

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Section 2601-1

DISABILITY INSURANCE DEFINITIONS

Final Statement of Reasons

BACKGROUND:

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement benefit to eligible workers in California who were unable to work due to a non-work related illness or injury. Senate Bill 1661 (Chapter 901, Statutes 2002) added the Family Temporary Disability Insurance (FTDI) benefit to the Unemployment Insurance (UI) Code. The FTDI benefit, otherwise known as Paid Family Leave (PFL), expanded the scope of the SDI program to provide a partial wage replacement benefit to eligible workers who take time off to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child.

The Disability Insurance (DI) Branch is developing and adopting new business automation processes and protocol through the efforts of the Disability Insurance Automation (DIA) project to simplify and improve various manual claim processes that exist under current business practices. The goal of the DIA project is to improve access to services, improve service delivery, enhance the DI Branch's ability to detect and prevent fraud and abuse, align with Employment Development Department (Department) information technology standards, and reduce costs.

The DIA project will develop a method to allow claimants, medical providers, employers, and voluntary plans to submit claim information through a secure electronic environment over the Internet. It will implement scanning/optical character recognition to convert any paper claims to electronic format. The DIA project will also adopt new technologies that will provide the DI Branch staff with more efficient tools to perform their duties and supplement current processes related to the administration of SDI benefits.

NECESSITY:

Under UI Code sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under UI Code sections 2601, 2625, 2706 and 2708, SDI benefits are payable from the Disability Fund to individuals who file a claim for benefits in

accordance with authorized regulations and are eligible to receive such benefit payments.

The DIA project will change the DI Branch's business practices and allow DI and PFL claimants, medical providers, employers, and voluntary plans to submit claims and claim information over the Internet. As a result of this anticipated change, certain terms such as "affidavit", "copy", "electronic means", "form", "mail", "signature", "statement on letterhead" and "writing" currently utilized in the Department's regulations relating to DI benefits, contained in title 22 (commencing with section 2601-1) of the California Code of Regulations (CCR), may create confusion in a new business environment that will include both hard-copy and electronic media. Thus, these terms must be properly defined.

The DIA project will also utilize technology to transmit SDI claim appeals electronically to the California Unemployment Insurance Appeals Board (CUIAB), the state body with the authority to consider appeals of determinations and assessments made by the Department. The terms "affidavit", "mail", "signature" and "writing" are currently defined in the regulations of the CUIAB, contained in title 22, section 5000 of the CCR. To provide consistency with the current protocol between the Department and the CUIAB for transmitting information related to appeals, petitions and board appeals, the Department proposes to adopt the substance of these specific CUIAB definitions for the SDI program.

The proposed regulation amendment to 22 CCR section 2601-1 is necessary to establish definitions to clarify terms utilized in the Department's DI regulations, mitigate any potential misinterpretations of various terms, and to provide consistency with 22 CCR section 5000 as well as relevant UI Codes, as the DI Branch implements new technologies to enhance and improve the administration of the SDI program.

The proposed regulatory action to CCR, title 22, is as follows:

Section 2601-1 Disability Insurance Definitions.

The provisions of title 22, section 2601-1 of the CCR provide definitions for various terms utilized by the Department for the purpose of administering SDI benefits. The proposed amendment to section 2601-1 would establish new definitions for specific terms as well as adopt in substance the definitions of certain terms currently established in title 22, section 5000 of the CCR. In order to incorporate the proposed definitions into the current regulations in alphabetical order, each subdivision was renumbered accordingly.

Subdivision (a) –The proposed regulation amendment would add the definition for "affidavit" as a written statement made under oath and a declaration under penalty of perjury. The amendment would utilize the affidavit criteria of Code of Civil Procedure sections 2012 through 2015.6 as well as be consistent with 22 CCR section 5000(b). This amendment is necessary to establish a new

definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department's development of requirements and procedures for utilizing an affidavit on a claim form, document, or any acceptable electronic method of transmitting information for the purpose of administering SDI benefits.

Subdivision (b) – The existing language in subdivision (a) that defines “authorized representative” is now subdivision (b) and would be retained with no substantive change. The proposed amendment to this subdivision would correct a minor grammatical error.

Subdivision (c) – The existing language in subdivision (b) that defines “certificate” is now subdivision (c) and would be retained with no change.

Subdivision (d) – The existing language in subdivision (c) that defines “claimant” is now subdivision (d) and would be retained with no change.

Subdivision (e) – The existing language in subdivision (d) that defines “continued claim” is now subdivision (e) and would be retained with no change.

Subdivision (f) – The proposed regulation amendment would add the definition for “copy” as any written or printed material that is duplicated by electronic means or photographic reproduction. When specified, a copy of a document will constitute an acceptable method for collecting or transmitting information related to a first or continued claim. This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department's development of requirements and procedures allowing for the use of a copy in either electronic or hardcopy format, for the purpose of administering SDI benefits.

Subdivision (g) – The proposed regulation amendment would add the definition for “electronic means” as an acceptable means of transmitting information which would include facsimile, electronic mail, Internet, or other acceptable electronic methods as determined by the Department. The purpose of this definition is to further clarify the term as it relates to the proper use and acceptance of current and future technologies. This amendment is necessary to establish a new definition for the purpose of clarifying regulations concerning DI benefits and to implement the Department's development of requirements and procedures allowing for the use of various electronic methods for the purpose of administering SDI benefits.

Subdivision (h) – The existing language in subdivision (e) that defines “first claim” is now subdivision (h) and would be retained with no change.

Subdivision (i) – The proposed regulation amendment would add the definition for “form” as it relates to the type of forms utilized by the Department. The

amendment would specify that the term “form” includes both hardcopy and electronic formats by which the Department may collect, solicit or communicate information to and from claimants, medical providers, employers, insurance companies, and third party administrators. This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department’s development of requirements and procedures for utilizing forms that include both hardcopy and electronic formats for the purpose of administering SDI benefits.

Subdivision (j) – The existing language in subdivision (f) that defines “independent medical examination” is now subdivision (j) and would be retained with no change.

Subdivision (k) – The existing language in subdivision (g) that defines “insurer” is now subdivision (k) and would be retained with no change.

Subdivision (l) – The proposed regulation amendment would add the definition for “mail” as the term applies to physical delivery through the United States Postal Service or any other authorized postal service. The amendment would utilize the substance of the definition contained in 22 CCR section 5000 (jj). This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department’s development of requirements and procedures allowing for the use of such mail delivery for the purpose of administering SDI benefits.

Subdivision (m) – The existing language in subdivision (h) that defines “physician” is now subdivision (m) and would be retained with no change.

Subdivision (n) – The existing language in subdivision (i) that defines “regular wages” is now subdivision (n) and would be retained with no change.

Subdivision (o) – The proposed regulation amendment would add the definition for “signature” as including a mark made in compliance with the Civil Code. The amendment also provides that the term “signature” includes a digital signature that is made in compliance with the applicable provisions of the Government Code and CCR. The amendment would provide consistency with the requirements for signatures set out in UI code section 17 as well as be consistent with the language of 22 CCR section 5000 (bbb). This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department’s development of requirements and procedures allowing for manual and electronic signatures for the purpose of administering SDI benefits.

Subdivision (p) – The proposed regulation amendment would add the definition for “statement on letterhead” in regards to an acceptable supporting document for verification of adoption or foster care placement as prescribed in section 2708(c)-1 of the CCR. The amendment provides that the term “statement on

letterhead” includes an electronic or hardcopy document that officially identifies the issuing entity, which may be a county, state, or equivalent government or private entity. This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department’s development of requirements and procedures for the use and acceptance of statements on letterhead for the purpose of administering SDI benefits.

Subdivision (q) – The existing language in subdivision (j) that defines “voluntary plan” is now subdivision (q) and would be retained with no change.

Subdivision (r) – The existing language in subdivision (k) that defines “week” is now subdivision (r) and would be retained with no change.

Subdivision (s) – The existing language in subdivision (l) that defines “weekly wage” is now subdivision (s) and would be retained with no change.

Subdivision (t) – The proposed regulation amendment would add the definition for “writing” to mean the original or a copy of any form of recorded message, provided by electronic means or in printed format, capable of comprehension by ordinary visual means. The amendment would be consistent with the requirements of UI code section 8 and the language of 22 CCR section 5000(ggg). This amendment is necessary to establish a new definition for the purpose of clarifying existing regulations concerning DI benefits and to implement the Department’s development of requirements and procedures for the acceptance of writings for the purpose of administering SDI benefits.

Subdivision (u) – The existing language in subdivision (m) that provides no individual shall be deemed eligible for SDI benefits for any week of unemployment unless such unemployment is due to a disability is now subdivision (u) and would be retained with no change.

Subdivision (v) – The existing language in subdivision (n) that provides a claimant shall be notified in writing of any determination on his claim is now subdivision (v) and would be retained with no change.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed amendments in plain English pursuant to section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE, 45 DAY WRITTEN PUBLIC COMMENT PERIOD, AND WRITTEN COMMENTS RECEIVED DURING 45 DAY PUBLIC COMMENT PERIOD:

On January 30, 2009, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department posted this public notice on its Internet website. A copy of the public notice, the text of the proposed amendments, and the initial statement of reasons were mailed to everyone known to be interested in the Department's regulations.

During the 45-day written public comment period which was held from January 30, 2009 through March 16, 2009, no one requested a public hearing. However, during the comment period, the Department received comments (the comments are included as part of this rulemaking file at Tab No. 6). The comments are indicated below, followed by the Department's response.

Comment

E-mail received on March 16, 2009, from Lilian Miwa Maher, Paid Family Leave Collaborative. She made the following comments regarding section 2601-1:

1. Since the Initial Statement of Reasons states that the DIA project will "allow DI *and* PFL claimants ... to submit claims and claim information over the Internet," the Collaborative believes that the additional definitions should also be added to PFL regulations, Section 3302-1 (italics added). Including the additional definitions in both the DI and PFL regulations will not only clarify the terms that would otherwise be defined only in the DI regulations, but will avoid any misinterpretation regarding the relationship between the DIA project and PFL.
2. While the Collaborative applauds the EDD's efforts to automate the SDI and PFL claim process, we want to ensure that this will not result in decreased staffing or funding for non-automated claim processing. It is important that the EDD maintain, if not increase its current service, to ensure that the automation is not at the expense of access to and service for the low-income workers who need SDI and PFL.

Response

1. The Department agrees that clarification is necessary to avoid any confusion or misinterpretation as to the relationship between the DIA project and the proper administration of the PFL program. After careful consideration the Department has determined that a separate rulemaking notice, to include the additional definitions to Section 3302-1, will be prepared immediately upon approval of this regulatory action. This will allow the Department an opportunity to identify and address any other

potential concerns that may arise from making conforming regulatory amendments to section 3302-1.

2. The purpose of the DIA project is to enhance and improve the SDI program, its business processes, and the delivery of quality service and timely benefits to the Department's customers. The Department has no intention of diminishing its ability to continue to provide timely benefits and services for those customers who are unable to readily access the Internet and must file a claim through the Department's traditional business process.

ECONOMIC IMPACT STATEMENT:

The Department does not anticipate the proposed amendments will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The proposed amendments will clarify existing regulatory language by including definitions that properly address the technological enhancements to the SDI program business practices with no adverse impact to individuals, medical providers, employers, or voluntary plans. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

SMALL BUSINESS IMPACT:

The Department has determined that the proposed amendments will have no effect on small businesses because they do not impose any new mandates on small businesses. The proposed amendments do not require that small businesses take any action or refrain from taking any action in regards to conducting business.

LOCAL MANDATE DETERMINATION:

The Department has determined that the proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed regulatory action. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the proposed regulatory action.
