

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

FINAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Interpreter Services**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9795.1, 9795.1.5, 9795.1.6, 9795.3 and 9795.5**

The Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code Sections 133, 5307.3, 5710 and 5811 has amended or adopted the following regulations:

Amend section 9795.1	Definitions
Adopt section 9795.1.5	Interpreters for hearings, depositions or arbitrations
Adopt section 9795.1.6	Interpreters for medical treatment appointments or medical legal exams
Amend section 9795.3	Fees for Interpreter Services
Adopt section 9795.5	Interpreter Directories

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code section 11346.9(d), the Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. There have been no changes to the statutes directly relating to this rulemaking.

The proposed regulation changes are summarized below.

Section 9795.1 Definitions

Subdivision (a) "certified" was deleted, as new sections 9795.1.5 and 9795.1.6 explain what "certified" means with regard to interpreters for hearings, depositions or arbitrations and interpreters for medical treatment appointments or medical legal exams.

The remaining subdivisions are re-lettered.

Former subdivision (b), new subdivision (a) is the definition of "claims administrator." It was amended to add the phrase "the person or entity responsible for the payment of compensation for any of the following:" and the following entities were added: "the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) or for the Subsequent Injuries Benefits Trust

Fund (SIBTF), the Self-Insurers' Security Fund, or the California Insurance Guarantee Association (CIGA).” This was necessary because these entities are responsible for paying the interpreters.

Subdivision (e) “provisionally certified” was deleted as new sections 9795.1.5 and 9795.1.6 explain what “provisionally certified” means with regard to interpreters for hearings, depositions or arbitrations and interpreters for medical treatment appointments or medical legal exams.

Subdivision (f) “qualified interpreter for purposes of medical treatment appointments” was deleted as new section 9795.1.6 defines how to qualify to be paid for medical treatment appointments or medical legal exams.

Former subdivision (f) “Qualified interpreter” was deleted as sections 9795.1.5 and 9795.1.6 define how to qualify to be paid for interpreter services.

Section 9795.1.5 Interpreters for hearings, depositions or arbitrations

This section was added and provides that to qualify to be paid for interpreter services at a hearing, deposition or arbitration, the interpreter shall be (1) certified, which means listed on the State Personnel Board webpage at <http://jobs.spb.ca.gov/InterpreterListing/> or the California Courts webpage at <http://courts.ca.gov/programs-interpreters.htm>; or (2) provisionally certified, which means deemed qualified to perform interpreter services when a certified interpreter cannot be present, either: (A) by agreement of the parties, or (B) based on a finding by the workers' compensation administrative law judge conducting a hearing that the interpreter is qualified to interpret at the hearing, or by the arbitrator conducting the arbitration that the interpreter is qualified to interpret at the arbitration. The finding of the judge or arbitrator and the basis for the finding shall be set forth in the record of proceedings.

This section is necessary to define a certified interpreter and a provisionally certified interpreter for hearings, depositions or arbitrations. Government Code section 11435.55 specifies that the hearing agency may “provisionally qualify” another interpreter when a certified interpreter cannot be present.

Section 9795.1.6 Interpreters for medical treatment appointments or medical legal exams

This section was added and provides that:

“(a) To qualify to be paid for interpreter services at a medical treatment appointment or medical legal exam, the interpreter shall be certified, certified for medical treatment appointments or medical legal exams, or provisionally certified.

(1) Certified means listed on the State Personnel Board webpage at <http://jobs.spb.ca.gov/InterpreterListing/> or the California Courts webpage at <http://courts.ca.gov/programs-interpreters.htm>; or

(2) Certified for medical treatment appointments or medical legal exams, which means either

(A) passing the Certification Commission for Healthcare Interpreters (CCHI) exam evidenced by a CCHI certification/credential indicating that the interpreter passed the exam and specifying the language, if indicated. The certification procedure is set forth on the CCHI webpage at <http://www.healthcareinterpretercertification.org/>. The CCHI certification/credentials are valid for four years from the date when CCHI granted/issued the credential. Individuals who are granted a CCHI certification or credential must comply with the CCHI requirements to be recertified within this four year period to maintain their certification/credential. Questions about an application may be sent by email to apply@healthcareinterpretercertification.org or to CCHI, 1725 I Street NW, Suite 300, Washington, DC, 20006 (866-969-6656); or

(B) passing the National Board of Certification for Medical Interpreters (National Board) exams evidenced by a National Board credential indicating that the interpreter passed the exams and specifying the language. The certification procedure is set forth on the National Board webpage at <http://www.certifiedmedicalinterpreters.org/>. The National Board certification is valid for five years from the date when National Board granted/issued the certification. Individuals who are granted a National Board certification must comply with the National Board requirements to be recertified within this five year period to maintain their certification. Questions about an application may be sent by email to info@certifiedmedicalinterpreters.org or to National Board, P.O. Box 300, Stow, MA 01775 (1-765-633-2378); or

(3) Provisionally certified as an interpreter for purposes of medical treatment appointments or medical legal exams (A) if the claims administrator has given prior written consent to the interpreter who provides the services, or (B) the injured worker requires interpreter services in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese, in which case the physician may use a provisionally certified interpreter if that fact is noted in the record of the medical evaluation.”

This section is necessary to define a certified interpreter and a provisionally certified interpreter for purposes of medical treatment appointments or medical legal exams. As of 2009, all interpreters who provide service to limited-English-speaking enrollees and beneficiaries covered by commercial plans and insurance in California must get trained in "interpreting ethics, conduct, and confidentiality" as set out "in the standards promulgated by the California Healthcare Interpreting Association." The California Healthcare Interpreting Association (CHIA), which has developed healthcare

interpreting standards, are pushing for the adoption of a set of qualifications for healthcare interpreters in California. In February 2013, CCHI posted this statement:

“The California Healthcare Interpreting Association’s [CHIA] mission includes promoting the healthcare interpreter profession and providing education and training to healthcare professionals.

Therefore, CHIA recognizes that two national organizations – the National Board of Certification for Medical Interpreters and the Certification Commission for Healthcare Interpreters – are offering interpreters’ certification with the goal of measuring and demonstrating minimum competency in healthcare interpreting. We recognize too that our members can choose to seek either or both of these certifications as a means to further their professional prospects.”

Both CCHI and the National Board have 501c3 public charity status.

Regarding the CCHI credential/certification, as set forth on the CCHI webpage, for Spanish, Arabic, and Mandarin, the interpreter must pass both the AHI and CHI exams to be certified. AHI exam tests the knowledge needed to be an effective healthcare interpreter but the examination is non-language specific (because oral exams for other languages has not yet been developed by CCHI) and thus does not test language proficiency or interpreting skills and abilities. Before being eligible to take the AHI exam, an interpreter must meet eligibility requirements including education, academic or non-academic healthcare training and linguistic proficiency in English and the target language. Therefore, it is appropriate the CHI certification is required for the languages that have the oral test and the AHI credential is appropriate for interpreters for languages for which an oral exam has not yet been developed.

Section 9795.3 Fees for Interpreter Services

Subdivision (a) was revised to state: “Fees for services performed by a certified or provisionally certified interpreter, upon request of an employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:”

This revision was necessary to be consistent with the new definitions in sections 9795.1.5 and 9795.1.6.

Subdivision (a)(1) was changed from plural to singular for syntax: “A medical treatment appointment;”

Subdivision (b) was revised by deleting “qualified or” and adding “or provisionally certified” to be consistent with the new definitions in sections 9795.1.5 and 9795.1.6

A new subdivision (f) was added to state: “It is the responsibility of the party producing a

witness requiring an interpreter to arrange for the presence of the interpreter.” This is necessary to help prevent disputes regarding which party has the responsibility to hire the interpreter and to be in compliance with Labor Code section 5811(b)(1).

Section 9795.5 Interpreter Directories

Subdivision (a) was revised to state: “Interpreters certified in accordance with sections 9795.1.5 (a)(1) and 9795.1.6 (a)(1) are listed at the following websites: <http://jobs.spb.ca.gov/InterpreterListing/> and <http://www.courts.ca.gov/programs-interpreters.htm>.”

Subdivision (b) was revised to state: “Certified interpreters for the purposes of medical treatment appointments and medical legal exams who meet the qualifications of section 9795.1.6(a)(2) are listed in the registry for Certification Commission for Healthcare Interpreters (CCHI) or National Board of Certification for Medical Interpreters (National Board) at the following websites: <https://cchi.learningbuilder.com/Account/Login?ReturnUrl=%2f> or <http://www.certifiedmedicalinterpreters.org/registry>.”

Subdivision (c) is added to state: “Proof of certification may be requested by the claims administrator and shall be provided by the certified interpreter for the purposes of medical treatment appointments and medical legal exams if the interpreter is not listed on the CCHI or National Board website directory.”

This section is necessary to inform the public where certified interpreters will be listed. The public may search the registries to confirm that an interpreter is certified. Referring the public directly to the certifying entities registries will ensure the most up-to-date and correct information regarding the interpreters’ certification status. Subdivision (c) is necessary because employers are not required to pay for interpreter services if an interpreter is not certified or provisionally certified.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for Emergency Regulations:

The proposed text was indicated by Times New Roman font, underlining, thus: added language. Deletions were indicated by Times New Roman font, strikeout, thus: ~~deleted language~~.

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by Times New Roman font, double underlining, thus: added language. Deletions were indicated by Times New Roman font, double strikeout, thus: ~~~~deleted language~~~~.

Proposed Text Noticed for 1st 15-Day Comment Period on Modified Text:

The proposed text was indicated by Times New Roman font, double wavy underline and bold italic font, thus: *added language*. Deletions are indicated by Times New Roman font bold italic double strikeout, thus: ~~*deleted language*~~.

Proposed Text Noticed for 2nd 15-Day Comment Period on Modified Text:

The proposed text was indicated by Arial font, double wavy underline and bold italic, thus: *added language*. Deletions are indicated by Arial font, bold italic double strikeout, thus: ~~*deleted language*~~.

The following non-substantive changes were made after the 2nd 15 day comment period:

The changes are indicated by Black Arial font, thus: added language. Deletions are indicated by Black Arial font, strikeout, thus: ~~deleted language~~.

Section 9795.1.5 Interpreters for hearings, depositions or arbitrations

Subdivision (a)(1): corrected the website typographical error from “sbp” to “spb.”

Section 9795.1.6 Interpreters for medical treatment appointments or medical legal exams

Subdivision (a)(1): corrected the website typographical error from “sbp” to “spb.”

Subdivision (a)(2)(A): added “if indicated” as clarification because only the certifications for Spanish, Arabic and Mandarin note the interpreter’s credentialed language.

Subdivision (a)(2)(B): added an “s” after exam where it appears two times in the first sentence.

Subdivision (a)(3): corrected the syntax in the last phrase to: “...in which case the physician may use a provisionally certified interpreter if that fact is noted in the record of the medical evaluation.”

Section 9795.3

Subdivision (b)(1): Added an “s” to appeals board.

UPDATE OF MATERIAL RELIED UPON / DOCUMENTS ADDED TO RULEMAKING FILE

In addition to the documents identified in the Initial Statement of Reasons the following documents were relied upon by the Division and were made available to the public as required by Government Code Section 11347.1.

Title of Document Added to Rulemaking File	Dates of Availability for Public Comment
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<ul style="list-style-type: none"> • California Workers' Compensation Interpreters Association March 18, 2013 letter with attachments: <ul style="list-style-type: none"> ○ California State Personnel Board's Bilingual Services program General Information dated 5/2/05 ○ California State Personnel Board's Bilingual Services Program Report from the Personnel Resources & Innovations Division date April 2001 ○ SPB Advisory Panel Member Agencies and Accompanying Interpreter Training Schools/Programs dated 4/2/2004 ○ SPB Bilingual Services Programs dated 4/2/2004 ○ Departments with Delegated Authority to Administer Bilingual Oral Fluency Exams (list) ○ California State Personnel Board Recommendations and Resources for the Translation of Written Documents dated April 2003 ○ National Council on Interpreting in Health Care, National Standards of Practice dated September 2005 ○ International Medical Interpreters Association, Medical Interpreting Standards of Practice dated October 1995 ○ California Healthcare Interpreters Association (CHIA), California Standards for Healthcare Interpreters dated 2002 ○ Statistics for Certified Medical Spanish Interpreters in California updated 3/12/13 ○ Master Listing of State Certified Administrative Interpreters 2013, 	<p>First 15 day comment period May 21, 2013 – June 5, 2013</p>
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<p>updated 3/2013</p> <ul style="list-style-type: none"> ○ Master Listing of the State of California Court Certified Interpreters 2013, updated 3/12/13 • CalHR – Bilingual Services Program dated 10/8/12 • Dept. of Managed Healthcare, Second Biennial Report to the Legislature on Language Assistance dated July 1, 2011 • Certification Commission for Healthcare Interpreters (CCHI) Credentials & Eligibility dated 2011 • CCHI Certification and “About Us” dated 10/8/12 • CCHI “A Three-Year Journey to Credentialing Excellence” dated 2012 • International Medical Interpreters Association, Medical Interpreting Standards of Practice dated 2007 • Health Workforce Initiative, Medical/Healthcare Interpreters in California, dated March 2012 	
<ul style="list-style-type: none"> • Printouts of emails and written comments from various interested parties concerning the Division’s proposed changes have been added to the rulemaking file. • Certification Commission for Healthcare Interpreters (CCHI), Candidate’s Examination Handbook, updated October 2011 • CCHI “Maintaining CCHI Credentials and Certification,” dated 5/29/2013 • The National Board of Certification for Medical Interpreters (National Board), “Prerequisites,” dated 5/29/13 • National Board, “Candidate Test Preparation Document for the Oral Exam,” downloaded from webpage 5/29/13 • National Board “Certified Medical Interpreter – 	<p>2nd 15 comment period May 30, 2013 – June 14, 2013</p>

<p style="text-align: center;">Candidate Handbook 2011-2012”</p> <ul style="list-style-type: none"> • National Board, “Recertify,” dated 5/29/13 	
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LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Acting Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations:

Feb. 1, 2013 through March 19, 2013.

First 15-day comment period on modifications to proposed text:

May 21, 2013 – June 5, 2013

Second 15-day comment period on modifications to proposed text:
May 30, 2013 – June 14, 2013