



California Workers' Compensation Institute
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VIA E-MAIL

Workers' Compensation Appeals Board
P.O. Box 429459
San Francisco CA 94142-9459
ATTN: WCAB Forum

**RE: Forum Comments
Workers' Compensation Appeals Board Rules – EAMS Implementation**

Introduction

In the preamble to the proposed regulation, the Board notes that the informal comment process is intended to introduce the workers' compensation community to the Electronic Adjudication Management System and to allow the affected parties to provide informed and reasoned comments. The Board admits that a detailed description of the system cannot be provided and the scope and functionality of the system is unknown.

As we have already stated to the DWC, it is difficult to assess the validity of procedures proposed to implement an electronic management system that does not yet exist. Because we do not know how the actual system will function when it become operational, putting a procedure in place to use it seems to be a "what if" exercise.

Many of the members of CWCI have extensive experience developing, implementing, and maintaining electronic management systems. It is a monumental task. The attorneys I have spoken with are concerned that the proposed regulations issued separately by the DWC and the WCAB are premature and that an implementation date of July 1, 2008 only adds greater urgency to the process. The Institute recommends that these proposals be used by the court administrator and the Board to structure broad based discussions within the workers' compensation community.

EAMS Advisory Committee: As the administrative director has done for a number of very complex regulatory schemes, the Institute recommends that the DWC and the Board convene an advisory group to not only vet the proposed regulations but also study the functionality of the electronic system. The committee should involve representatives of all types of affected members of the workers' compensation community. We believe that this would be a very effective introduction to the system and could provide the Division and the Board with additional expertise and experience regarding the pitfalls and advantages of electronic adjudication management.

The advisory group could also advise the Division on the extent and scope of training that might be necessary for the community. Demonstrations of the system would help ensure a broader understanding of what will be required and of what this system can offer the workers' compensation community. This will be a complicated transition for attorneys and for WCALJs. Those who have attempted a paperless environment know how anxiety-filled the process can be. Meetings with elements of the community, demonstrations of the functionality of the system, and open dialogue with the potential users could ultimately be as important to the process as the technical capabilities of the system.

Beta Testing: The materials provided state that the system will "go live" statewide in July. Those with experience implementing such comprehensive systems know the value of smaller testing of the system and the implementation procedures. Rolling out EAMS at a single Board for a testing period of as much as a year may be more prudent and useful to the Division and the community.

Claims administrators, attorney firms, medical providers, and lien claimants may be willing to participate in a specific test of this type and may be able to ensure an efficient and effective operation when the system goes live statewide.

Staging the Implementation: The implementation of a system as complicated as EAMS should be staged. While the community needs to understand the full scope of EAMS, a gradual implementation may avoid the potential chaos of going live all at once. This would alleviate, as well, the need to impose a comprehensive regulatory system to trigger all aspects of the system at one time. It may be possible to begin with a court calendaring system, followed by the Board issuing its decision online, electronic document filing, and then implement an online case file system over a period of a year or more.

Implementation by the Workers' Compensation Community: As difficult, time consuming and costly as it has been for the Division and the Board to develop EAMS to date, the Division must keep in mind that the rest of the workers' compensation community will be required to modify or update its systems to match the level of EAMS technology, train staff, and develop new workflows and procedures to assure the success of EAMS. For some this will not be difficult but EAMS encompasses the entire workers' compensation community, and some will be very far behind.

Technical Comments

While the primary recommendation is to use these proposed regulations as the basis for a community-wide discussion of the Electronic Adjudication Management System and its implementation, the Institute will also provide some analysis of the specific proposed regulations.

Section 10301 Duplication

This section is an example of the redundancy found in the separate sets of proposed regulations. These definitions, it would seem, could be combined into a single set of regulations applicable to both the Division and the Board files. Other regulations address the same or similar topic but fail to mirror the language provided elsewhere.

Section 10301(dd) S-signature

While this definition may suffice for the Board's purposes, it might be appropriate to cite the Uniform Electronic Transactions Act, as well.

Section 10608 Deleted Section

This section did not delete subdivision (f) and it should be eliminated.

Section 10843 "Legal File"

This section refers to the legal file but should be changed to case file as defined by section 10301(e).

Conclusion

Thank you for the opportunity to comment on these proposed regulations and we look forward to further discussions with the Division and the Board regarding these momentous changes.

Sincerely,

Michael McClain
General Counsel

MMc/pm

cc: CWCI Legal Committee
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Return to Work Committee