



California Workers' Compensation Institute
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March 19, 2013

VIA E-MAIL to dwcrules@dir.ca.gov

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

**RE: Written Testimony on Proposed Permanent Interpreter Regulations
Sections 9795.1 – 9795.3**

Dear Ms. Gray:

This written testimony on regulations proposed for permanent adoption to implement Senate Bill 863 provisions regarding interpreter qualifications and fees is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$36B of annual payroll (20% of the state's total annual self-insured payroll).

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

Self-insured employer members are Adventist Health, Agilent Technologies, City and County of San Francisco, City of Santa Ana, City of Santa Monica, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Foundation Health Plan, Inc., Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

Introduction

The Institute thanks the Division for initiating the regulatory process to change interpreter requirements and fees, even in the midst of dealing with the mountain of other rulemaking required to implement Senate Bill 863 provisions. In summary, the Institute wishes to emphasize the following recommendations:

- 1. Adopt a schedule of interpreter fees based on the federal interpreter fee schedule.**
Such a schedule will provide uniform, clear, state-wide allowances that will be easy to understand and calculate, and will eliminate the administrative burdens and disputes caused by “market rates” and superior court rates. “Market rates” much like repackaged drugs, are determined by the interpreter and are easily inflated and often manipulated. Superior court rates vary from court to court, often change, are difficult to verify, and it is difficult to determine which superior court venue applies. If the Administrative Director does not accept the recommendation to adopt a schedule based on the federal rates, the Institute strongly recommends nevertheless eliminating “market rates” and superior court rates from the schedule.
- 2. Adopt codes under which interpreter services can be billed, paid and reported.**
Reference the billing and payment rules and guides and clarify exceptions where necessary for forms, fields and code sets, and documentation. Consider adapting or adopting an interpreter form/addendum signed under penalty of perjury that includes information start and end times for interpreting services, excluding meal breaks, and prohibiting double billing.

Recommended revisions to the proposed regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§9795.1. Definitions.

As used in this article:

(a) "Certified" means an interpreter who is certified in accordance with Sections 11435.30 or 11435.35 of the Government Code or Section ~~68562~~ **68566** of the Government Code.

According to LC sections 4600(f), 4620(a), and 5811(b)(2), a certified interpreter is a language interpreter certified pursuant to Government Code Sections commencing with 11435.05, or Section 68566.

Clarify that certified interpreters are interpreters who on the date of service are included on the State Personnel Board or Judicial Council lists of certified interpreters pursuant to section 9795.5(a) and must submit evidence of the certification with a billing or upon request.

(b) "Claims Administrator" means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-

insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

Revise this definition to include CIGA, UEF and SIF.

(c) "Full day" means services performed which exceed one-half day, more than four hours up to and including 8 hours, not including meal periods.

(d) "~~One-half~~ Half day" means up to and including four hours, not including meal periods.;

(e) "Overtime" means any hour or fraction thereof exceeding eight hours and only if the workday exceeds eight hours, not including meal periods.

(f) "Hourly" means any hour or fraction thereof, not including meal periods.

(1) When appearing at any Workers' Compensation Appeals Board hearing, (or) daytime arbitration, all or any part of a morning or afternoon session.

(2) When appearing at a deposition, all or any part of 3.5 hours.

(3) When appearing at an evening arbitration, all or any part of 3 hours.

Modify the above language to define the terms used in an interpreter fee schedule based on that of the Federal Courts.

(eg) "Provisionally certified" means, for other than medical treatment appointments, an interpreter who is deemed to be qualified to perform services under this article, when a certified interpreter cannot be present, (1) by written prior agreement of the parties for any interpreter services provided under this article other than at an appeals board hearing or arbitration, or (2) by the treating physician at a medical treatment appointment, if the injured worker requires interpreting services in a language other than the languages designated pursuant to section 11435.40 of the Government Code.

(eh) "Provisionally certified" means, for medical treatment appointments, an interpreter who is deemed to be qualified to perform services under this article, when a certified interpreter cannot be present, (1) by agreement of the parties for any services provided under this article other than at an appeals board hearing, or arbitration. or (2) by the treating physician at a medical treatment appointment, and the claims administrator has given written prior consent to the selection of the individual who provides the interpreting service, or if (2) the injured worker requires interpreting services in a language other than the languages designated pursuant to section 11435.40 of the Government Code.

The separate definitions are needed to describe more clearly how a provisionally certified interpreter for a medical treatment appointment may differ from a provisionally certified interpreter for other events.

(fi) “Qualified interpreter for purposes other than medical treatment appointments” means a language interpreter certified in accordance with (a) an interpreter who has a documented and demonstrated proficiency in both English and the other language; a fundamental knowledge in both languages of health care terminology and concepts relevant to health care delivery systems; and education and training in interpreting ethics, conduct and confidentiality, which may include the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Healthcare. Evidence of these criteria shall be established by a certificate of completion of a Medical or Healthcare Interpreter Certification Program issued by a California educational or vocational institution.

An additional definition pursuant to Labor Code section 4600(f) is needed to clarify that, except for medical treatment appointments, a qualified interpreter is a certified interpreter.

(fj) “Qualified interpreter for purposes of medical treatment appointments” means an interpreter who has a documented and demonstrated proficiency in both English and the other language; a fundamental knowledge in both languages of health care terminology and concepts relevant to health care delivery systems; and education and training in interpreting ethics, conduct and confidentiality, which may includes the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Healthcare and who appears on the Administrative Director’s list of qualified interpreters for medical treatment appointments. Evidence of these criteria shall be established by a certificate of completion of a Medical or Healthcare Interpreter Certification Program that meets these standards issued by a California educational or vocational institution.

So that the regulated public can more easily identify the standards, the Institute suggests adding links to the web sites of

- 1. the California Healthcare Interpreting Association (www.chiaonline.org) and*
- 2. the National Council on Interpreting in Healthcare (<http://www.ncihc.org>)*

and deleting the word “may” if the Division intends to establish these the standards.

Clarify that qualified interpreters for medical treatment appointments are interpreters who on the date of service are included in the Administrative Director’s list of qualified interpreters for medical treatment appointments pursuant to section 9795.5(b) and must submit evidence of qualified interpreter status with a billing or upon request.

(gk) "Travel time" means the time an interpreter actually travels to and from the place where service is to be rendered and his or her place of business.

(h) "Market rate" means that amount an interpreter has actually been paid for recent interpreter services provided in connection with the preparation and resolution of an employee's claim.

The Institute strongly recommends deleting the market rate from the schedule. The market rate is the most abused feature of the current schedule. It is easily and frequently manipulated to increase payments, and is the main source of payment disputes over interpreter fees. The current fee schedule generates disputes; a simpler, fairer fee schedule will minimize them. The Institute recommends basing the schedule on the straightforward and easily administered Federal Fee Schedule adopted by the United States District Courts.

NOTE: Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35 and 68562 68566, Government Code.

§ 9795.3. Fees for Interpreter Services other than at medical treatment appointments

(a) Fees for services performed by a certified, provisionally certified, or qualified interpreter, where the employee does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:

(1) An examination by a physician to which an injured employee submits at the requests of the claims administrator pursuant to Labor Code section 4050, the administrative director, or the appeals board;

(2) Medical treatment appointments;

(3) A comprehensive medical-legal evaluation as defined in subdivision (c) of Section 9793, a follow-up medical-legal evaluation as defined in subdivision (f) of Section 9793, or a supplemental medical-legal evaluation as defined in subdivision (k) of Section 9793; provided, however, that payment for interpreter's fees by the claims administrator shall not be required under this paragraph unless the medical report to which the services apply is compensable in accordance with Article 5.6. Nothing in this paragraph, however, shall be construed to relieve the party who retains an interpreter from liability to pay the interpreter's fees in the event the claims administrator is not liable.

(4) A deposition of an injured employee or any person claiming benefits as a dependent of an injured employee, at the request of the claims administrator, including the following related events:

(i) Preparation of the deponent immediately prior to the deposition,

- (ii) Reading of a deposition to a deponent prior to signing, and,
- (iii) Reading of prior volumes to a deponent in preparation for continuation of a deposition.

(5) An appeals board hearing, or arbitration.

(6) A conference held by an information and assistance officer pursuant to Chapter 2.5 (commencing with Section 5450) of Part 4 of Division 4 of the Labor Code to assist in resolving a dispute between an injured employee and a claims administrator.

(7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee.

(b) The following are maximum reasonable fees for interpreter services provided by a qualified or certified interpreter at any events in (a), except that for examinations pursuant to (a), fewer than 3 hours shall be billed and paid at the hourly rate. shall be presumed to be reasonable:

Full Day INLC1 \$388

Half Day INLC2 \$210

Overtime INLC3 \$55 per hour or part thereof

Hourly INLC4 \$55 per hour or part thereof

(~~b~~) The following are maximum reasonable fees for interpreter services provided by a qualified or certified-an interpreter who is not a certified or a provisionally certified interpreter shall be presumed to be reasonable:

Full Day INLP1 \$187

Half Day INLP2 \$103

Overtime INLP3 \$32 per hour or part thereof

Hourly INLP4 \$32 per hour or part thereof

~~(1) For an appeal board hearing, arbitration, or deposition, or formal rehabilitation conference: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services. Services over 8 hours shall be paid at the rate of one eighth the full day rate for each hour of service over 8 hours.~~

(2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of \$ 11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services.

(3) The fee in paragraph (1) or (2) shall include, when requested and adequately documented by the interpreter, payment for mileage and travel time where the travel has been preauthorized, is reasonable and necessary to provide the service, and where the distance between the interpreter's place of business and the place where the service was rendered is over 25 miles. Travel time is not deemed reasonable and necessary where a qualified interpreter listed in the master listing for the county where the service is to be provided can be present to provide the service without the necessity of excessive travel.

(i) Mileage shall be paid at the minimum rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for non-represented (excluded) employees at Title 2, CCR § 599.631(a).

(ii) Travel time shall be paid at the rate of \$-5.00 per quarter hour or portion thereof.

(c) Unless notified of a cancellation at least 24 hours prior to the time the service is to be provided, not counting weekends or federal holidays, the interpreter shall be paid no less than the minimum fee.

(d) Nothing in this section shall preclude payment to an interpreter or agency for interpreting services based on an agreement made in advance of services between the interpreter or agency and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section.

(e) The fees set forth in subdivision (b) shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter are documented and submitted to the claims administrator with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter.

(f) An interpreter may not bill or be paid for services rendered during an interval already billed for services to another person or entity. The billings shall be prorated to avoid overlap.

(g) Interpreter billings shall include following statement: "I have not violated Labor Code Section 139.32 and the content of this bill is true and correct to the best of my knowledge. This statement is made under penalty of perjury and is dated this _____ of _____ at _____ County, California" signed by the interpreter or the authorized representative of the interpreting service.

AUTHORITY:

Note: Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35 and 68562 68566, Government Code.

§ ~~9795.3~~, 9795.3.1. Fees for Interpreter Services at medical treatment appointments

(a) Upon request of an injured employee who does not proficiently speak or understand the English language, fees ~~Fees~~ for services performed at a medical treatment appointment by a qualified and certified, or provisionally certified, or interpreter ~~qualified interpreter, where the employee does not proficiently speak or understand the English language,~~ shall be paid by the claims administrator, for any of the following events:

~~(1) An examination by a physician to which an injured employee submits at the requests of the claims administrator, the administrative director, or the appeals board;~~

~~(2) Medical treatment appointments;~~

~~(2)(3) A comprehensive medical-legal evaluation as defined in subdivision (c) of Section 9793, a follow up medical-legal evaluation as defined in subdivision (f) of Section 9793, or a supplemental medical-legal evaluation as defined in subdivision (k) of Section 9793; provided, however, that payment for interpreter's fees by the claims administrator shall not be required under this paragraph unless the medical report to which the services apply is compensable in accordance with Article 5.6. Nothing in this paragraph, however, shall be construed to relieve the party who retains an interpreter from liability to pay the interpreter's fees in the event the claims administrator is not liable.~~

~~(3)(4) A deposition of an injured employee or any person claiming benefits as a dependent of an injured employee, at the request of the claims administrator, including the following related events:~~

~~(i) Preparation of the deponent immediately prior to the deposition;~~

~~(ii) Reading of a deposition to a deponent prior to signing, and;~~

~~(iii) Reading of prior volumes to a deponent in preparation for continuation of a deposition.~~

~~(4)(5) An appeals board hearing, or arbitration, or formal rehabilitation conference.~~

~~(5) An informal rehabilitation conference.~~

~~(6) A conference held by an information and assistance officer pursuant to Chapter 2.5 (commencing with Section 5450) of Part 4 of Division 4 of the Labor Code to assist in resolving a dispute between an injured employee and a claims administrator.~~

~~(7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee.~~

(b) The following is the maximum reasonable hourly fees for interpreter services provided by a qualified or and certified interpreter ~~shall be presumed to be reasonable:~~

Hourly INMC4 \$55 per hour or part thereof

(b) The following is the maximum reasonable hourly fees for interpreter services provided by a qualified or and provisionally certified interpreter ~~shall be presumed to be reasonable:~~

Hourly INMP4 \$32 per hour or part thereof

~~(1) For an appeal board hearing, arbitration, or deposition, or formal rehabilitation conference: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services. Services over 8 hours shall be paid at the rate of one-eighth the full day rate for each hour of service over 8 hours.~~

~~(2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of \$ 11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services.~~

(3) The fee ~~in paragraph (1) or (2)~~ shall include, when requested and adequately documented by the interpreter, payment for mileage and travel time where the travel has been preauthorized, is reasonable and necessary to provide the service, and where the distance between the interpreter's place of business and the place where the service was rendered is over 25 miles. Travel time is not deemed reasonable and necessary where a qualified interpreter listed in the master listing for the county where the service is to be provided can be present to provide the service without the necessity of excessive travel.

(i) Mileage shall be paid at the minimum rate adopted by the Director of the Department of

Personnel Administration pursuant to Section 19820 of the Government Code for non-represented (excluded) employees at Title 2, CCR § 599.631(a).

(ii) Travel time shall be paid at the rate of \$5.00 per quarter hour or portion thereof.

(c) Unless notified of a cancellation at least 24 hours prior to the time the service is to be provided, **not counting weekends or federal holidays**, the interpreter shall be paid no less than the minimum fee.

(d) Nothing in this section shall preclude payment to an interpreter or agency for interpreting services based on an agreement made in advance of services between the interpreter or agency and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section.

(e) The fees set forth in subdivision (b) shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter are documented and submitted to the claims administrator with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter.

(f) An interpreter may not bill or be paid for any services rendered during an interval already billed for services to another person or entity. The interpreter shall prorate the billing to avoid overlap.

(g) Interpreter billings shall include following statement: "I have not violated Labor Code Section 139.32 and the content of this bill is true and correct to the best of my knowledge. This statement is made under penalty of perjury and is dated this _____ of _____ at _____ County, California" signed by the interpreter or the authorized representative of the interpreting service.

Separating the interpreting fee schedule for medical treatment appointments from the one for other events in two separate sections, 9795.3 and 9795.4, will harmonize the new provisions in Senate Bill 863, clarify the scheduled fees and make the schedules easier to understand and to use.

In section 9795.3(a)(1) clarification is needed that "an examination to which an injured employee submits at the request of the claims administrator" is an examination pursuant to Labor Code section 4050. Labor Code section 4050 states in pertinent part:

"Whenever the right to compensation under this division exists in favor of an employee, he shall, upon the written request of his employer, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the employer... "

Billing codes for interpreter services are necessary to bill, explain reviews, request 2nd reviews and IBRs, report to WCIS, and for tracking and analysis.

The recommended changes to sections 9795.3 and 9795.4 provide a simplified interpreter fee schedule based on the current United States District Court fee schedule for interpreters instead of on current superior court fees. This schedule provides the same allowances state-wide without the need to discover and administer the constantly changing and difficult to find superior court rates that differ from court to court. More information on this federal court interpreter fee schedule can be found on the United States District Court web site at:

www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters.aspx

These schedules will eliminate confusion and disputes over the rates to pay interpreters. If adopted, the most significant improvement will be the elimination of the "market rate" that is easily manipulated and that constantly and artificially drives up costs, wastes resources and fuels so many disputes.

The federal fee schedule prohibits interpreters from billing for a time interval more than once, a practice that is all too commonly seen in workers' compensation in California. The Institute recommends adopting schedules based on the federal interpreter fee schedule, including this sensible principle.

SB 863 added Labor Code section 139.2 to prohibit referrals or cross-referrals between entities with financial interests in one another, including providers of interpreting services. Adding the proposed statement will enforce this new requirement.

If recommended revisions are adopted, it will be necessary to renumber the previous two sections.

AUTHORITY:

Note: Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35 11513 and ~~68562~~ 68566, Government Code.

9795.5. Interpreter Directories

a. Interpreters certified in accordance with section 9795.1 (a) ~~and who are qualified to interpret at workers' compensation appeals board hearings~~ are listed at the following websites:

<http://jobs.spb.ca.gov/InterpreterListing/> and <http://www.courts.ca.gov/programs-interpreters.htm>.

b. The Administrative Director shall maintain a list of qualified interpreters for the purposes of medical treatment appointments. An interpreter who meets the qualifications of section 9795.1

(b) must apply to the Administrative Director to be included on the list through the year and must present evidence of the required documentation. The list shall be reviewed and revised on a **yearly monthly** basis, and shall be made available on the website www.dir.ca.gov or upon request.

It is necessary to review and revise the Administrative Director's list monthly. Yearly revisions of the list are not frequent enough as this would result in new applicants waiting up to a year to be added to the list.

NOTE: Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35 and **68562 68566**, Government Code.

Thank you for considering our testimony. Please contact me if further clarification is needed.

Sincerely,

Brenda Ramirez
Claims and Medical Director

BR/pm

cc: Christine Baker, Department of Industrial Relations Director
Destie Overpeck, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members
CWCI Return to Work Group