

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

BACKGROUND:

The Employment Development Department (EDD) 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 suffer wage loss from being unable to perform their regular or customary work due to non-work related illness or injury.

Senate Bill (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) added the Family Temporary Disability Insurance benefit, also known as Paid Family Leave (PFL), to the California Unemployment Insurance Code (UIC). PFL provides benefits to eligible workers who have loss of wages when they take time off work to care for a seriously ill child, spouse, parent, parent-in-law, grandchild, grandparent, sibling, or registered domestic partner, or to bond with a new child.

Under UIC section 2708, a claimant must establish medical eligibility for each period of disability benefits by filing an initial or continued claim supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. It is the treating physician or practitioner who completes and files the medical certificate with the EDD. Currently, certificates are filed either electronically or by paper. Paper certifications are mailed or hand delivered to the EDD.

PROBLEM STATEMENT:

The EDD is in the process of modernizing its systems. The Department has the nation's largest public benefit system with over 21 million claimants and 63 million claims being filed for Unemployment Insurance (UI), Disability Insurance (DI), and Paid Family Leave (PFL) over the past decade. The EDD delivered unprecedented levels of benefits to Californians during the pandemic, paying over \$180 billion in unemployment insurance benefits. The pandemic tested every benefit system in the country and pushed

capabilities to their limits, exposing the need to engage customers directly to design better systems and modernize operations.

To ensure the EDD can continue to deliver benefits to Californians in the most efficient way possible, the EDD is looking to modernize all UI, DI, and PFL business program operations and their related systems. The EDD has established a 5-year incremental implementation roadmap for a new EDD benefit system. This modernization effort is called EDDNext. The goal of the EDDNext modernization is to promote responsible service, implement sustainable business operations, and advance technical innovation. At the core of this modernization plan is the creation of an online integrated claims management system that will enable EDD customers to quickly file claims and claim-related documents, check claim status, receive important notices and information from the EDD, and communicate with the Department. The project will improve customer service across EDD's UI, DI, and PFL benefit programs, focusing on five strategic objectives:

1. Enhanced customer-centric service design – ensure equity access via optimizing service channels with multiple-languages access (mobile, social media, self-service website, live chat, etc.).
2. Increase self-service opportunities – simplify self-service functionality across all programs for claims intake and processing.
3. Mitigate fraud – protect customer identity, reduce fraudulent activities, and reduce the costly risk to the State by re-engineering claims processing and enhancing technology-driven security.
4. Improved consistent integrated program delivery – extend data analytics (dashboards, daily reporting on claims progress, fraud analysis, standardize user experience, enhance EDD training) to better serve claimants.
5. Greater adaptability for faster program changes – integrated system that enables rapid program changes and scalable to meet the unusual spikes in workload demand & modifications required for compliance with United States Department of Labor (USDOL) and California rules/regulations.

The EDD has been working to make legislative and regulatory changes needed for automation and modernization. As an example, Senate Bill 191 was recently passed to authorize the EDD to serve notices, including notices of determination of eligibility of benefits, personally, electronically, by mail, or in any other manner the Department elects. Previously, the law only permitted the EDD to serve certain notices either personally or by mail. Changes such as these are intended to speed up the claims process for claimants and to allow the Department to use technology to work more efficiently.

NECESSITY:

Under UIC sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. UIC section 2708(a) mandates that, except as provided in UIC section 2708(c) and sections 2708.1 and 2709, medical eligibility for an SDI or PFL claim must be supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. Under UIC section 2706.1, the first claim, accompanied by the certificate, shall be filed no later than the forty-first consecutive day following the first compensable day of unemployment and disability. If the first claim is incomplete, the form is returned to the claimant and, absent good cause, the claimant must return the completed form within ten days of when the Department mailed it. Pursuant to UIC section 2706.2, any continued medical certification shall be submitted to the Department within twenty days of the date the claimant is issued a notice of final payment or departmental request for additional medical certification.

Title 22, section 2706-4 of the California Code of Regulations (CCR) currently requires the EDD to accept disability claims and other related documents by mail except in cases when the Department requires a personal appearance or examination. The proposed amendments to Title 22, section 2706-4 of the CCR would make a distinction between who may file documents electronically and who may file documents by mail or electronically. The proposed changes would require vetted physicians, practitioners, and registrars of county hospitals to file medical documents electronically through their verified EDD online accounts. The proposed changes would reaffirm that required claim documents completed by the claimant may continue to be filed by mail or electronically.

The amendments are necessary to give the Department clear authority to require physician and practitioner accountholders, most of whom already keep electronic health records, to file documents electronically. Electronic filing by physician and practitioner accountholders is necessary to allow the Department to more quickly and efficiently process claims.

ANTICIPATED BENEFITS FROM THE PROPOSED REGULATIONS:

The anticipated benefit from the proposed regulation amendments is that the EDD will be able to process SDI and PFL claims more quickly and efficiently. The amendments would require treating physicians and practitioners to file medical certifications electronically unless they have been granted a waiver. The EDD's online claims system

can quickly and efficiently review and process the certificates through automation, reducing the amount of time and resources needed for a claimant to received benefits.

SPECIFIC PURPOSE, AND RATIONALE, FOR EACH PROPOSED AMENDMENT:

Section 2706-4, title. "Claims" is amended in the title to "Claim Documents that" to alert the reader that there will now be documents that cannot be filed by mail.

Section 2706-4, subsection (a). This subsection is being amended to indicate that only those required documents filed by the claimant or their authorized representative may be filed by mail.

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 exempt by an approved waiver, must file documents electronically through the department's online system.

PLAIN ENGLISH CONFORMING STATEMENT:

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

CONSIDERATION OF ALTERNATIVES:

In accordance with Section 11346.5(a)(13) of the GC, the EDD considered alternatives to the proposed regulation including maintaining the status quo and continuing to accept paper certifications. However, doing so would prevent the EDD from fully utilizing its automation capabilities, and would result in longer claim processing times and the need for more staff resources than the proposed change.

SMALL BUSINESS IMPACT:

The Department determined the proposed amendments likely will have only a nominal effect on small businesses. However, it is difficult for the EDD to estimate the number of businesses that will be impacted by the proposed regulatory action.

According to EDD’s internal systems data, and as illustrated in the table below, an average of 60,450 physicians/practitioners (P/Ps) have filed a paper DE 2501B, the medical certification portion of a first claim for Disability Insurance (DI) benefits. This number includes P/Ps who submitted even just one paper DE 2501B. However, it provides no insight into how many of those P/Ps lacked the capability to file the form electronically as opposed to those who could file electronically but chose not to.

The EDD data also shows that only an average of 25,493 P/Ps filed at least one paper DE 2525XX, the medical certification to continue a claim for DI benefits. Anecdotally, the EDD receives as many continued claims as first claims. The significant difference between the numbers may suggest that some P/Ps who filed a paper DE 2501B subsequently chose to submit required documentation electronically.

As shown below, the annual decline in P/Ps who submit at least one paper form for both the DE 2501B and DE 2525XX suggests that P/Ps are gradually transitioning to electronic filing. Whether this is due to the ease and expediency of electronic filing, the fact that electronic filing facilitates quicker claims processing for patients, or that electronic filing can be done in a secure environment to protect sensitive information, the end result is that each year fewer P/Ps are choosing to submit paper documentation.

Table 1: Number of P/Ps Who Submitted Paper Forms Per Calendar Year

Form	2019	2020	2021	Average
DE 2501B	63,393	59,273	58,683	60,450
DE 2525XX	28,291	25,682	22,507	25,493

Unfortunately, while the EDD’s data could identify how many P/Ps are submitting at least one paper form, it is unclear how many businesses these P/Ps represent. Without knowing how many of these P/Ps are solo practitioners or practitioners working out of small medical offices, it is difficult to determine how many businesses — particularly small businesses — will be impacted by this rulemaking. Additionally, even if the EDD had such a number, it would not necessarily represent how many businesses currently lack the capability to file forms electronically. The EDD suspects that the vast majority of P/P and their offices are able to file forms electronically. Data from the U.S. Department of Health and Human Services’ 2016 Report to Congress shows that as of 2015, 96% of hospitals and 78% of physician offices used certified Electronic Health Records (EHR) technology.¹ EDD can only assume that these percentages have increased over the past six years.

¹ <https://dashboard.healthit.gov/report-to-congress/2016-report-congress-examining-hitech-era-future-health-information-technology.php>, accessed 12/5/2022.

FISCAL IMPACT:

Anticipated costs or savings in federal funding to the State: None.

Anticipated costs or savings to any State Agency: The proposed regulatory action assists the EDD in curtailing fraudulent activity. The DI Branch of the EDD estimates a total cost of \$144,642 to implement the regulation by updating existing processes. The one-time implementation cost is to develop business requirements for the programming efforts, update information on the EDD website, communicate updates for staff, and educate customers.

Anticipated costs or savings to any local agency or school district: None.

Significant statewide adverse economic impact: The Department does not anticipate that this regulatory action will result in any costs to the federal government, to State government, to local county governments, or to private individuals. For a business (including a small business or private practice) that does not currently have the capabilities to submit documents electronically to the EDD, the EDD estimates an initial one-time cost of up to \$1,000 with potential additional costs of up to \$1,000 annually, as described in greater detail below.

The initial one-time cost of \$1,000 represents the cost to purchase and install necessary equipment, specifically a personal computer and establish internet connectivity. According to Internet Service Providers,² annual internet service (pre-tax and fees) can cost up to \$600. Factoring in additional potential costs for equipment and software service and upkeep, the EDD estimates ongoing cost for compliance with the proposed regulations to be up to \$1,000 annually.

The costs impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Anticipated impact on housing costs: The proposed regulations will have no effect on housing costs.

Anticipated non-discretionary costs or savings imposed upon local agencies: None.

² <https://www.isp.com/near-me/ca/>, accessed 4/27/2022.

LOCAL MANDATE DETERMINATION:

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

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

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.

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

The Department relied upon the 2016 Report to Congress on Health IT Progress and Internet Service Providers, February 29, 2016.