

ADVISORY NO. 273
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TOPIC: PLAIN LANGUAGE NOTICE REQUIREMENTS

New Rule 124.2 (“Carrier Reporting and Notification Requirements”) became effective August 9, 1999, and has since created a great deal of confusion. The rule focuses on reporting to the claimant and the Commission of carrier actions taken on claims, and key events occurring in claims. It includes requirements contained in previous Rules 124.1 through 124.4, and adds additional requirements.

Subsections (d) through (h) of Rule 124.2 require that the carrier notify the Commission and the claimant of disputes and other key events and actions (generally related to initiation, termination, and other changes in income benefits) in accordance with *both* Rule 124.2, *and as otherwise provided* by other rules. These subsections specify how notification is to be given using plain language notices “with language and content prescribed by the Commission.”

The problem is that the Commission has not yet prescribed the language and content of the plain language notices.

Significant problems also appear to be caused by the generally duplicitous, but different requirements of new Rule 124.2 and old Rule 124.6 (“Notice of Refused or Disputed Claim”), which deals with filing of TWCC-21 forms. This should be less of a problem soon, since the Commission has proposed the repeal of this rule in conjunction with the adoption of new Rule 124.3 (“Investigation of a Claim and Notice of Denial/Dispute”). The Commission is likely to take formal action on these rules in its February public meeting. After the repeal of Rule 124.6, Form TWCC-21 will no longer be used, as all of the notification requirements will be contained exclusively in Rule 124.2.

Based upon information we received from our clients that the Division of Compliance and Practices was taking the position that carriers are *currently* required to use plain language notices (despite the fact that no language has yet been prescribed), our firm contacted the Commission. After receiving contradictory responses, we have now obtained the definitive answer.

If there are no plain language notices with language prescribed by the Commission, they cannot be used. There will be no penalties issued for this until the letters are released and implemented. However, the carrier still needs to

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provide the employee/rep with a notice explaining the action taken and the reason behind it. The TWCC-21 is still acceptable for that purpose until the plain language notices are released. Also, some carriers have developed some plain language forms for their interim use until the release of TWCC's letters.

Our advice, in an abundance of caution, is to continue to use the TWCC-21 form until Rule 124.6 is repealed, and also transmit that form with a cover letter, utilizing plain language, describing the action being taken.