l)] “International Association of Industrial Accident Boards and Commissions” is amended to reflect the association’s change of office location. Additionally, the sentence regarding the licensing agreement is deleted as a licensing agreement is no longer required.

Former subdivision (m) is re-lettered (o).

2. Section 9702

Subdivision (a) is amended to refer to the California EDI Implementation Guide for First and Subsequent Reports of Injury and the California EDI Implementation Guide for Medical Bill Payment Records. The subdivision requires that claims administrators only transmit data elements taken from the California EDI Implementation Guides. Former subdivisions (a) (1) through (4), which pertained to a variance period, are deleted as the variance periods ended in 2001.

Subdivision (b) is amended to delete reference to March 1, 2000 since that date has now passed. Various data element names and numbers have been amended or deleted to be consistent with the updated IAIABC EDI Implementation Guide.

Subdivision (c) is amended also refer to data element transmission as required under (b) and (e). Various data element names and numbers have been amended or deleted to be consistent with the updated IAIABC EDI Implementation Guide. Also, the footnotes for many of the data elements have been added or changed to be consistent with the updated IAIABC EDI Implementation Guide.

Subdivision (d) is amended to increase the five day time period in which claims administrators must submit data elements to fifteen days, to provide claims administrators with more time to report. Various data element names and numbers have been amended or deleted to be consistent with the updated IAIABC EDI Implementation Guide. Also, the footnotes for many of the data elements have been added or changed to be consistent with the updated IAIABC EDI Implementation Guide. The following “note” has also been added to this subdivision: “Final reports (MTC = FN) are required only for claims where indemnity benefits are paid. For medical-only claims, the final report would be reported under Subsection (g) (MTC = AN) with claim status = ‘closed.’”

Subdivision (e) is amended by deleting the sentence reserving the section. Subdivision (e) now sets forth that on or after June 1, 2006, claims administrators handling one hundred and fifty (150) or more total claims per year shall submit to the WCIS on each claim with a date of service on or after June 1, 2006, the data elements (which are set forth in the chart in subdivision (e)) for all medical services for which the claims administrator has received a billing or other report of provided medical services. The California EDI Implementation Guide for Medical Bill Payment Records sets forth the specific California reporting requirements. The data elements required in this subdivision are taken from California EDI Implementation Guide for Medical Bill Payment Records and the IAIABC EDI Implementation Guide for Medical Bill Payment Records. The claims administrator shall submit the data within ninety (90) calendar days of the medical bill payment. Each claims administrator shall transmit the data elements by electronic data interchange in the manner set forth in the California EDI Implementation Guide. Many of the data elements in the chart have footnotes, which are explained at the end of the chart.

Subdivision (g) is amended to modify the words “each claim” with “with a date of injury on or after July 1, 2000 and...” The words, “including medical” are deleted as they are unnecessary and confusing. Various data element names and numbers in the chart have been amended or deleted to be consistent with the updated IAIABC EDI Implementation Guide. The following “note” has been added: “Final reports (MTC = FN) are required only for claims where indemnity benefits are paid. For medical-only claims, the final report would be reported under this subsection (MTC = AN) with claim status = ‘closed.’”

Subdivision (h) (3) has been added to state that on and after June 1, 2006, a claims administrator’s obligation to submit an Annual Report of Inventory pursuant to Title 8, California Code of Regulations, section 10104 is satisfied upon determination by the Administrative Director that the claims administrator has demonstrated the capability to submit complete, valid, and accurate data as required under subsections (b), (d), (e), and (g), and continued compliance with those subsections.

3. Section 9703

Subdivision (b) is amended to include that the Division of Workers' Compensation may obtain and use individually identifiable information: "(5) To conduct research related to the workers' compensation system for the purpose of carrying out the duties of the Division of Workers' Compensation or the Administrative Director."

Subdivision (d) is added to state that upon written request to the Administrative Director, researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation agencies may obtain individually identifiable information from the WCIS, in the manner set forth in a memorandum of understanding between the Administrative Director, the commission, and the person or entity conducting research, for the purpose of bona fide statistical research. The subdivision also sets forth what the request must include and rules pertaining to the protection of individually identifiable information.

The remaining subdivisions are re-lettered.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: Costs will be incurred by workers' compensation insurers, self-insured self-administered employers and third party claims administrators to expand the Electronic Data Interchange structure of the Workers' Compensation Information System (WCIS) reporting program, including payment for programming and related staff, and costs associated with establishing linkages between claims handling and bill review systems. Costs will also be incurred to report the additional medical transactions data to the WCIS. Some nationwide workers' compensation insurance companies already report medical data to other states (i.e. Texas and West Virginia) and therefore already have their medical reporting systems in operation. Other insurance carriers who are not yet providing medical data may contract with a third party vendor and incur costs of approximately \$8000 per year. Insurance companies who report directly to WCIS and use their own systems will need to upgrade their programming for the medical data reporting and may incur an initial cost of approximately \$50,000. Medical data reporting to the WCIS is required by Labor Code section 138.6 which established the WCIS, Labor Code section 4603.4 which requires that all employers/claims administrators accept electronic billing from medical providers, and the need to collect medical data in order to analyze and monitor system performance [see the California State Auditor Report entitled: California's Workers' Compensation Program: Changes to the Medical Payment System Should Produce Savings Although Uncertainty about New Regulations and Data Limitations Prevent a More Comprehensive Analysis (January 2004.)].

The costs may affect claims administrators (workers' compensation insurance companies, third party claims administrators, or self-insured self administered employers). The claims administrators will be required to report via an electronic transmission of the medical data listed in the regulations to the WCIS in the time frames set forth in the

regulations, as they are currently required to do with data elements derived from the first and subsequent reports of injury.

The Division has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Division has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
 - (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
 - (iii) The use of performance standards rather than prescriptive standards.
 - (iv) Exemption or partial exemption from the regulatory requirements for businesses.'
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
 - Effect on Housing Costs: None.
 - Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The entities directly affected by the regulations are three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations may affect small businesses. However, claims administrators have been required to report to WCIS since November 1, 1999. Therefore, the reporting to WCIS is not a new requirement. Additionally, small businesses are generally not self-insured, insurers, or third party administrators. Finally, subdivision (e), which requires medical data reporting, will not affect small business, as only claims administrators handling one hundred and fifty or more total claims per year are required to report.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- 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 potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments.
- 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. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division’s Internet message board (the DWC Forums). Additionally, the proposed regulations were made available for discussion and comment to the WCIS Advisory Committee (Title 8, California Code of Regulations, section 9704).

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division’s website at www.dir.ca.gov. To access them, click on the

“Proposed Regulations - Rulemaking” link and scroll down the list of rulemaking proceedings to find the current Workers’ Compensation Information System rulemaking link.

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, 1515 Clay Street, Oakland, 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.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers’ Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)
Division of Workers’ Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact persons is (510) 286-7100.

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 made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 9701.