

N E W S L I N E

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DWC Posts Draft Benefit Notice Regulations Amendment to Online Forum for Public Comment

The Division of Workers' Compensation (DWC) has posted a draft amendment to the Benefit Notice regulations regarding required notices for denied claims to the [DWC online forum](#) for public comment.

Labor Code section 138.4 requires the Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation (CHSWC), to prescribe reasonable rules and regulations for service on the employee (or employee's dependents, in the case of death) notices dealing with the payment, nonpayment or delay in payment of temporary disability, permanent disability and death benefits; notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation; and an accounting of benefits paid.

Labor Code section 138.4 was amended, effective January 1, 2017, by section 1 of SB 1160 to require the AD to adopt regulations, on or before January 1, 2018, "to provide employees with notice that they may access medical treatment outside of the workers' compensation system following the denial of their claim."

Section 9812 of the regulations prescribes the required timeframes for sending benefit notices and the content for notices dealing with each type of benefit to which an injured worker might be entitled. The proposed amendment to section 9812(i) will require the Notice Denying Liability for All Compensation Benefits to contain the following statement:

"Although your claim has been denied, if you believe that you still need medical treatment for your injury or illness, you have the right to obtain treatment outside the workers' compensation system.

"If you have your own health insurance, or are eligible to be treated by someone else's health insurance, you can use that insurance to get medical care. You should advise your physician that you believe that your injury or illness is work related, so the health insurer can seek reimbursement from the claims administrator.

“If you do not have health insurance available, there are doctors, clinics, or hospitals that will treat you without immediate payment. You should advise any doctor, clinic, or hospital that agrees to treat you that you believe that your injury or illness is work related so they can seek payment from the claims administrator through the workers’ compensation system.”

The “safe harbor” provision of Title 8, California Code of Regulations, section 9810(f) provides that: “Benefit notices using the sample notices devised by the Administrative Director and available on the Division’s website are presumed to be adequate notice to the employee and, *unless modified*, shall not be subject to audit penalties.”

DWC welcomes suggestions from the workers’ compensation community to improve the quality and clarity of the proposed amendment.

The division will accept comments on the proposed amendment to section 9812 until close of business on October 31, 2017. Please note that this comment period does not concern any other provision of the benefit notice regulations.

The proposed amendment to the existing regulation is shown in underlined format. In addition, due to the length of section 9812, the proposed amendment is highlighted in yellow.

The forum can be found on the DWC forums [web page](#) under "current forums."

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