

ITEM 10

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING GENERAL CLEANUP PROVISIONS

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5

ARTICLES 1, 2, 3, 4, 5, 6, 7, 8, AND 10

SECTIONS 1181.1 THROUGH 1181.10; 1181.12 THROUGH 1181.13; 1182.13; 1183.1
THROUGH 1185.6; 1186.2; 1187.1 THROUGH 1187.10; 1187.14 THROUGH 1188.2;
1190.1 THROUGH 1190.5

EXECUTIVE SUMMARY

Section 1189.2(a) of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and notice and rulemaking package to all interested persons for public comment.

The purpose of this rulemaking is to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (3) clarify the period of limitation for filing an incorrect reduction claim consistent with the statutory scheme; (4) clarify the review of consolidated incorrect reduction claims; (5) clarify the procedure when a claimant changes authorized representatives for a matter; (6) update authority and reference citations; and (7) update punctuation for consistency throughout regulations.

I. Proposed Order Number 16-01(Exhibit A)

The proposed changes are described immediately below.

A. Substantive Proposed Changes

Following is a summary of the substantive proposed changes and corresponding new language intended to clarify and streamline Commission regulations.

1. Appeal of Executive Director Actions and Decisions on a Test Claim Filing

Section 1183.1. Test Claim Filing

The proposed amendment deletes subsection (i), which states that any party may appeal to the Commission regarding the actions and decisions of the executive direction pursuant to this section, because it is duplicative. Section 1181.1 already provides that any action and decision of the executive director may be appealed to the Commission for review. The purpose of this change is to delete this duplicative and unnecessary subdivision, and make it consistent with changes made in a prior rulemaking package.

2. Service of Claimant's Rebuttal to Comments on a Test Claim

Section 1183.3. Claimant's Rebuttal to Comments on a Test Claim

The proposed amendment adds the words “shall be” before the words “served in accordance with section 1181.3 of these regulations within 30 days of service of the written comments,” to clarify that rebuttal comments, if filed, are required to be served in accordance with section 1181.3 of the regulations.

3. Comment Period on Draft Expedited Parameters and Guidelines

Section 1183.9. Expedited Process for Proposed Parameters and Guidelines

The proposed change increases the comment period in which parties, interested parties, and interested persons may file comments on draft expedited parameters and guidelines from 20 days to 21 days after the service of the Commission draft proposed decision. The purpose of this change is to streamline the process for adopting proposed expedited parameters and guidelines and to make it consistent with the comment periods on amendments to parameters and guidelines and draft proposed decisions for those matters. The comment period for regular parameters and guidelines remains 15 days because in that process the claimant has already had the opportunity to include reasonably necessary activities when filing the proposed parameters and guidelines and the parties have two opportunities for comments under that process. Under the expedited parameters and guidelines process, there is one opportunity to comment.

4. Comment Period on Proposed Amendment to Parameters and Guidelines

Section 1183.17. Amendment to Parameters and Guidelines

The proposed change decreases the comment and rebuttal periods for proposed amendments to parameters and guidelines from 30 days to 21 days. The purpose of this change is to streamline the process for adopting proposed amendments to parameters and guidelines and to make it consistent with the comment periods on expedited parameters and guidelines and draft proposed decisions on those matters.

5. Timeline for Test Claim Filings

Section 1183.18. Timelines

Government Code section 17553(a)(2) requires the Commission to adopt procedures to ensure that a statewide cost estimate is adopted within 12 or 18 months as specified, after receipt of a test claim. Section 1183.18 contains a timeline used as a reference for the timely processing of test claims, parameters and guidelines, and statewide cost estimates in accordance with Government Code section 17553. The proposed changes to this regulation incorporate the proposed changes to the comment periods for expedited parameters and guidelines and requests to amend parameters and guidelines as described above. In addition, the days on the timeline are corrected to incorporate the 30-day deadline for the Commission to provide notification to the Legislature of its decisions on test claims pursuant to Government Code section 17555 [i.e., decision adopted on day 190, with notification to the Legislature on day 210, instead of on day 220]. The days on the timeline are also corrected to incorporate the 30-day deadline after the adoption of a decision approving a test claim for the claimant and the Department of Finance to notify the Commission in writing of their intent to develop a joint reasonable reimbursement methodology (RRM) pursuant to Government Code section 17557.1 [i.e. test claim decision adopted on day 190, with notification of a joint RRM on day 210, rather than day 220]. Other non-substantive, clarifying changes are also made to the language.

6. Incorrect Reduction Claim Filings

Section 1185.1. Period of Limitation for Filing an Incorrect Reduction Claim

Section 1185.1(c) requires that an incorrect reduction claim be filed no later than three years “following the date of the Office of State Controller’s final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim.” The proposed amendment clarifies that the three-year limitation period begins to accrue when the claimant first receives written notice from the State Controller, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. In addition, the proposed amendment removes “remittance advice” from the list of written notices of adjustment in accordance with Government Code section 17558.5(c), which states that “[r]emittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.” The proposed amendment also clarifies that filings made beyond the statute of limitation, will be returned to the claimant for lack of jurisdiction. The purpose of these changes is to clarify that an untimely filing will be sent back to the claimant and, unlike other completeness issues, cannot be cured, and to make the regulation consistent with current statute.

Section 1185.2. Review of Incorrect Reduction Claim

Section 1185.2 of the regulations provides that within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. A filing is complete only if all requirements for a new filing have been satisfied. (Cal. Code Regs., tit. 2 §§ 1181.2(e), 1185.2(a).) The purpose of these changes is to clarify the filing requirements for an incorrect reduction claim.

Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant

Section 1185.3 of the regulations outlines the process for an individual claimant to initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7. The proposed amendment clarifies that a consolidated incorrect reduction claim shall comply with the filing requirements outlined in section 1185.1 for any incorrect reduction claim, including the three-year period of limitation for filing such claims. In addition, the proposed language clarifies that a consolidated incorrect reduction claim shall be deemed complete if it contains a narrative that describes all the elements required for a consolidation and satisfies the requirements in section 1185.1. The proposed language further clarifies that Commission staff shall review a consolidated incorrect reduction claim for completeness and jurisdiction consistent with the other regulations in this article.

Section 1185.4. Joining Consolidated Incorrect Reduction Claim

Section 1185.4 of the regulations provides that within 30 days of receipt of the Commission's notice regarding the original claimant's notice of intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the Commission, file a notice of intent to join the consolidated incorrect reduction claim. The proposed amendments clarify that the notice of intent to join a consolidated incorrect reduction claim is required to include the Controller’s notice of adjustment provided in accordance with Government Code section 17558.5(c), and that the notice of intent to join will be reviewed by Commission staff for

completeness and jurisdiction, consistent with the other regulations addressing incorrect reduction claims.

Section 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.

Section 1185.5 of the regulations provides that a claimant may opt out and not be bound by any determination made on the consolidated claim by filing notice within 15 days of service of the Controller's comments on a consolidated claim. A claimant that opts out of a consolidated incorrect reduction claim may file an individual incorrect reduction claim in order to preserve its right to challenge a reduction made by the Controller. The proposed language clarifies that the individual incorrect reduction claim shall be prepared and filed in accordance with section 1185.1 of the regulations.

7. Designation in Writing of Authorized Representative at Hearing

Section 1187.8. Representation at Hearing

Section 1187.8 of the regulations provides that a party may appear in person or through an authorized representative. The proposed changes requires the party to designate in writing the authorized representative to act as its sole representative and to file and serve written notice of representation in accordance with section 1181.3 of these regulations. The proposed changes also specify that all correspondence and communications shall be forwarded to this representative. In addition, any change in representation must be authorized by the party in writing, and notice of the change shall be filed and served in accordance with section 1181.3 of the regulations. The purpose of this change is to clarify that designation of an authorized representative, as well as a change to a designation of an authorized representative, must be made in writing and served in accordance with existing provisions in the regulation.

B. Technical and Non-Substantive Proposed Changes

In an effort to "clean-up" the Commission's regulations, the proposed rulemaking makes terminology consistent, corrects punctuation and spacing, updates authority and reference citations, and fixes clerical or internal reference errors from prior rulemakings.

Consistent Terminology

Language has been changed for consistent use of terminology throughout the regulations. For example, replacing instances of "statement of decision" and "adopted decision" with "decision" to eliminate any ambiguity in the Commission's terminology and processes.

Clerical Changes of Internal References, Punctuation and Style

Minor and non-substantive changes in internal references, punctuation, and style are proposed to improve the readability and clarity of the regulations.

Updated Authority and Reference Citations

Citations have been updated to maintain consistency in punctuation throughout the regulations.

II. Text of Proposed Regulations (Exhibit B)

The draft proposed regulatory text is attached as Exhibit B. The proposed text is in strikeout and underline to show proposed changes to current regulatory language.

Before filing with the OAL, staff may make technical corrections, as may be required.

III. Timetable

If the order is adopted at the March 25, 2016 hearing of the Commission, staff will proceed pursuant to the following timetable:

March 29, 2016	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
April 8, 2016	Notice of Proposed Regulatory Action will be issued and published.
May 9, 2016	Last day to request public hearing.
May 23, 2016	End of public comment period.
July 22, 2016	Adopt proposed rulemaking package.
August 5, 2016	File Adopted Regulations with the Office of Administrative Law.
October 1, 2016	Effective date of adopted regulations.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 16-01.