



California Workers' Compensation Institute  
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VIA E-MAIL: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

June 8, 2016

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation, Legal Unit  
Post Office Box 420603  
San Francisco, CA 94142

**Re: 1<sup>st</sup> 15-Day Comment - Proposed Home Health Care Services Fee Schedule Regulations**

Dear Ms. Gray:

This 1<sup>st</sup> 15-day comment on modifications to proposed regulations regarding a Home Health Care Services Fee Schedule is presented on behalf of the members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 72% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (28% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz/Fireman's Fund Insurance Company, AmTrust North America, Chubb, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, Country of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the Proposed Home Health Care Services Fee Schedule Regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

## **§ 9789.90 Home Health Care - Definitions.**

### **Recommendation**

(b) “Home care organization” means a business entity providing personal care and domestic care services, **as those terms are defined under the “home health care services” topic in the Medical Treatment Utilization Schedule (MTUS)**, to injured workers in the home and is licensed as compliant with the Home Care Services Consumer Protection Act of 2013 (Health & Safety Code §§ 1796.10-1796.63) by the California Department of Social Services.

### **Discussion**

*The current Medical Treatment Utilization Schedule (MTUS) does not have a special topic labeled “home health care services” and does not currently define the terms “personal care” and “domestic care services.” The MTUS Chronic Pain Medical Treatment Guidelines provides the following for home health services:*

*“Recommended only for otherwise recommended medical treatment for patients who are homebound, on a part-time or “intermittent” basis, generally up to no more than 35 hours per week. Medical treatment does not include homemaker services like shopping, cleaning, and laundry, and personal care given by home health aides like bathing, dressing, and using the bathroom when this is the only care needed. (CMS, 2004)”*

*Reference to the language currently in the MTUS for “home health services” creates confusion since the description of domestic and personal services is provided as a means of identifying services that are excluded from the medical treatment recommendation language. Reference to MTUS provides no benefit to defining a “home care organization” as being a licensed entity under Health & Safety Code §§ 1796.10-1796.63.*

### **Recommendation**

(d) “Home health care services” include the provision of medical and other health care services, including personal care and domestic care services, to the injured worker, in **their his or her** place of residence **as set forth in the “home health care services” topic of the MTUS**.

### **Discussion**

*The current Medical Treatment Utilization Schedule (MTUS) does not have a special topic labeled “home health care services.” In-home provision of recommended medical treatment is addressed for homebound injured workers, and domestic and personal care services are partially addressed as non-medical services in the MTUS Chronic Pain Medical Treatment Guidelines. The Institute suggests that the reference to the MTUS should be removed until the MTUS is revised to properly address home health care services, including personal care and domestic services.*

*Replacing “their with “his or her” provides a minor grammatical improvement*

## Recommendation

(-)“Attendant care services” means tasks that assist the injured worker with activities of daily living (ADLs) and include: bathing, dressing, toileting, transferring bed/chair, etc.

(-)“Chore services” means tasks that assist the injured worker with instrumental activities of daily living (IADLs) and include: housekeeping, laundry, food preparation, shopping, etc.

(-)“Home health aide” means an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient’s home.

(-)“Qualified Occupational Therapist Assistant” (OTA) means an individual licensed as an OTA and currently registered with the National Board for Certification in Occupational Therapy (NBCOT).

(-)“Qualified Physical Therapy Assistant” means an individual holding a valid, unexpired, and unrevoked physical therapist assistant license who may assist in the provision of physical therapy services only under the supervision of a physical therapist licensed by the board.

## Discussion

*Without language defining what specific services are included in a category, disputes will arise regarding the appropriate billing code and payment amount. Likewise, it is important to define a “Qualified Physical Therapy Assistant” and “Qualified Occupational Therapist Assistant” to eliminate the potential for an unlicensed individual providing and billing for those in-home services. The Institute recommends the addition of these definitions to clarify these terms that are included, or recommended to be re-included in the coded descriptions in §9789.93 Table A. Addition of the recommended definitions requires resequencing of the original terms.*

*The definition of “home health aide” was found in Health and Safety Code Section 1727(c).*

## § 9789.91 Home Health Care – Eligibility for Services & Payment

### Recommendation

(d)(2) ~~Either an employer or its A~~ claims administrator and an injured worker may agree that the injured worker may use, and the employer or ~~its insurer-claims administrator~~ will pay for, a provider who is not employed by a home care organization or home health care agency and who may be a family member of the injured worker, if the individual has the necessary skills to provide the home health care services required by the injured worker. In such cases, payment shall be provided directly to the injured worker, who will be responsible for paying the provider ~~and no employment relationship shall be established between the employer or its claims administrator and the provider~~. Such agreements may also include a provision to waive the requirements of subsection 9789.92(c).

### Discussion

*The employer’s claims administrator is responsible for administering a claim and therefore it is the claims administrator that may make this agreement, and not the employer.*

*The use of “claims administrator” instead of “insurer” allows for consistency throughout the Home Health Care Fee Schedule regulations and eliminates confusion that could result from differences in descriptive terminology.*

*Payment of wages is a primary -- but not the sole -- indicator of an employment relationship. Language indicating a specific exemption from employment is necessary in order to document the intent of the regulation and avoid frictional costs.*

## **§ 9789.92 Home Health Care – Payment Methodology & Billing Rules**

### **Recommendation**

(a) The maximum allowable amounts (MAA) for home health care services are set forth in section 9789.93, Table A. **In no case shall the MAA be lower than the then-current state or local minimum wage, whichever is higher.**

### **Discussion**

*While the Institute agrees that it is appropriate to assure that MAA should not fall below current state or local minimum wages, we believe that the Administrative Director must revise the maximum allowable amounts in Table A to accomplish this as there is no authority to adopt uncertain future rates.*

### **Recommendation**

(c) **With the exception of services paid to the injured worker under the provisions of §9789.91(d)(2),** home health care services shall be billed and paid for under the timeframes and rules set forth in Labor Code sections 4603.2 and 4603.3, and the rules for medical treatment billing and payment set forth in Article 5.5.0, sections 9792.5.0 through 9792.5.15, of Title 8 of the California Code of Regulations.

### **Discussion**

*An agreement entered into by an employer or its claims administrator to pay the injured worker directly for home health care services should not encumber the provider of services with the requirement to bill using a completed CMS-1500 form, nor for the claims administrator to create a formal Explanation of Review with all of the required data elements. The terms of billing and payment should be included in the written agreement.*

## **§ 9789.93 Table A**

### **Recommendation**

**(See attached recommended version of Table A.)**

### **Discussion**

*Restoration of the “chore services” category in Table A is appropriate as a distinct option, available for injured workers who may not require the skill level necessary for “attendant care,” but who are nonetheless unable to perform basic household tasks. Definitions of “services of a home health aide,” “chore services,” and “attendant care services” are necessary in order to provide sufficient instruction to stakeholders and to reduce frictional costs.*

Sincerely,

Stacy Jones  
Senior Research Associate

Brenda Ramirez  
Claims & Medical Director

BR/pm  
Attachment

cc: Christine Baker, DIR Director  
George Parisotto, DWC Acting Administrative Director  
Dr. Raymond Meister, DWC Executive Medical Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members