

JANUARY 11, 2024

EMPLOYMENT DEVELOPMENT DEPARTMENT

15-DAY NOTICE OF AVAILABILITY OF INFORMATION ADDED TO THE RULEMAKING FILE AND MODIFICATIONS TO TEXT OF PROPOSED RULEMAKING REGARDING AMENDMENT OF TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 2706-4

Pursuant to the requirements of Government Code section 11346.8(c) and California Code of Regulations, title 1, section 44, the California Employment Development Department (EDD) hereby makes available and gives notice that it has revised the text of the above-referenced proposed regulatory action, which was previously published and noticed for public comment on May 12, 2023.

Additionally, pursuant to the Requirements of Government Code sections 11346.8(d), 11346.9(a)(1), and 11347, the EDD is providing notice that documents have been added to the rulemaking file and are available for public inspection and comment.

The documents and information added to the rulemaking file are as follows:

Addendum to the Initial Statement of Reasons
Modified Text of Proposed Regulation

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments regarding these newly proposed revisions, and only these revisions, of the text as well as the added document to **Kim Van Nguyen** via U.S. mail, email, or fax (see U.S. mail and email addresses and fax number indicated below). **Email comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, email, or fax, must be received by the Department no later than January 29, 2024.** All written comments received on **January 29, 2024**, which pertain to the indicated changes will be reviewed and responded to by the Department as part of the compilation of the rulemaking file. Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

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Note: In the event Ms. Nguyen is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Linda Saeturn-Rodriguez, Senior Legal Analyst
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Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name: Kim Van Nguyen, Attorney
Telephone No.: (916) 654-8410

INTERNET WEBSITE ACCESS

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Section 2706-4

ELECTRONIC FILING OF DOCUMENTS BY PHYSICIANS, PRACTITIONERS, and REGISTRARS OF COUNTY HOSPITALS

INITIAL STATEMENT OF REASONS – ADDENDUM

Background:

On May 12, 2023, the Employment Development Department (EDD) published a Notice of Proposed Rulemaking and Public Comment Period (45-Day Notice), Initial Statement of Reasons (ISOR), and proposed regulations related to electronic filing of certifications by physicians, practitioners, and registrars of county hospitals in support of medical eligibility claims for a 45-day public comment period. (See OAL File No. Z2023–0427–01). These and other rulemaking documents pertaining to this rulemaking are available for review on the EDD's website at https://edd.ca.gov/en/about_edd/proposed_regulations/. The 45-Day comment period for the proposed regulations opened on May 12, 2023 and closed on June 26, 2023.

The EDD has reviewed all comments received during the 45-day public comment period and is modifying its proposed regulations in response to those public comments. In addition, the EDD is adding this Addendum to the Initial Statement of Reasons (Addendum) to the rulemaking file. The Addendum corrects inconsistencies of the Initial Statement of Reasons (ISOR) to the modified proposed regulation text. It also provides additional detail and clarification of the necessity and anticipated benefits of the proposed regulation. This is an Addendum to the ISOR and does not replace it.

Corrections to ISOR:

The proposed regulation text has been modified to state that physicians and practitioners must file documents electronically unless they have filed an exemption with the EDD. Exemptions can be filed when a physician or practitioner can certify to a lack of automation, a severe economic hardship, or other good cause. The original proposed regulation text required physicians or practitioners to apply for and be granted approval of a waiver in order to file by paper. With the modified text, the Specific Purpose and Rationale portion in the ISOR for Section 2706-4, subsection (b) should be corrected to state the following:

Section 2706-4, subsection (b). This subsection is being added to explicitly indicate that physicians, practitioners, and registrars of county hospitals of the state, except those who have filed an exemption certifying to a lack of automation, a severe economic hardship, or other good cause that hinders their ability to

electronically file, must file documents electronically through the department's online system. Exemptions expire one year from the date of filing and may be refiled annually.

Any other language in the ISOR referencing a "granted waiver" should be corrected and replaced with "filed exemption" to be consistent with the modified proposed regulation text.

Expanded Detail and Clarification to the Necessity and Anticipated Benefits to the Proposed Regulation:

In response to the public comments received and for clarification purposes, the EDD wishes to expand upon the Necessity and Anticipated Benefits to the Proposed Regulation sections of the ISOR. The Department is adding the following details:

The proposed regulatory action is necessary to allow the Department to more quickly and efficiently process State Disability Insurance (SDI) and Paid Family Leave (PFL) claims, to protect the credentials of doctors from use by imposters, and to limit fraudulent claim filing attempts. By requiring most physicians and practitioners to file medical certifications electronically, the regulation will significantly reduce delay from the more time-consuming and labor-intensive process of reviewing paper certifications. Fewer paper certifications will also help protect providers from identity theft and reduce fraud because the anti-fraud measures used for electronic certifications are more effective and consistent than with paper documents. The regulation will therefore lead to a shorter overall processing time for all claims while strengthening the Department's ability to combat fraud.

A majority of claims filed with the EDD are filed electronically. In 2022, 68% of SDI claims were filed in electronic format. However, the percentage of medical providers who electronically file medical certifications in support of these claims was substantially less. In 2022, the EDD received only 59% of medical certifications electronically, leaving 41% or 375,717 paper certifications that had to be processed manually. Of these paper certifications, only 8,317 came from out of state or international providers. This suggests that a vast majority of medical providers filing paper certifications can file electronically, but choose not to.

The Department needs to increase the number of electronically filed certifications in order to process electronic certifications faster while using fewer resources. Paper certifications require additional mailing time, data entry, and manual validation. First, they require more time to get from the provider to the corresponding claim in EDD's system. Along with the additional time needed for mailing, paper certifications need to be scanned into the SDI Online system and matched up to the proper claim. Then, unlike electronically filed certifications, which provide for real-time data validation that alerts the filer to errors or missing information that can be immediately rectified, EDD often needs to get in contact with providers to correct or gather missing information on paper certifications. This can require substantially more time and manual effort.

Paper filed certifications not only take more time and resources to process but are also more susceptible to fraud than those electronically filed. All paper filed certifications undergo a manual ID verification process as part of EDD's fraud preventative measures. During the pandemic, the EDD and its programs were frequent targets of fraudsters who used stolen claimant identities to acquire benefits. Due to the significant increase in identity theft scams and the ongoing filing of false claims, and to help protect legitimate providers and claimants as well as the Disability Insurance Fund, the EDD enacted fraud preventative safeguards to both electronic and paper medical certifications. Under those fraud prevention procedures, paper filed certifications undergo a different ID verification process which is less effective, more time-consuming, and more labor-intensive than the electronic process.

The process of verifying paper physician certifications often also requires direct contact with providers to verify individual claims. Inability to reach a provider in a timely manner may result not only in benefits being delayed but also possible disqualification of valid claims. This can cause some claims to unnecessarily go through an appeals process that can further delay benefits. More medical professionals filing certifications online will result in fewer paper certifications that would need to have their identities verified through manual processes and fewer claims that may have to be redetermined. This, in turn, would reduce the backlog and allow EDD's limited resources to verify paper certifications faster while more effectively identifying fraudulent claims.

The proposed regulation requiring medical providers to electronically file is needed to increase the speed and efficiency of the SDI and PFL claims process, safeguard doctors' personal information, and limit fraudulent claim filing attempts. The anticipated advantage is that claimants will receive their benefits faster and more reliably because the EDD will be able to direct more staffing resources to claim processing activities and will more adequately combat fraud.

MODIFIED TEXT OF PROPOSED REGULATION

Employment Development Department

PROPOSED REGULATION TEXT

Amendment of Section 2706-4

Title 22, California Code of Regulations

NOTE: The original text published in the California Code of Regulations has no underline. The initial proposal (noticed on May 12, 2023) is illustrated by single underline for proposed additions and ~~single strikethrough~~ for proposed deletions. Changes made after the 45-day comment period are illustrated with text proposed to be deleted in this notice shown in ~~double strikethrough~~; text proposed to be added is shown in double underline.

AMEND SECTION 2706-4 TO READ AS FOLLOWS:

§ 2706-4. ~~Claims~~ Claim Documents That May Be Filed by Mail.

- (a) ~~All claims and other required documents relating thereto~~ required claim documents completed by the claimant or their authorized representative may be filed by mail except in those cases where the claimant is notified by the department that a personal appearance or examination will be required. Filing by mail shall be deemed complete at the time of deposit in the mail, in a sealed envelope, with postage paid, addressed to the department.
- (b) Physicians and practitioners must file documents electronically through the department's online system unless they have been granted a waiver filed an exemption with the department. The department may grant the waiver. An exemption may be filed when the physician or practitioner has certified to a lack of automation, a severe economic hardship, or other good cause. An approved waiver filed exemption shall be valid for one year or longer, at the discretion of the director and may be refiled annually.

Authority cited: Sections 305, 306 and 2602, Unemployment Insurance Code.

Reference: Section 2706, Unemployment Insurance Code.