

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Sections 2706-1, 2706-2, 2708(c)-1, and 3267-1
Title 22, California Code of Regulations

FOSTER CHILD BONDING

Initial Statement of Reasons

BACKGROUND:

The Employment Development Department (EDD or Department) administers the State Disability Insurance (SDI) program. The SDI program was established in 1946 to provide a partial wage replacement insurance plan for eligible California workers who have loss of wages when they are unable to perform their regular or customary work due to their own illness, injury, or pregnancy. Family Temporary Disability Insurance (FTDI) was added to the SDI program in 2002. Senate Bill (SB) 1661 (Chapter 901, Statutes of 2002) and SB 727 (Chapter 797, Statutes of 2003) added the FTDI benefit, also known as Paid Family Leave, to the California Unemployment Insurance Code (CUIC). The benefits are available to California workers who need time off work to care for a seriously ill family member; to bond with a newborn child, adopted child, or foster child; or to participate in a qualifying exigency related to a military member.

PROBLEM STATEMENT:

Current regulations require a claimant to provide certain personally identifiable information of a foster child, which may not align with state and federal child welfare and juvenile court laws.

When filing an FTDI claim to bond with a new child after birth, adoption, or foster care placement, the claimant is required to provide certain information, including but not limited to the new child's legal name, date of birth, gender, and residence address. (California Code of Regulations (CCR), tit. 22, § 2706-2, subd. (e).) The claimant is also required to provide supporting documentation to establish the relationship between the claimant and the new child. (CCR, tit. 22, § 2708(c)-1.)

Federal and state child welfare and juvenile court laws generally protect the confidentiality of child welfare files. Title IV-E of the Social Security Act requires states that receive federal child welfare funds to have a state plan, approved by the Secretary of Health and Human Services, that "provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan..." (42 U.S.C. § 671(a)(8).) The Child Abuse Prevention and Treatment Act (CAPTA) requires states to include in their state plan assurances that their state program will preserve the confidentiality of reports and records made and maintained under CAPTA to protect the rights of children and their parents, and it specifies a limited list of individuals and agencies to which these records may be made available. (42 U.S.C. § 5106a(b)(2)(B)(viii).)

California Welfare and Institutions Code (WIC) section 827 limits access to the “juvenile case file,” which courts have interpreted broadly to include any documents and other information housed in a county child welfare agency file regarding a child who has suffered or is at serious risk of suffering abuse or neglect that brings the child within the jurisdiction of the juvenile court under WIC section 300. This includes information in agency files where no juvenile court proceedings have been instituted, and the matter is handled informally. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780–781; *In re Elijah S.* (2005) 125 Cal. App.4th 1532. See 87 Ops.Cal.Atty.Gen. 72, 75 (2004).)

WIC section 10850 protects the confidentiality of any records made or kept by any public officer or agency concerning any individual in connection with the administration of any provision of the Welfare and Institutions Code relating to any form of “public social services” for which grants-in-aid are received by the state from the federal government. Protected information includes all applications and records kept in connection with the administration of child welfare that identifies the applicant or recipient by name or address. (WIC, § 10850(a).) The focus of section 10850 is the confidentiality of the identity of aid recipients. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 238.) As such, the law limits what personally identifying information (PII) foster parents may disclose to the Department.

As stated, foster parents currently complete the bonding certification which requires them to provide the foster child’s PII for an FTDI claim. Additionally, acceptable supporting documents under current regulations contain similar PII. Accordingly, the regulations must be revised to better align the requirements with the WIC.

Lastly, these regulatory updates will clarify the information a claimant must provide in the first or continued claim for disability insurance or FTDI benefits, as well as update outdated gender pronouns.

NECESSITY:

Under CUIC sections 305 and 306, EDD is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department.

The current CCR, title 22, section 2706-2(e), and section 2708(c)-1 require foster parents to provide the foster child’s PII for a bonding claim.

The proposed amendments to CCR, title 22, section 2706-2(e) would separate the bonding certification requirements into two distinct categories: non-foster bonding, to include “a new child after birth, adoption, or legal guardianship placement,” and “a new child after foster care placement.” For foster child bonding claims, the proposed amendments would eliminate collection of the foster child’s PII and require collection of only the claimant’s (foster parent’s) name and signature, the date of the foster child’s placement with the claimant, and documentary evidence pursuant to CCR, title 22, section 2708(c)-1.

CCR, title 22, section 2708(c)-1 outlines the supporting documents a claimant is required to provide to the Department when filing a claim to bond with a new child after birth, adoption, foster care placement, or legal guardianship placement. For foster child bonding claims, a claimant must provide the information to verify foster care placement either on a specific California Department of Social Services form or in a statement on letterhead from a county, state, or equivalent government or private entity.

The proposed amendments specified above would remove the requirement that the claimant provide the foster child's PII, and require only the claimant's information, date of foster care placement, and contact information for the person making the foster care placement, such as a social worker. The amendments would also update the California Department of Social Services form used for this process and collect an email address in addition to the existing contact information for the person who placed the foster child.

The proposed regulatory amendments specified above are necessary to allow EDD to gather necessary information and documents to evaluate bonding claims while aligning with federal and state laws related to the confidentiality of child welfare files, and to separate and distinguish the requirements for foster child bonding and other types of FTDI.

The proposed amendments to Sections 2706-1(e)(2) and 2706-2(d)(2) would clarify the requirement for a claimant, when applying for SDI benefits, to provide their social security number (SSN) "and/or" any other names and SSNs by which they are or were known. Eligibility for benefits may be based on wages earned by an individual under the SSN under which they have worked, provided they submit sufficient information to prove they were paid those wages, along with meeting all other eligibility requirements.

Lastly, the proposed regulatory change to Section 2706-1(c) would clarify that an individual may file a disability insurance claim if they have met the specified conditions for "at least" eight days, which is the minimum duration for a qualifying disability.

CCR, title 22, section 3267-1 relates to reporting requirements for employers who operate their own disability insurance plans, known as "voluntary plans," instead of using the state SDI program. Employers wishing to set up voluntary plans must apply and be approved by EDD. Once approved, the employers must meet reporting and other requirements. Amendments to this section are necessary to add FTDI claims for a qualifying military exigency as defined in section 3302.2 of the CUIC, which was added to the FTDI program in 2018.

The amendments in CCR, title 22, sections 2706-1, 2706-2, and 2708(c)-1 align with modern legal standards, replacing "his or her" with "their" as the standard inclusive pronoun. This is necessary to comply with recent efforts to update gendered language to gender neutral pronouns in California statutes, including amendments to the Vehicle Code to define gender categories as female, male, or nonbinary (Vehicle Code § 12800) and updates to multiple state laws to remove gendered language under Assembly Bill 378 (Chapter 50, Statutes of 2021).

ANTICIPATED BENEFITS FROM THE PROPOSED REGULATIONS:

The primary anticipated benefit of the proposed regulatory actions is to ensure better alignment with federal and state laws while safeguarding the PII and privacy of foster children. The proposed amendments would also inherently reduce data risks, including unauthorized access and data breaches, since EDD will be collecting and storing less PII. The amendments also would mitigate the risk of potential fraudulent claims being filed in light of the requirement for third party verification from the placement worker or agency.

SPECIFIC PURPOSE AND RATIONALE FOR EACH PROPOSED AMENDMENT:

The proposed regulation amendments to CCR, title 22, sections 2706-1, 2706-2, 2708(c)-1 and 3267-1 are as follows:

Section 2706-1. Filing a First Claim for Disability Benefits.

Subdivisions (a) and (b) – The proposed regulations would change the pronouns “his or her” to “their” in alignment with modern legal standards for inclusive pronouns.

Subdivision (c) – The proposed regulations would clarify the minimum duration of a qualifying claim by adding the qualifier “at least.” Specifically, an individual may file a disability insurance claim if they have met the stated conditions for at least eight days. This change will prevent confusion and add clarity to this provision.

Subdivision (d) – The existing language within this subdivision will be retained with no change.

Subdivision (e) – The purpose of this subdivision is to delineate the information a claimant must provide in the first or continued claim for disability insurance benefits. The proposed amendment would modify the requirements for a claimant seeking disability benefits, from requiring that they provide their social security number *and* any other names or social security numbers by which they are known, to requiring they provide their social security account number “and/or” any other names and social security account numbers by which the claimant is or was known. This amendment is necessary to align with the proposed regulation amendment to CCR, title 22, section 2706-2, which also makes similar revisions, and to make the section consistent with existing law.

The proposed amendments to this subdivision and its subsections (8), (9), (10), (11), (12), (13)(A), and (15) would change the pronouns “he or she” and “his or her” to “they” and “their” in alignment with modern legal standards for inclusive pronouns.

Subdivision (f) – The proposed amendments to this subdivision and its subsection (5) would change the pronouns “his or her” to “their” in alignment with modern legal standards for inclusive pronouns.

Section 2706-2. Claim for Family Temporary Disability Insurance Benefits - Filing and Contents.

Subdivisions (a) and (b) – The proposed regulations would change the pronouns “his or her” to “their” in alignment with modern legal standards for inclusive pronouns.

Subdivision (c) – The existing language within this subdivision will be retained with no change.

Subdivision (d) – The purpose of this subdivision is to delineate the information a claimant must provide in the first or continued claim for FTDI benefits. The proposed amendment would modify the requirements for a claimant seeking FTDI benefits, from requiring that they provide their social security number *and* any other names or social security numbers by which they are known, to requiring they provide their social security account number “and/or” any other names and social security account numbers by which the claimant is or was known. This amendment is necessary to align with the proposed regulation amendment to CCR, title 22, section 2706-1, which also makes similar revisions, and to make the section consistent with existing law.

The proposed amendments to this subdivision and its subsections (7), (8), (10), and (11) would change the pronouns “he or she” and “his or her” to “they” and “their” in alignment with modern legal standards for inclusive pronouns.

Subdivision (e) – Federal and state laws limit the information foster parents can provide to the Department to verify the foster child’s placement for purposes of a bonding claim. Therefore, to align with federal and state laws, the proposed regulations would separate the bonding certification requirements into two separate categories: non-foster bonding, where the child’s PII will continue to be collected, which includes “new child after birth, adoption, or legal guardianship placement;” and “a new child after foster care placement,” where the child’s PII will no longer be collected.

Subdivisions (f) and (g) – The existing language within these subdivisions will be retained with no change.

Section 2708(c)-1. Acceptable Documentation for a Child's Birth, Adoption, Foster Care Placement, or Legal Guardianship Placement.

Subdivision (a) – The proposed regulation, in order to better align with federal and state laws, would add language to (a)(1) to exclude applicants seeking FTDI for bonding with a foster child from the requirement that a supporting document include the foster child’s name, date of birth, gender, and social security number.

Subdivision (b) – The proposed amendments would revise the provided “Example 1” to align with modern legal standards for inclusive pronouns.

Subdivision (c) – The proposed amendment to (c)(G) would revise the requirements for the signature block for the social worker placing an adopted child to make the requirements for signature of a social worker, director, or designate consistent with the proposed amendments to subdivision (d) of this section, which are necessary to ensure consistency and improve departmental efficiency.

Subdivision (d) – Amendments to this subdivision, part (d)(1), would update the form used to report foster care placement to the form preferred by the California Department of Social Services. Specifically, the proposed amendments would replace the Department of Social Services form *Approval of Family Caregiver Home* (SOC 815) revision 11/02, or its subsequent revision, with California Department of Social Services form *Foster Parents Agreement* (SOC 156) revision 05/25, or its subsequent revision, which does not contain the foster child’s PII on the portion submitted to EDD. The proposed amendments to (d)(2) would likewise remove the requirement for any PII belonging to the foster child on a statement provided by a county, state, or equivalent government or private entity that confirms foster care placement. These changes are necessary to align with federal and state laws.

The proposed amendments would revise existing (d)(2)(H), related to obtaining the social worker’s contact information, to also include an agency or work email address; change “typewritten” to “printed” name; and remove the reference to a “direct” telephone number and require just a telephone number. These changes would align the regulations with current processes. Additional amendments throughout (d)(2) would update the section delineations as needed for consistency. Proposed amendments to “Example 3,” “Example 4,” and “Example 5” apply the updated language of the new subsection (d)(2)(C) to the examples and align with modern legal standards for inclusive pronouns.

Subdivision (e) – The proposed amendments to the provided example would change the pronoun “his” to “their” in alignment with modern legal standards for inclusive pronouns.

Section 3267-1. Reports from Voluntary Plans.

Subdivision (a) – The proposed regulation at (a)(8)(C) would add participation in a qualifying exigency (support of a family member in the Armed Forces deploying to a foreign country) as an option for the type of family care leave on the final report submitted to the Department. This amendment is necessary to align with the provisions of CUIIC section 3302.2, which added military exigency to the FTDI program in 2018.

Subdivisions (b) through (d) – The existing language in these subdivisions will be retained with no change.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT OR SIMILAR DOCUMENT RELIED UPON:

The Department did not rely upon any technical, theoretical, and/or empirical study, report or similar document in proposing this regulatory action.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code section 11346.2(b)(4)(A), the Department has not identified any reasonable alternative to be considered by the Department, including those that would lessen any adverse impact on small businesses. The proposed regulatory action is necessary to align with current law prohibiting the disclosure of foster children's PII, and is not projected to have any adverse impact on small business. However, the Department does welcome input from the public on potential alternatives that would achieve the goals of this rule while complying with current law.

ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE § 11346.3(b):

EDD has determined that the proposed regulatory action will not have a significant impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business in California. SDI contributions are paid by employees through payroll deductions, not by employers. Contributions will continue to be withheld and remitted to EDD for deposit into the SDI Fund, which finances program benefits and administrative costs. Accordingly, business operations and responsibilities will remain unchanged.

This regulatory action is not anticipated to impose significant costs on federal, state, or local governments, private individuals, or housing. Unlike Unemployment Insurance, which is administered under a federal–state partnership and funded by employer payroll taxes, SDI is administered under state law and solely funded by covered employees. Therefore, no substantial change in workload or responsibilities is expected.

The proposed amendments will provide significant benefits to the health and welfare of California residents by strengthening privacy protections for foster children and their caregivers. By reducing the collection and storage of PII, the amendments will inherently lower the risk of identity theft, fraud, unauthorized disclosure, and data breaches. Enhanced privacy safeguards will protect foster youth and support their access to financial and caregiving benefits, thereby promoting family stability and overall well-being.

The proposed regulations will not affect worker safety or the State's environment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS:

EDD has determined that the proposed regulatory action would not have a significant statewide adverse economic impact on business. Employees fund the cost of SDI

benefits and program administration through payroll deductions; therefore, employers bear no direct costs. The roles and responsibilities of parties involved in the current process would remain largely unchanged.

Under current regulations, claimants must submit foster care placement documentation when filing a bonding claim. This documentation is typically provided by a county, state, or licensed private placement agency and includes detailed information about the foster child and placement, along with verification by the responsible worker or agency official.

The proposed regulations would continue to involve the same parties but require less information. Placement entities would no longer be required to provide the foster child's full name, gender, date of birth, SSN, or residence address. This reduction in required information will lessen the workload for placement entities, while EDD will continue to verify the claimant's application against the documentation provided. Any discrepancies or missing information will be addressed through existing verification procedures, which are substantially unchanged.

EDD worked closely with the California Department of Social Services, which oversees California's foster care system, to understand the requirements of state and federal law prohibiting collection and disclosure of foster children's PII and to develop proper procedures that would align with those laws while still ensuring the proper filing and payment of FTDI claims.

Claims to bond with a foster child represent less than 1% of all FTDI bonding claims filed annually. In 2024, claimants filed 1,342 FTDI foster child bonding claims, which represented 0.52% of the total 255,681 bonding claims filed. Given the low number of foster child bonding claims filed each year, and the fact that placement entities would continue their participation in the process with slightly less effort due to reporting fewer data elements, EDD has determined that the proposed regulatory action would not have a significant statewide adverse economic impact on business.