

DWC Forum – Interpreter Fee Schedule Comments

California Workers' Compensation Interpreters Association
Issues, Plans & Objectives Committee

May 18, 2015

We have carefully read the April 27, 2015 proposed Interpreter Fee Schedule. Please consider the following topics and discussion.

Certification: The draft proposal fails to include **California State Certified Medical Interpreters** as providers. There are 269 medical interpreters listed on the State Personnel Board/CalHR Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing>)

The proposal is contrary to discussions with the DIR during the drafting of SB 863. We advocated that the DIR not only uphold medical certification, but to also reinstate it. As a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI) as testing bodies in order to bring more certified interpreters into the system.

Given the access to these testing bodies, the DIR should implement procedures to assure interpreter competence, and not create the proposed provisional certification. Given the lack of testing and training, provisionally certified interpreters likely will not meet the same level of competency and are not bound by the same ethical standards as certified interpreters thereby diminishing the quality of medical treatment and access to other benefits for the injured worker.

The proposal for creating provisionally certified interpreters does not assure competence. Claims administrators, lawyers, and doctors are not necessarily competent to assess another individual's interpreting skills. The proposal improperly imposes a burden on doctors, lawyers and hearing officers to "provisionally certify" interpreters. To assume that an individual, who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to "determine sufficient skills" of civil engineers or attorneys, just because they work with them.

The proposal creates an improper cost incentive for the claims administrator. Based on other information in the draft proposal, "provisionally certifying" an interpreter is likely to be a price-driven, and not a quality-driven, decision. When decisions are made this way, professional interpreters are driven out of the field causing further prejudice to the Limited English Proficient (LEP) injured worker.

The proposal fails to include procedural safeguards. There is no mechanism to ensure that the claims administrator (who has an inherent conflict of interest) will actually and in good faith call three certified interpreters prior to sending a "provisionally certified" interpreter. Do those three have to service the county in which the event will be taking place, or can they be located anywhere in the state of California? We believe that there must be a method to assure that the list of all certified interpreters is exhausted before claims can resort to a "provisional certified" interpreter.

The proposal encourages awarding interpreter services to out-of state-agencies, which provide

bundled services and drive down the amount the individual interpreter receives in compensation.

Further, we also object to the use of the word *certified* in conjunction with the term *provisionally*. It is a clear misrepresentation of fact intended to create a false veneer of legitimacy for someone who has met none of the requirements of a professional.

Instead, we recommend that the DIR look to the Certification Commission for Healthcare Interpreters (CCHI) Registry of Candidates¹ as a source of provisionally qualified interpreters. These individuals meet established prerequisites and CCHI has offered to make this registry available to the State of California to identify/verify the status of *provisionally qualified* interpreters and those on the path to certification.

The pre-requisites are:

- a) Provide proof of having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languagetesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.
- b) Provide proof of having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

This would ensure a minimum level of competency in order to assure the protection of the injured worker's civil rights.² It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the State of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>).

Finally, we categorically oppose the use of individuals other than certified or registered interpreters in any legal setting, because it would jeopardize the LEP injured worker's equal access to due process under the law.

Fee Schedule: The amounts proposed in the draft are not only well below current rates, but also fail to take into consideration the skills, education and level of expertise required by the interpreting profession. The proposed fee schedule also does not consider the amount of inflation since the fees were established twenty-one years ago,³ nor does it reflect the scarcity of interpreters when compared to other providers in the system. The fees appear to make no provision for Language Service Providers.

Further, the fees proposed in the draft fail to consider the actuarial data. We presented the *CWCIA Fee Schedule Proposal* in

¹ Refer to the attachment dated May 12, 2015 from CCHI to the CWCIA Board of Directors

² Refer to attachment *Provisionally Qualified Interpreter Recommendation*

³ Refer to attachment *Cost of Living Calculation*

Feb 2014, and while we insist that regulation is an abridgment of our economic liberty, we

stand by our recommendations. Most importantly, we believe that setting the fee for non accredited interpreters at 50% less than fees for certified interpreters, together with granting the power to approve usage of non-accredited interpreters with no oversight and allowing the claims administrators alone to schedule the interpreter, will result in unaccredited interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose purpose is to help the LEP injured worker gain equal access.

The DWC commissioned its own actuarial firm, the Berkeley Research Group (BRG), to recommend a fee schedule, which it did. However, the DWC ignored the recommendations of its chosen contractor and proposed a much lower remuneration amount without any credible authority, other than some other fee schedules that BRG determined to be inappropriate. This unethical conduct has garnered nearly 200 pages of outraged comments on the DWC Forum from not only worker's compensation interpreters but also other professional interpreter associations, such as NAJIT, AIJIC, CWA as well as national medical certifying entities. Advocates for injured workers, such as attorneys, physicians, Voters Injured at Work, CAAA, CSIMS, have also expressed their concerns and opposition to such arbitrary fees. Said fees are clearly discriminatory towards Spanish language interpreters because those fees considerably below those of other languages and have also generated much criticism. This fee proposal will jeopardize injured workers' access to quality interpretation and is counter to the Legislature's mandate in SB 863.

Further, CWCIA presented a Fee Schedule proposal in February of 2014, which closely resembles BRG's recommendations. Moreover, we vehemently oppose the imposition of a one-hour minimum, the requirement that physicians verify interpreter time spent and disagree with the abolition of travel time and mileage allowances.

Finally, the DIR should not rely on unsupported claims and opinions by non-interpreters. Accusations such as those by Hilary D. Saltzman and Guadalupe Barragan that interpreters line their pockets with cash by doing 5 to 15 hearings in a half-day show a total lack of understanding and are a misrepresentation of the profession. It is impossible, both physically and mentally, for a single interpreter to perform that many hearings. Language Service Providers (LSPs) may have several clients, requiring them to schedule several interpreters to service the hearings at a particular WCAB and each interpreter must be paid for the half-day commitment. These comments falsely assume that the carrier pays on time in full without requiring significant administrative time to follow up by telephone, by letter and by additional litigation. Interpreters do not receive a "financial windfall".

In addition, doctors and attorneys are not limited to the number of clients they service in a given time frame and they bill for the work their associates perform. Auto mechanics also have minimum fees and service several autos at the same time.

There is no cap on the earnings that other workers' compensation provider businesses generate. Why should there be a cap imposed on interpreters' earnings? Wanting to relegate interpreters to wage earners, instead of considering them as professionals and business owners, is discriminatory and out of touch with the nature of the work, but also reflects a complete disregard for the expertise and effort put into becoming an accredited professional. The WCAB relies on professional certified interpreters to facilitate the business of the court.

Travel time and mileage allowance: The proposal does not compensate for mileage and

travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters who will accept assignments in many geographical areas of the state. Many injured workers live in rural areas, which requires travel by urban based interpreters in order to provide services, often involving distances of well over 30 miles one way. The interpreters bear the burden of travel that no other professional service providers share. Therefore interpreters must be allowed compensation for travel time and mileage after 10 miles. Attorneys are allowed to charge their clients (insurance companies) travel time and so should interpreters. Parking fees and toll road expenses should also be reimbursable.

Interpreters as lien claimants. Classifying interpreters as lien claimants creates litigation and adds to the costs of doing business and administering the claim and unnecessarily burdens the WCAB. This was BRG's recommendation as well. The DIR should require timely payment for all interpreter services without having reimbursement hinge on the compensability of the case, i.e. MPN status, post-termination claims, whether injury is found etc. Otherwise, the DIR will find itself with an exodus of interpreters, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that provides all workers entering the Workers' Compensation system equal access to benefits.

Interpreter control: The existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies. We believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. This provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion.

Further, the interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified *individuals* to provide services, while certified **interpreters** are sent home. Or, interpreter services are objected to on the grounds that the interpreter is not part of their "preferred network" or "MPN." The carrier frequently fails to send someone to interpret for the injured worker, leaving the task to the local LSPs, who then provide services to assist doctor and patient. Then, the insurance company denies payment for legitimate requested and completed language services that was necessitated by their own failure to arrange said service as would be their obligation under the proposed MPN structure. This non-payment then triggers a vicious cycle of non-reimbursement for services rendered, which culminate in the litigious lien process, which costs the state and the interpreter dollars and ultimately the LEP proper assistance. Or more common still, the carrier's preferred provider will send an unqualified "interpreter" instead of a certified interpreter.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863. Thank you. Respectfully submitted.

[Enclosures:](#)

CWCIA's Recommendation on Defining Provisionally Qualified Interpreters dated 5/16/15 [attachment 1]

CCHI's Certification Process and National Registry of Certified Interpreters letter dated 5/12/15 to CWCIA's board of directors [attachment 2]

CCHI's comment addressed to the DIR dated 5/14/15, "Fees and Requirements for Interpreter Services" [attachment 3]

San Francisco Chronicle article dated 4/26/15, titled "Medical interpreters in short supply as health coverage grows" [attachment 4] CWCIA's "Comments Regarding the DWC's Draft Interpreter Fee Schedule Regulations" dated 5/16/15 –**this document**–[attachment 5]

CWCIA's Cost of Living Calculation dated 5/3/15 [attachment 6]

CWCIA's Revisions to the DWC's Draft Interpreter Fee Schedule Regulations [attachment 7]

Stacy L. Jones, Senior Research Associate
California Workers' Compensation Institute

May 18, 2014

These forum comments on draft regulations regarding Interpreter service fees are presented on behalf of the members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 74% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Allianz Global Corporate & Specialty, Alaska National Insurance Company, AmTrust North America, Chubb Group, 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 are Adventist Health, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County 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 draft Copy Service Fee Schedule regulations are indicated by highlighted **underline** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§9932. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Medical Treatment Appointments and Medical-Legal Exams.

Recommendation

(a) For interpreters in one of the languages designated pursuant to Government Code section 11435.40, including, but not limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, or Vietnamese, all of the following conditions must be met:

(1) A certified interpreter for medical treatment appointments or medical-legal exams cannot be present, as set forth in subsection (c), to provide services in a language that has been designated pursuant to Government Code section 11435.40; and

(2) The physician determines the interpreter present has sufficient skill to be provisionally qualified to interpret in the required language and notes in the record of the medical evaluation or treatment that a provisionally qualified interpreter is being used **as well as the criteria used to determine qualifications**; and

Discussion

The Institute recommends adding “as well as the criteria used to determine qualifications” in order to require documentation of the criteria used to determine that an interpreter deemed to be provisionally qualified meets a sufficient skill level. This would ensure that minimal standards are met to assist the injured employee who is not proficient in a language shared with the evaluating/treating physician.

§9933. Requirements and Restrictions On Performing Interpreter Services As a Non-certified or Non-Provisionally Certified Interpreter for Medical Treatment Appointments.

Recommendation

~~§9933. Requirements and Restrictions On Performing Interpreter Services As a Non-certified or Non-Provisionally Certified Interpreter for Medical Treatment Appointments.~~

~~(a) A non-certified or non-provisionally certified interpreter for medical treatment appointments shall only be used for medical treatment appointments in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40.~~

~~(b) All of the following are required in order for an individual to perform services as a non-certified or non-provisionally certified interpreter for medical treatment appointments:~~

~~(1) The injured worker needs interpreter services in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40; and~~

~~(2) The physician determines the interpreter present has sufficient skill to interpret in the required language, and notes in the record of the medical evaluation or treatment that a non-certified or non-provisionally certified interpreter for medical treatment appointments is being used.~~

Discussion

*The Institute recommends striking the language in §9933 as it creates confusion. The language in Government Code §11435.40 states the following: “**The languages designated shall include, but not be limited to, [emphasis added] Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages**”. Since the list of languages is not limited to those named, any language could be included in the list. The requirement defined under §9933 appears to create an arbitrary distinction between languages that would require “provisional certification” and those that would require “non-provisional certification”.*

§ 9934. Events Qualifying for Interpreter Services.

Recommendation

(7) During those settings which the Administrative Director determines are reasonably necessary to ascertain the validity or extent of injury or issues related to entitlement to benefits. **Interpretation services required for translation of settlement documents shall necessitate the presence of applicant’s attorney to provide adequate answers to any questions that the injured worker may have.**

Discussion

The Institute recommends adding language to ensure that services provided by paralegals are not incorrectly billed as interpretation services. The role of the interpreter is to facilitate communication between individuals who do not share a common language. The interpreter’s role does not include the provision of legal advice or legal explanations.

§9936. Notice of Right to Interpreter.

Recommendation

(a) The notice of hearing, deposition, medical-legal exam, or other setting shall include a statement explaining the right to have a qualified interpreter present if the injured worker does not proficiently speak or understand the English language **and the medical provider is not proficient in the injured workers’ native language.** Where a party is designated to serve a notice, it shall be the responsibility of that party to include this statement in the notice.

Discussion

The Institute recommends adding text that addresses situations where the medical provider and the injured worker are both proficient in a shared language. There is no need to engage the services of an interpreter when both the injured worker and the medical service provider are able to communicate directly in a language other than English.

§9937. Fee Schedule for Interpreters at Hearings and Depositions.

Recommendation

(g) 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 payment overlap.

(h) Interpreter billings shall include the following statement: “I have not violated Labor Code Sections 139.2 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.

Discussion

The Institute recommends adding language to address situations where services are provided to multiple claimants during the same time interval. Maximum fees are based on defined blocks of time (full-day, half-day, etc.) and an interpreter may be providing services to more than one injured worker during the same block of time.

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.

§9938. Fee Schedule for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Recommendation

(b)The fees set forth in this section shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter have been documented and submitted to the claims administrator and the claims administrator has consented to the use of the provisionally certified interpreter 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.

Discussion

The Institute recommends revised language to ensure that the claims administrator has the opportunity to consent to the use of a provisionally certified interpreter. The proposed regulatory language could be construed to mean that the first notification of use of a provisionally certified interpreter could be at the time of billing for the services. This may place the interpreter in the position of providing a service for which the claims administrator did not provide consent, as required under §9932, leading to payment disputes.

Recommendation

~~(d) A non-certified or non-provisionally certified interpreter for medical treatment appointments, who meets all the terms and conditions set forth in sections 9930(i) and 9933, who provides interpreter services in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40, shall be paid an hourly rate of \$33.25 per hour.~~

Discussion

The Institute recommends striking the language in §9938(d) based on the same rationale offered in our discussion related to the recommendation for deletion of the language in §9933. If the language is not stricken then a subsection needs to be added with the requirements defined under §9938(b) so that they apply to non-certified or non-provisionally certified interpreter services.

§9939. Minimum Time Period Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Recommendation

~~(d) A non-certified or non-provisionally certified interpreter for medical treatment appointments shall only be paid the hourly fee set forth in section 9938(d), and is not entitled to any minimum time period fee.~~

Discussion

The Institute recommends striking the language in §9939(d) based on the same rationale offered in our discussion related to the recommendation for deletion of the language in §9933. If a distinction is not needed for interpreters providing services in languages other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese then there would be no need to define separate payment rules.

§9940. Cancellations and Cancellation Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Recommendation

(a) For ~~interpreters, other than non-certified or non-provisionally certified~~ **or provisionally certified interpreters** for medical treatment appointments, the following cancellation fees shall apply:

Discussion

The Institute recommends revising the language in order to provide greater clarity. The proposed regulatory language introduces confusion by suggesting that a third category of interpreter service may require reimbursement for late notification of cancellation.

§9942. Billing Codes.

Recommendation

The following chart sets forth the billing codes that shall be used to bill for interpreter services.

MTI 5	Interpretation at a medical treatment appointment by a non-certified, non-provisionally certified interpreter for medical treatment appointments and medical legal exams.	Languages other than those in Gov. Code section 11435.40
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Discussion

*The Institute recommends striking the language defining service code “MTI 5”. Government Code §11435.40 does not provide an all-inclusive list of languages and disputes may arise based on the non-limiting language of §11435.40: “**The languages designated shall include, but not be limited to, [emphasis added] Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean,***

Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages”.

Ivania Alberto
Certified Court Interpreter

May 18, 2014

I am a Certified Court Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. In order to understand the disaster that looms ahead, I urge you to please take just a moment to put yourself in the position of the Limited English Proficient (LEP) person. Let us just say you are on vacation abroad and become terribly ill. You are not 100% fluent in the language. In whose hands would you choose to place your trust? An interpreter with proper credentials or a person off the street? Worse yet have someone else choose the cheapest option for you.

How about management informing you that you can no longer take breaks nor lunch for the sake of productivity. Your 401K and health insurance will be done away with and to add insult to injury your salary will be cut in half. ALL for the sake of saving some filthy rich magnate some money because he does not think you are really entitled to have those benefits and he believes some guy off the street can do your job even though your degree(s) that qualify you for the job speak volumes. Would you continue working there if there were other entities willing to value your qualifications? I believe the answer is obvious. This is exactly the situation certified court/medical interpreters are being subjected to by the insurance company's proposals. Please take this into consideration and do not side with the insurance companies.

I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter eat a meal and arrive on time to the afternoon deposition and to work at the optimum level. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB because the the judge will usually take breaks in between allowing the interpreter to rest his/her mind from the mentally taxing task of Interpereting which is not the same as having a conversation since the interpreter has to go beyond speaking. Listening to the source language, interpreting to the target language while retaining what had been said moments prior and making sure to keep the same register and switching and making grammatical sense in both languages meanwhile conveying the same idea into the target language including the language nuances of the cross
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction in pay less for Spanish interpreters than other language interpreters is just outright discriminatory.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time when they are biased party to the insurance

company and are under the instructions to deny everything anyways? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?

- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other language interpreters.

- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.

- The exclusion of mileage and travel time compensation. We live in California with some of the worst traffic conditions in the nation! It is mind-boggling in trying to understand why these necessary elements are being eliminated. Only one thing comes to mind, insurance company wants more and more money in their fat pockets. What are the reasonable factors that were taken in consideration for this change? Are they building more highways and streets or something?

- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.

- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. NO interpreter will accept only a “one hour guarantee” assignment and be expected to be there longer than the time booked provoking lost appointments. The insurance company will be spending more money to have their adjusters booking these appointments over and over or having pseudo interpreters giving the applicant attorneys reasons for appeal. More delays more money bleeding out.

- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible to do so. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Anahita Ghafourpour
Courter Certified Spanish/English Interpreter

May 18, 2014

As an independent California Court Certified Interpreter and member of the Association of Independent Judicial Interpreters of California (AIJIC), I would like to express my opinion in opposition to the proposed fee schedule.

The lower proposed rate for Spanish/English interpreters compared to interpreters of other languages is absurd and discriminatory.

Why is government setting a limit on how much independent interpreters can earn? These extremely low rates do not take into account inflation nor the high cost of living in the San Francisco Bay Area and would position interpreters at an extreme disadvantage, making interpreting an undesirable and less attractive career.

Maria Palacio

May 18, 2014

I am a state-certified interpreter in the state of California and have been for the past 22 years.

The following is in response to the interpreter regulations and fee schedule proposal. The proposal clearly gives the insurance companies a blanket license to use non-certified interpreters. This would clearly be a detriment in that it would deprive injured workers due process by denying them the right to have a skilled interpreter and it would displace certified professionals who have had to go through a rigorous certification process. The following points specifically address the inherent weaknesses of the proposal:

1. There is a double standard when it comes to certification. Certification is emphasized and mentioned throughout the Labor Code and proposed text but the requirement applies to independent contractors, not to the insurance companies and the agencies that they use which are well known throughout California. Many of those agencies already have "rate negotiator representatives" whose job is to contact their vendors and recommend that they take a 50% reduction in pay because according to them, many areas are "saturated" with interpreters who are willing to work for much less. This would clearly result in a massive displacement of professional interpreters who have had to study and pass rigorous certification exams in order to get certified. This would give the insurance company the ability to hire not-qualified interpreters; this will surely deny the injured workers' due process. (By "not-qualified" I refer to the following: "Just because I have ten fingers does not mean I can play concert piano.")

2. The proposed regulations give adjusters whose job is to cut costs for the insurance companies the ability to use non-certified interpreters through the following two loopholes:

- a) Section 9931(C) states that adjusters only have to contact three certified interpreters before they can claim that no certified interpreters are available. Does this mean that an adjuster can call a certified interpreter in Los Angeles to cover a job in Palm Springs (100 miles / 2 hours drive time)? The rate of pay for interpreters would clearly make it cost prohibitive for any interpreter to travel a long distance to cover an interpreting assignment. There is no language that defines the parameters within which an adjuster can look for a certified interpreter. There is also no mention as to who will monitor and complied with. Just as important, how will it be enforced? Is there a budget for hiring someone to enforce this? If an interpreter is on an assignment and can't answer a call from an adjuster, does this qualify that interpreter as unavailable?

- b) Section 9932(a)(3) gives the adjuster the authority to send non-certified interpreters as long

as THEY, the adjusters, authorize it. I have been at several medical appointments where the appointment has been double-booked in error. The doctor calls the adjuster and the adjuster states that they authorize only "their" interpreter (their interpreter is non-certified) to stay, not me, because since they are the paying party, they get to choose, even if their interpreter is non-certified. Believe me, the doctor goes along with what the adjuster states. This is for AMEs, QMEs, more. Allowing adjusters to authorize interpreters to cover a job for what is clearly only for monetary reasons is a tactic which blatantly denies the injured worker due process and is non-compliance with California Labor Code..

3. Section 9935(a) strips the Applicant Attorneys of their right to choose their interpreter for depositions, med-legal appointments and treatment. Who will be able to choose interpreters for WCAB hearings is unclear but is definitely skewed in favor of the adjuster. Is it fair to let the adjusters who are clearly not interested in anything but saving money by using companies that bundle their services (to the insurance companies), choose who will interpret at hearings where the injured worker will be making life-changing decisions? More than once I have appeared at a WCAB hearing where the carrier has sent a non-certified interpreter to interpret. Should an adjuster be allowed to choose the cheapest and thus least qualified interpreter possible for a med-legal appointment where something as significant as the value of an injured worker's case is being determined? (Again... just because I have ten fingers, does that qualify me to play concert piano?)

The most egregious aspect of this proposal is that it clearly denies the injured worker due process. This is just one more attempt at drafting laws whose agenda is to save money for the insurance companies at the cost of the almost completely powerless injured worker. Will the many certified interpreters who will most likely be forced to leave their profession if the new regulations are passed become another burden on the state? This proposal does not represent the spirit of our great nation as so beautifully stated by my colleague; she quoted John D. Rockefeller: "I believe that the law was made for man and not man for the law; that government is the servant of the people and not their master. I believe in the dignity of labor, whether with head or with hand, that the world owes no man a living but it owes every man an opportunity to make a living."

Lastly, in reference to an earlier comment I read at this forum written 4/28/15, in the twenty-two years I have served as interpreter at all the WCABs in the greater Los Angeles area, I have never, ever seen an interpreter appear "...on 30 cases per day, 15 in the morning and 15 in the afternoon...". This is an untruth.

Roman Garcia
G&A Interpreters and Translators, Inc.

May 18, 2014

I am a state certified interpreter and I strongly disagree with several points of this draft. The most important are the following:

1- I firmly oppose section 9931 which authorizes adjusters, physicians, hearing officers and/or by agreement of the parties to provisionally certify an individual after only three unsuccessful attempts to find an available certified interpreter. I also strongly disagree with section 9932(a)(3) which gives adjusters the authority to choose non-certified interpreters just because they

authorize it. NO non-certified interpreter should be used at any point for any reason. There are plenty of certified interpreters in our State (more than a thousand) to reduce the search to only three attempts. Also, certified interpreters go through rigorous training, grueling exams and continuing education programs to be able to maintain our certification and improve our skills. How can a person such a judge, attorney, doctor (or much less an adjuster) who doesn't speak the foreign language be qualified to qualify anybody to interpret. There are State and National associations that exist for that purpose. Not only will this end the quality standards and completely undermine the interpreting profession but, most important, this measure will be a disservice to the injured worker who completely depends on competent interpreters to convey his concerns, testimony, symptoms and so much more. Many injured workers have already been abused by their employers, suffered permanent disabilities (that may affect them for the rest of their lives in addition to limiting their earning capacity) and their benefits have been greatly reduced in the past, but now this measure will deprive them from real due process. What is left after that? And what about the legal consequences of having a less than adequate interpreter? The lawsuits, appeals, and legal actions that can and will occur just because this proposal seemed more "cost effective". It poses an eminent and serious threat to the injured worker's ability to be heard and for justice to be rendered.

Injured workers are entitled to be represented by a attorney licensed in California and treated by licensed physicians. By denying them from having a certified interpreter, their rights are being violated since their attorneys and physician's communication (and hence their professional services) will be compromised with the use of an unqualified interpreter. This makes no sense at all. They might as well represent (and treat) themselves.

2-Another important point is section 9935(a) which authorized adjusters to select interpreters for medical appointments. If the main goal of this system is to provide an even ground and protect the rights of injured workers, we need to maintain the neutrality of the interpretation. Claim administrators who represent the insurance companies cannot choose no-certified interpreters for these settings. This measure is clearly a conflict of interest since adjusters' only goal is to reduce costs. The attorneys who represent the injured workers should select certified interpreters for depositions, hearings and all medical appointments to guarantee the quality and accuracy of the interpretation. The value of the case, the kind of treatment provided, the applicant's decisions, health and life are on the line. I agree that some guidelines are important to improve the efficiency of the billing process and to streamline costs and valuable time spent at the WCAB but this shall never be done at the expense of the injured worker. We need to keep a few safeguards to protect their rights.

3- My final point is related to the suggested fees throughout this proposal as outlined in sections 9937 and 9938. Most interpreters do not act as agencies, in other words our job is to interpret and translate. We don't receive appointments, coordinate, schedule, confirm, bill, collect, follow up, file liens and/or petitions, research labor codes for billing and responding to the denials of payments, or show up to lien conferences and trials. We simply can't do it all. Agencies have a very important role in this industry, they provide a valuable service and must be taken into consideration when fees are discussed. The reality is that the rates as they are delineated in this proposal are not sufficient to compensate interpreters and agencies, specially medical and deposition fees.

4. I oppose to sections 9939 Fee schedule for Interpreters Medical Treatment Appointments and Medical Legal Exams. There is no legal protection for interpreters, you have taken away the two

hour minimum requirement. Also you have done away with other rights interpreters had, like driving time or mileage.

Please inform me about what will the penalties be against the insurance company for not paying the interpreters in a timely fashion and what is the time frame to pay interpreters. It seems to me that the indentation of this law is to give the insurance company complete control of our profession and that is not acceptable.

The state legislators need to think very seriously about this reform and act accordingly to what is best for the people they have sworn to protect. The injured workers are the constituents, not the insurance companies.

Robert A. Duran

May 18, 2014

Draconian! The DIR/DWC has decided to take a giant step backwards with it's proposed solution to the issue regarding a fee schedule for interpreters and interpreters overall.

They commissioned the Berkeley Research Group (BRG) to conduct a survey and analysis of what interpreters are currently charging statewide. BRG issued it's final report in December of 2014. Apparently the DIR/DWC did not like the results so they decided to come up with their own fee schedule. Mind you that the numbers they came up with are close to 35% of what the BRG recommended. One has to wonder how much the study cost the taxpayers of California.

The solution you are proposing is to basically do away with certified interpreters and replace them with "provisionally certified" interpreters and giving the exclusive power to the carriers and their adjusters to determine the qualifications of this person. All they have to do, in a non-transparent way, is to apparently contact three certified interpreters and if none are available or not part of the carriers "provider network" (another topic subject to debate) then wha-la, they can deem an individual, without venting their qualifications, a provisionally certified interpreter. Many of these carriers have already contracted with several large (with a capital "L") Walmart style companies to BE the provider networks. These companies are closed shops and independent interpreters or LSP's need not apply. The vendor doesn't know or care who the interpreter is or what their qualifications are. All they need to do is supply a body. The adjuster is calling all the shots. If an interpreter, in the past, happened to be doing applicant work then forget about being part of the club.

The proposal that "lay" persons (doctors, lawyers, etc) are qualified to "provisionally certify" an person as an interpreter is demeaning to ALL interpreters. Just because I took a mail order course in German 20 years ago does not make me a German interpreter. Some individuals sent by the carriers to provide service are fluent in (if you want to call it a language) Spanglish (at best) but not Spanish. Leave the job of interpreting to the professionals who have dedicated many years of their lives attaining language degrees and continuing studies to hone their skills.

As for the proposed fee schedule: If interpreters were part of any of the large labor unions and organizations (some of which form part of the CSWIC Board) do you honestly think that they would stand by and condone their membership going 21 years without a raise. And then, when one is proposed it doesn't represent anything near the adjustments in the cost of living as mandated by the US Government. The BRG recommended a lot more, closer to \$144.00 and

didn't say anything about paying Spanish speaking interpreters less because there are more of them. This is likened to the days of the Bracero Program of the 1940's and 1950's where the DIR/DWC is saying, "Be happy, you've got a job". Believe me, I know firsthand what it was like trying to survive on beans and tortillas when that was all our family could afford.

Interpreters should be paid for their services regardless of the outcome of the case. We are providing a service where all parties derive a benefit. We are an essential part of process. Is the court reporter or copy service subject to not getting paid because the party that called them to provide their services loses? Or better yet, the interpreter is forced to reduce their fees because the case may have settled with a low value Compromise and Release. How about a claim denied AOE/COE where the interpreter provided services at a WCAB hearing? Interpreters need to be recognized for being an intricate part of the Workers' Compensation System, not simply a nuisance.

In closing I ask that you seriously look at ALL the comments sent to you by the concerned parties and not impose this one-sided and biased proposal on the interpreting profession. Interpreters are not the problem and by offering such a demeaning and slap- in-the-face reimbursement rate is not conscionable. The DIR/DWC, instead working with the interpreting professionals are building roadblocks where the only beneficiaries are the carriers. Your mandate is to help the injured worker to get through the process and be able to return to work. The cost incurred by the insurance providers is not one of your mandates.

Caterina Cruz Bruzzone
California Certified Court Interpreter

May 18, 2014

I want to kindly direct your attention to some concerns regarding the Proposed Interpreter Services Requirements and Fees.

Please find below a list of concerns, and the reasoning behind my discrepancies with the proposed regulations:

1) § 9932 (c) "Cannot be present" as used in this section means that the party, claims administrator, or individual responsible for providing the interpreter service is unable to obtain the services of a certified interpreter for the particular event, after contacting at least three certified interpreters who are certified for the event in question, and in the language required.

Regarding the use of provisionally certified interpreters for medical and medical-legal appointments when a certified interpreter cannot be present:

I would suggest that the party, claims administrator, or individual responsible for providing the interpreter service contacts all certified interpreters before resorting to the use of a provisionally certified interpreter. The main concern here is the monitoring and enforcement of this new regulation of contacting "at least three" certified interpreters before resorting to the services of provisionally certified interpreters who, by all means, will represent huge savings on the part of the claims administrator. Besides, who is going to guarantee the standards of this "provisional" certification? There should be no use of services other than of certified interpreters for medical-legal, and legal assignments as it undermines the transparency and reliability of the services provided.

2) § 9930 (d) d) “Full-day” means services performed which exceed one-half day, up to 8 hours; and § 9937 (1) (1) Certified interpreters for hearings and depositions, who meet the terms and conditions of that definition, as set forth in section 9930(a), shall be paid the complete half-day rate as set forth in this section, for any portion of a half-day of interpreter services, as defined in section 9930(e), and the complete full-day rate for any portion of a full-day of interpreter services, as defined in section 9930(d).

Regarding the proposed full-day fee, and full-day definition as a period of 8 hours:

I would recommend this definition to be revised, considering that interpreter services at depositions are currently provided on a half-day basis of 3 hours, and a full-day basis of 6 hours, and is done so for a reason, which is that interpreting is a mental task that is affected by fatigue, and setting a full-day as 8 hours of non-stop interpreting on the part of the independent interpreter is counterproductive, and it also establishes a pay per hour at a lower amount than the fee to be paid of medical-legal services (\$48.50 per hour pay for a \$388 full-day fee for 8 hours of service versus \$52.50 proposed per hour fee for medical-legal services).

3) § 9930 (e) (2) (e) “Half-day” means:

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

Regarding the definition of a half-day for depositions:

It seems unfitting for interpreter services provided at depositions to be set for 3.5 hours, instead of 3 hours, since most independent interpreters cover morning and afternoon deposition assignments, and not all assignments are close in distance, therefore, the interpreter needs to allow enough time to get from one assignment location to the other. Furthermore, interpreters working independently must have even a 10 minute lunch break, which would be impossibility if the standard of 3.5 hours of service is set by these proposed regulations. Just to illustrate, services that are booked for 10:00 AM for 3.5 hours would mean that the interpreter would stay until 1:30 PM, if the next assignment starts at 2:00 PM, and the interpreter needs to drive or travel from one location to another, and arrive 15 minutes before the deposition starts, as it is customary among interpreters, then, not only this would make it almost impossible, but certainly, the interpreter would have absolutely no time left to have even a bathroom break. Therefore, establishing a half-day of 3.5 hours is unreasonable, and it would jeopardize the independent interpreter ability to make a living out of this profession.

4) § 9937 (A) and (B)

A) For Spanish language certified interpreter for hearings and depositions: \$210 for each half-day of service and \$388 for each full-day of service.

(B) For a certified interpreter for hearings and depositions in all languages other than Spanish: \$240 for each half-day of service, and \$418 for each full-day of service.

Regarding the difference on fees proposed for Spanish language services versus other languages: The main concern here is making a distinction based on the demand, and not based on certification or preparation. It is unnecessary, and unfair to base fees on the demand for such a service. Certified interpreters must submit to a rigorous preparation and examination process in order to become certified, regardless of the language.

5) There is no mention of Federally Certified Interpreters under the list of certified interpreters considered to cover hearings and depositions on § 9930 (a), or to cover Medical and Medical-legal Exams on § 9932. Federally Certified Interpreters meet the most rigorous standards in the

interpreting profession, and should not be ignored on the list of certified interpreters for hearings, depositions, or medical legal exams on § 9930 or § 9932.

6) There is no provision on either § 9937 or § 9938 for mileage reimbursement or travel expenses, which makes the proposed fees unfitting for the current cost of living. If we consider that those fees are the only fees the interpreter is to be paid for services, then it should be taken into account that the independent interpreter must cover all expenses related to services such as: transportation expenses, including gas, travel time, and parking costs, vehicle maintenance, auto insurance coverage, medical insurance coverage, continuing education expenses, just to name a few. The proposed fees are not keeping pace with inflation. Fees should be set more realistically, and tantamount to the interpreting profession.

Thanks for your attention to this letter, I hope these comments are considered when reviewing the proposed Requirements and Fees for Interpreter Services.

Ed Howard, Howard Advocacy
Association of Independent Judicial Interpreters of California

May 18, 2014

While the Workers' Compensation system exists to provide relief to injured workers in exchange for them giving up their right to sue for such injuries in court, court certified and registered interpreters are required to provide neutral services to all parties. However, the proposed fee schedule and proposed regulations would compromise that purpose while undermining the ability of injured workers to obtain appropriate compensation.

As discussed in detail below, the proposed regulations are in varying degrees possibly unconstitutional because they discriminate against Limited English Proficient workers (LEPs), particularly Latino workers, and they also discriminate against Spanish-language interpreters. Moreover, and contrary to legislative intent, these proposed regulations will result in a dramatic reduction in vital, competent and impartial interpreting services to LEP immigrant workers and their employers; appear to be arbitrary; and do not appear to be based on any first-hand appreciation of how much interpreters truly earn now, how much less they will earn after these regulations, and how what they earn varies throughout the State.

AIJIC appreciates the opportunity to comment informally on these regulations. Respectfully, the regulations should be substantially modified and further studied before they are released for formal public comment.¹

ABOUT AIJIC

AIJIC is a nonprofit trade association started by a group of certified court interpreters who saw the need to take action in order to protect the legal interpreting profession in the private sector, which has been steadily deteriorating in recent years. The following are some of AIJIC's main goals.

¹ AIJIC is to some degree hampered in its ability to comment thoroughly about the regulations by not being able to review the study of interpreter fees conducted by the DWC through an outside consulting firm. Request is hereby made under the California Public Records Act, Government Code §§ 6250 - 6276.48, for a copy of the study and any and all correspondence related to the study and the drafting of these proposed regulations.

- Educate the legal community and agencies about the current laws governing court interpreters, particularly sections 68560.5 and 68561 of the Government Code of California, which require certified court interpreters to be used for civil, criminal or juvenile proceedings, including depositions for civil cases.
- Encourage other interpreters to report use of non-certified interpreters hired for court proceedings and explore a way to take action by lobbying for the enforcement of Sections 68560.5 and 68561 of the Government Code.
- Educate new interpreters about matters related to the profession.
- Share information among interpreters about agencies.
- Represent the interests of independent court interpreters before the Judicial Council of California and in Sacramento in order to have a voice in matters that directly affect our profession.
- Provide an online directory of independent judicial interpreters who are members of the association.
- Eventually explore the possibility of establishing a licensing procedure as an essential step towards self-regulation for court interpreters.
- Help AIJIC members with collection issues.

QUALIFICATIONS OF COUNSEL

The undersigned counsel is a recognized expert on administrative law. Counsel has appeared in precedent-setting regulatory matters before such agencies as the CPUC, Department of Insurance, Department of Social Services, numerous state licensing boards, the Coastal Commission, the Board of Equalization, the Franchise Tax Board, and the Air Resources Board. Regulatory matters counsel has been involved in include RH-298 (successful drafting and enactment of regulations regarding Department of Insurance intervenor funding); RH-311 (successfully lead effort to enact regulations governing cancellation and nonrenewal of insurance policies); RH-318 and IH-93-3REB (successfully lead effort to enact regulations governing insurance rating factors to reduce redlining by neighborhood); implementation of SB 954 (successful effort to prompt DGS to implement procurement reform); and regulations imposing airborne toxic control measures to reduce formaldehyde in composite wood products, now being copied federally.

Sample cases where counsel served as lead or supervising counsel include where the discretion of agencies has been an issue include *Signal Landmark v. Coastal Commission* (successful defense on behalf of the Bolsa Chica Land Trust of Coastal Commission rejection of massive development; victory lead to state acquisition of disputed coastal parcel and preservation of Southern California wetland ecosystem); *Gregorio T. v. Wilson* (successful challenge to anti-immigrant Proposition 187; initiative, severability, and administrative law issues with ACLU and MALDEF); *Congress of California Seniors v. Quackenbush* (successful challenge to Insurance Commissioner's long-term care insurance policies as not based on binding statute – suit spawned reform legislation); *Water Garden v. City of Santa Monica* (successful defense of Santa Monica's approval of a grocery store in underprivileged neighborhood, trial and appellate cases); *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal. App.4th 1473 (appellate

victory defending statute-mandated reduction in premium refunds); *20th Century v. Garamendi* (1994) 4 Cal.4th 216 (unanimous victory in Supreme Court case affirming lawfulness of Garamendi's complex premium rebate regulations; over \$1 billion in refunds was the result); *Amwest v. Wilson* (1995) 11 Cal.4th 1243 (unanimous Supreme Court victory regarding the lawfulness of legislative amendment to 103); *Butterfield v. Department of Social Services* (successful suit invalidating foster parent reimbursement rates as too low); and *California Women's Law Center v. State Board of Education* (successful administrative law, civil rights case overturning Board of Education regulations). Counsel was asked by the lead counsel against Proposition 8 to advise them and draft an *amicus curie* brief in the California Supreme Court (*Strauss v. Horton* 46 Cal.4th 364 (2009)).

APPLICABLE LAW

The lawfulness and wisdom of the regulations are measured against statutory authority. Labor Code section 5811 reads in part, as follows:

(b) (1) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

(2) A qualified interpreter is a language interpreter who is certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The duty of an interpreter is to accurately and impartially interpret oral communications and transliterate written materials, and not to act as an agent or advocate. An interpreter shall not disclose to any person who is not an immediate participant in the communications the content of the conversations or documents that the interpreter has interpreted or transliterated unless the disclosure is compelled by court order. An attempt by any party or attorney to obtain disclosure is a bad faith tactic that is subject to Section 5813.

Interpreter fees that are reasonably, actually, and necessarily incurred shall be paid by the employer under this section, provided they are in accordance with the fee schedule adopted by the administrative director.

A qualified interpreter may render services during the following:

- (A) A deposition.
- (B) An appeals board hearing.
- (C) A medical treatment appointment or medical-legal examination.
- (D) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who does not proficiently speak or understand the English language.

Little guidance is given to the DWC in (b)(2) as to how to set interpreter fee rates. At the outside, however, regulations must not be arbitrary, must be within the scope of the statutory enabling authority and must serve the legislative aims of the statute the regulations are implementing. (*See, generally, Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1)

Workers Compensation is “a compact struck at the dawn of the Industrial Age: [Workers] would give up their right to sue. In exchange, if they were injured on the job, their employers would pay their medical bills and enough of their wages to help them get by while they recovered.”²

This statute reflects the importance of interpretation services to the effective implementation of the Workers Compensation program. The entire system is geared toward meeting the needs of injured workers by establishing the facts surrounding their injury. If the worker does not understand what is being asked, the worker cannot communicate their injuries or symptoms or the alleged cause of them. Likewise, to the extent the worker’s words are not effectively communicated into English, the system operates on either no or incorrect facts and is arbitrary.

Controlling costs is beneficial to all. But, costs cannot be controlled at the expense of the foundational reason for workers giving up their right to sue in tort; namely, appropriate compensation for their on-the-job injuries. A regulation that has that impact is *ultra vires*.

INTERPRETING IS AN ENORMOUSLY CHALLENGING JOB REQUIRING HIGHLY TRAINED AND THEREFORE ADEQUATELY COMPENSATED INDIVIDUALS

Interpretation of a foreign language impartially and accurately is an enormously exacting job. For example, interpreter fatigue can occur because of the highly taxing cognitive functions required in bilingual interpretation. Simultaneous interpretation requires the interpreter to listen to the communication, process it, and render it simultaneously into the target language, all while continuing to listen for more material. Many incorrectly believe that a court interpreter is expected merely to provide a literal rendition of the proceedings, when in fact the interpreter's responsibility is to maintain the accuracy, register, style and context of the original message, without embellishing, omitting or editing.³

Thus, reflecting both the difficulty and the importance of the task, interpreters’ impartiality and ethics are closely regulated by the California Rules of Court, among others.⁴ Moreover, when it comes to legal proceedings such as those at-issue here, the competence of the interpreter absolutely must be tested and approved by neutral experts. The ability of a worker not fluent in English to obtain meaningful compensation hinges almost entirely on the ability of the interpreter to interpret what the worker is saying, establishing the record of how the injury occurred and the worker’s pain and symptoms which both serve as the foundation of the entire

² <https://www.propublica.org/article/the-demolition-of-workers-compensation>

³ California Rules of Court, rule 2.890 (b).

⁴ Rule 2.890 of the California Rules of Court (“Professional conduct for interpreters”, see appendix A); California Standards of Judicial Administration adopted by the Judicial Council of California for interpreted proceedings (Standard 2.10 and Standard 2.11; see appendix C); the Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts (see appendix E) and W. E. Hewitt, Court Interpretation: Model Guides for Policy and Practice in the State Courts, Publication R-167 (Williamsburg, Virginia: State Justice Institute, 1995); Nat’l Council on Interpreting in Health Care, A National Code of Ethics for Interpreters of Health Care 3 (2004), available at <http://data.memberclicks.com/site/ncihc/NCIHC%20National%20Code%20of%20Ethics.pdf>; Code of Ethics and Prof’l Responsibility (Nat’l Ass’n of Judiciary Interpreters and Translators), reprinted in Marianne Mason, Courtroom Interpreting app. 2, at 107 (2008) (providing uniform standards on ethics and professional responsibility to guide court interpreters in their work); Admin. Office of the U.S. Courts, Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts Standard 1-9, available at [http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/Standards for Performance.pdf](http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/Standards%20for%20Performance.pdf); Code of Ethics and Prof’l Responsibility Canon 2 (Nat’l Ass’n of Judiciary Interpreters and Translators), reprinted in Marianne Mason, Courtroom Interpreting app. 2, at 108 (2008)

proceeding. One wrong word or missed nuance or idiom can mean the difference between a worker being made whole and a lifetime of uncompensated pain. Once the deposition is transcribed, for example, it becomes the almost unchallengeable and sacrosanct record of what was and was not asked and said.

For these reasons, interpreters should not be considered to be fungible. Quality matters for it is the difference between a non-English speaking worker getting their day in court and not. Thus, any diminution in either the quality or availability of interpreting services directly translates into either wrongly reduced benefits for injured workers or an arbitrary result when it comes to insurers and employers.

THE PROPOSED REGULATIONS STRANGELY ALLOW THOSE WITH A VESTED INTEREST IN THE OUTCOME OF THE PROCEEDING WITH UTTERLY NO TRAINING OR EXPERTISE IN INTERPRETATION OR KNOWLEDGE OF FOREIGN LANGUAGES “PROVISIONALLY” TO “CERTIFY” THAT AN INTERPRETER IS QUALIFIED TO PERFORM THE JOB OF INTERPRETING THE INJURED WORKER’S WORDS INTO ENGLISH FOR ALL PROCEEDINGS.

Acknowledging that the proposed regulations will inevitably have the impact of dramatically reducing the number of minimally qualified and certified interpreters willing to participate in Workers' Compensation proceedings. In an apparent effort to overcome the predictable and dramatic diminution of certified interpreters willing to work in Workers' Compensation as a result of these proposed regulations, the regulations allow unqualified and self-interested parties to select literally anyone at all to interpret the words of the injured worker for proceedings, regardless of whether the person selecting the interpreter has any qualifications, fluency, experience, training, or knowledge of any foreign language or interpretation.

More specifically, the proposal allows physicians, lawyers, hearing officers, or claims administrators to certify an interpreter “provisionally.”

Respectfully, this is an astonishing proposal. Allowing the unqualified and in some cases self-interested parties the ability to qualify an individual with no interpreting credentials when it comes to something as essential as basing the record on what the injured worker actually meant and said is terrible public policy, entirely at odds with the whole foundation of Workers' Compensation generally and the need for interpretation specifically. At best, this proposal reveals a foundational misunderstanding of interpretation and the pivotal role accurate interpretation plays in adjudicating the injury claims of an injured worker. Certainly, these same individuals are unqualified to select an unlicensed court reporter, with the transcript by the unlicensed reporter enjoying the same dignity as one produced by a trained and tested licensee. Nor should laypeople in a Workers' Compensation proceeding be empowered to certify the qualifications and hence testimony of, say, allegedly expert physicians. We are aware of no comparable precedent in licensure or law where the unqualified and biased is so easily allowed to select an expert without any shred of knowledge about what they are selecting.

Moreover, assuming that unqualified and in some cases self-interested laypeople should routinely be allowed to “provisionally certify” random individuals to act as interpreters, the proposal contains no process or other accountable mechanism that ensures that bottom line-driven claims administrators will actually call three certified interpreters prior to selecting a far cheaper one with perhaps no experience or credentials. In contrast, existing regulations at least

require that the list of certified interpreters servicing the county in which the interpretation is taking place be exhausted before calling upon a potentially unqualified person. (CCR 9795.3 (e))

Interpreters are not akin to a copy service or a delivery service or catering. The dignity and skills and importance of interpreters deserve more regard than revealed by this proposal. So, too, does a minimal regard for the injured worker require a far greater consideration for the importance of the worker's words than is reflected by this – respectfully – astonishing facet of the proposal. It is, in fact, in all the parties' best interest, employers and insurance companies too, that the interpretation be performed by professionals with the appropriate credentials.

THE PROPOSED REGULATIONS ARE LIKELY UNCONSTITUTIONAL.

It is obviously the case that all non English speakers deserve quality interpretation. It is obvious that all ethnicities should be treated equally. Thus, there should be no difference based on ethnicity or national origin in the quality of such services. However, the proposed regulations single out Spanish-speaking interpreters for a special rate, the lowest proposed for all interpreters. The regulations with emphasis supplied provide:

§9937. Fee Schedule for Interpreters at Hearings and Depositions.

(a) The reasonable maximum fees payable for interpreter services at administrative hearings and depositions, apart from any mutual agreement as set forth in subsection (e), are as follows:

(1) Certified interpreters for hearings and depositions, who meet the terms and conditions of that definition, as set forth in section 9930(a), shall be paid the complete half-day rate as set forth in this section, for any portion of a half-day of interpreter services, as defined in section 9930(e), and the complete full-day rate for any portion of a full-day of interpreter services, as defined in section 9930(d).

(A) For Spanish language certified interpreter for hearings and depositions: \$210 for each half-day of service and \$388 for each full-day of service.

(B) For a certified interpreter for hearings and depositions in all languages other than Spanish: \$240 for each half-day of service, and \$418 for each full-day of service.

Whether the regulation singled out Armenian, Farsi, or Spanish is not the point. The point is that this regulation singles out one ethnicity for inferior treatment and, thus, is likely unconstitutional, for two reasons.

First, it will discriminate against a group of Californians based upon their race and national origin (Latinos). The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. *See U.S. Const. amend. XIV.* In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances.

The Supreme Court will "strictly scrutinize" a distinction such as the one in the proposed regulation when it reflects a "suspect classification" such as one based on either race or national origin. "A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification. (*Personnel Administrator v. Feeney*)

(1979) 442 U.S. 256, 272 (1979); *see also*, *Graham v. Richardson* (1971) 403 U.S. 365, 371–72.)

This regulation that on its face places Spanish-language interpreters and those in need of Spanish interpretation (Latinos) in a separate and inferior formal category is unlikely to survive scrutiny, at least based on the current record.

In calling for the enactment of the 1964 Civil Rights Act, President John F. Kennedy identified "simple justice" as the justification for Title VI:

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.

See H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

Moreover, and second, Government Code section 11135(a) outlaws discrimination in the provision of state government programs such as those overseen by the DWC. That statute provides:

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

IN SUM: Latino workers do not deserve less competent or less available interpretation and, hence, less effective compensation for their injuries. Spanish-language interpreters do not deserve to be discriminated against, either. Spanish speakers should not be categorized in an inferior position. This part of the regulations are very likely unlawful and respectfully must be changed.

THE PROPOSED REGULATIONS ARE ARBITRARY.

As underscored by the testimony from individual interpreters, the fees' caps and 3.5 hour half day invention are so low and so arbitrarily set without regard to the interpreter's costs and hence actual compensation as to likely be unconstitutional for another reason: as an unconstitutional confiscation. The Fourteenth Amendment to the United States Constitution provides in relevant part that "[no] state [shall] deprive any person of ... property, without due process of law ... The standard for determining whether a state price-control regulation is constitutional under the Due Process Clause is well established: 'Price control is "unconstitutional ... if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt' (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216' quoting *Pennell v. San Jose* (1988) 485 U.S. 1, 11.)

The takings clause limits the power of the states to regulate, control, or fix prices that producers charge consumers for goods or services. (*See, e.g., Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299, 307-308.)

"Rate-making is indeed but one species of price-fixing. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid." (*Power Comm'n v. Hope Gas Co.* (1944) 320 U.S. 591, 601 fn. 17.)

The crucial question under the takings clause is whether the rate set is just and reasonable. (*See, e.g., Duquesne Light Co. v. Barasch*, (1989) 488 U.S. 299, 307-308.) If it is not just and reasonable, it is confiscatory. (*Ibid.*)

For these reasons, rate regulation cannot be arbitrary. Such regulations should for policy and for legal reasons reflect the costs of interpreters. Such regulations should for policy and legal reasons reflect the real-world differences between different interpreters. (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.) The regulations should strive to ensure a reasonable rate of return and provide an opportunity to obtain individualized relief, especially from a one-size-fits-all rate regulation as is proposed. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.)

Here, the regulations do not appear to account for any of the following factors, each of which has an impact on whether the fee caps proposed permit a reasonable return, and without consideration of these factors, the rate-setting is too arbitrary to be sound public policy, putting aside questions of legality:

- How much the intermediary (i.e, language service provider) charges.
- How much it costs in various parts of the state to travel to a job.
- How long the job lasts, resulting in diminished opportunities for other jobs.
- Costs required to maintain language/interpreting proficiency and credentials.
- Deposition work and work in court are different when it comes to fair and nonarbitrary rates.
- What truly constitutes a half or full day, consistent with current private sector practices.

While the DWC maintains that the proposed regulations are modeled upon what is paid by the federal courts, they are not. Here is the most up-to-date fee schedule for those courts and it differs substantially from the proposed regulations:

Current Fees for Contract Interpreters (effective Jan 1, 2015)

Certified and Professionally Qualified Interpreters:

Full Day:	\$ 412	
Half Day:	\$ 223	
Overtime:	\$ 58	per hour or part thereof

Language Skilled (Non-Certified) Interpreters:

-	Full Day:	\$ 198	
-	Half Day:	\$ 109	
-	Overtime:	\$ 34	per hour or part thereof ⁵

Moreover, the work of interpreters in court cannot, in a non-arbitrary fashion, be analogized to work in depositions. Deposition work can extend far beyond a normal workday schedule, for example, and compensation needs to reflect that fact.

This warrants repetition. It is arbitrary to analogize the appropriate compensation for work in a courtroom with work in a deposition or other private setting. For the regulations not to arbitrarily diminish an interpreter's compensation, the proposed fee cap regulations should properly be revised to reflect the actual costs of the interpreter, for what matters in enticing interpreters that are qualified to do this work is not the fee per se. It is the compensation that actually ends-up in the pocket of an interpreter.

Here is a specific example of how the proposed regulations appear arbitrarily not to have considered actual practice of interpretation in any meaningful way. The proposal provides that a half day of work is 3.5 hours instead of the industry custom of 3 hours. This means that for an interpreter to be paid a full day, the interpreter must work more than 3.5 hours, instead of 3. Unlike WCAB proceedings that begin at 8:30 a.m., most depositions begin at 10 a.m. If a WCAB proceeding begins at 8:30 a.m. and ends 3.5 hours later, it ends at noon – enough time for an interpreter to eat something, drive in a congested urban area to another deposition, park, and truly work a full day.

Consider what removing the extra half hour does when a deposition begins at 10 a.m. Under current custom, a three-hour deposition would end at 1 p.m., leaving the interpreter sufficient time to eat, drive and find parking to get to a 2 p.m. job, ensuring a full day.

If, however, the starting time for the second assignment is 1:00 or 1:30 p.m., there would only be two possible outcomes: (i) the parties, witnesses and the like all for some reason agree to stay late or begin early just to accommodate the timing of the interpreter (extremely unlikely); or (ii) interpreters can never take more than one job per day, slashing their professional compensation by half.

This is how the real-world of interpreting works. The proposed regulations – especially the 3.5 hour half day provision -- arbitrarily are unmindful of any of these factors with the result being a mass exodus of court interpreters from Workers' Compensation proceedings (their annual take home pay has just been cut in half) and the demise of certified interpreting in Workers' Compensation, to the fantastic detriment of reasoned justice and the needs of injured non English-speaking workers.

THE PROPOSED REGULATION IF ADOPTED WILL HURT NON ENGLISH-SPEAKING WORKERS AND DISCOURAGE CERTIFIED INTERPRETATION.

⁵ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/ContractInterpretersFees.aspx>

As the individual testimonials in the record attest, the rates and hour caps proposed by these regulations are so low and so arbitrarily set, unmindful of costs, that the most likely results of the regulations will be a reduction in the number of certified/registered court interpreters. This result is at odds with the laudable aim of the proposed regulations to require certified interpreters given the importance of the proceeding.

QUESTIONS ABOUT AND THE FLAWS IN THE BRG STUDY

The BRG study was not made available at the time of the proposed regulations, with AIJIC only being able to review the study a few days before the deadline for comments. However, many questions about and problems with the study are immediately apparent, with more likely to emerge after a more thorough analysis:

Those consulted for the study. BRG claims to have spoken to a number of stakeholders in the Workers Compensation interpretation field. BRG states that those it consulted included “[s]takeholders included independent interpreters, professional associations of interpreters and large companies providing interpretation services, sometimes along with other services, in connection with workers compensation systems in California.” Yet, who was consulted is not detailed, making the study akin to a report with no bibliography. If BRG contacted independent interpreters, for example, the report does not document how many and from what part of the state. Which professional associations of interpreters did it contact? And, did it contact solely independent interpreters or associations of independent interpreters? Because if, BRG did contact such individuals, then, curiously, none of their concerns, comments or suggestions appear to have made it into the study. Was it merely one such association, the one grouping eight LSPs? And, how many large companies? That the study fails to anticipate any of the afore-detailed concerns and address them indicates, at best, that the BRG study did not consult the sources it should have prior to issuing the report.

A bias in favor of hourly rates. From the start the report evidences a bias in favor of an hourly rate and against a rate schedule. BRG, for example, barely mentions rate schedules, much less the practical and laudable reasons why they have endured in Southern California for years. “We considered and rejected the use of rate schedules,” BRG says in the section “Sources of Data.” But it never states what aspects of rate schedules it considered and why it rejected this so offhandedly. Indeed, it makes for strange reading when BRG says that rate schedules “became the rule,” used even by the Division of Workers’ Compensation, without providing even a cursory explanation for their proposed rejection. The study’s stated purpose “is to establish a fair market value for interpretation services. Thus, we wanted to look at *actual* data for the same or similar transactions on an hourly basis. Obtaining that data, however, was fraught with problems.” It may have been so because they were looking for hourly-based invoicing, not rate-schedule invoicing, which is the norm in Southern California, where the majority of WC cases take place and the majority of independent interpreters work. Again, the best case scenario is that the BRG report did not consult a wide enough breadth of stakeholders.

Incomplete data. By BRG’s own concession, the data BRG used in formulating its recommendations is incomplete, at best. “To say that it was difficult to obtain data understates the problem,” says the study. BRG relied on 83,971 “observations,” or transactions involving interpreters in California. Of this number, 79,634 (95%) came from a sole national language service provider. And, of this total, 54,269 (68%) were by non-certified interpreters, meaning the rates they billed were certainly below the norm for certified interpreters. The study also does not say how many of these non-certified interpreters worked depositions, IMEs, AME/QMEs, etc.

Moreover, this nationwide LSP provided its interpretation services as a “loss leader,” that is, it used cheap interpretation rates to entice customers to purchase other more profitable services. To make up for this “loss,” to make up for relying upon one data source with concededly unreliable data, BRG added an arbitrary markup of 7% to the amounts in those invoices submitted to the nationwide provider. Arbitrary because that 7% figure comes from translation businesses, which have entirely different rates and billing formulas than interpretation agencies.

Wrong data. More problematic than any of these percentages, however, is the 68% of transactions in which *non-certified* interpreters were used by the largest LSP cited by BRG for Spanish-language matters. The percentage of non-certified interpreters used by this LSP was 66%, and for languages other-than-Spanish, the percentage climbed to a whopping 86%. One can only imagine what the State of California would do if 68% of licensed court reporters used for Workers' Compensation proceedings were not certified.

Questionable assertions about liens. BRG also makes some statements about liens that raise further questions about the foundations of the proposed regulations. BRG states that one goal of the statutory requirement to create fee schedules and of their study "is to devise a way to circumvent the necessity for lengthy collection proceedings" and that they "hope to eliminate the bases for dispute that require so many interpreters to file liens in order to be paid." These assertions imply that liens are the most prevalent billing method for interpreters in Workers Comp., but there are no data or statistics submitted to back up this statement. The study also implies that the fee schedule will eliminate the need for interpreters to file liens in order to be paid but, this is deeply questionable and unproven.

CONCLUSION

AIJIC is grateful for the opportunity to comment on the proposed regulations. Again, without more time to review the study, it is difficult to offer the most constructive suggestions. However, the regulations as offered for informal comment are discriminatory against LEP workers, particularly Latinos, and appear to be arbitrarily unmindful of an interpreter's costs. They also depart from standard half-day and full-day private sector practices for no apparent reason and upon no apparent basis. Additionally, the authority given to the above-mentioned individuals to “provisionally qualify” interpreters flies in the face of the State's own rigorous certification requirements and compromises the neutrality afforded to all parties in a proceeding.

These regulations in their totality will cause a mass exodus of certified/registered interpreters from working in Workers' Compensation proceedings, compromising the quality of interpretation for all parties; workers will be unable to communicate the extent and nature of their injuries during what may be the most important legal proceeding in their lives.

Veronica Jenks
Certified Medical and Administrative Hearing Interpreter

May 18, 2014

I have been in this industry for 23 years working as an interpreter in the Workers Compensation System.

First allow me to point out what I think was just an oversight. Under 9944(b) “Interpreter

Directories,” this subsection neglects to mention the listing for Medical Interpreters certified by the State of California included under <http://jobs.spb.ca.gov>. It needs to be corrected in order to have a complete listing of ALL Certified Medical Interpreters in this State.

I appreciate the effort of the legislature in trying to streamline billing and payments to interpreters in an attempt to diminish lien filing with the WCAB and in order to resolve lien disputes. The issue with the new proposed Fee Schedule is that it does not take into account two important aspects of the interpreting industry:

- 1) Reasonable interpreting fees, and
- 2) the role of Language Service Providers.

Starting with number one, the current proposed fees under 9937 and 9938 are far below current market rates in most Counties in California. The DIR did not take into consideration that under Art 5.7, 9795.3, which came out 20 years ago, established a “minimum of 2 hours at \$90 dollars or market rate, whichever one is greater.” The term Market Rate has allowed for increases throughout the past years in order to satisfy cost of living, inflation and cost of doing business. Removing this term from the new rules without establishing an adequate fee that would satisfy all Counties in California will be detrimental to the system and most of all to the injured worker. Under the new proposal in 9938(1) the new permitted maximum is \$52.50 an hour with a two hour minimum for Certified Spanish language interpreters this is only \$15 dollars more than the minimum established 20 years ago, and under 9938(2) a maximum of \$82.50 per hour with a two hour minimum for Certified language interpreters in OTHER than Spanish. First of all the problem with that is that it is discriminatory. Are Spanish language interpreters second-class interpreters to our other than Spanish language interpreters counterparts? I think NOT! All Certifiable languages go through the same Certification requirements and process. As a matter of fact, the new proposed fee for Certified Interpreters in Other than Spanish would be more in line with the cost of living expenses and inflation increases that have occurred in the past 20 years as a starting point for the new proposed fees period. The other issued is the proposed fee for Depositions under 9937(a), the \$210 fee for each half day service and \$388 for each full-day service are completely out of touch with the current rates that are charged by interpreters in different counties in California. In essence you are asking the Interpreting community of Certified Spanish Interpreters to take a pay cut. These fees do not take into account that Interpreters are INDEPENDENT CONTRACTORS and that they RELY on reputable Language Service Providers (Agencies) to obtain these assignments and to be paid for their services. Also under 9937(a) and 9937(b) there is again a discriminatory distinction between fees allowed for Certified Spanish Interpreters and Other than Spanish Certified Interpreters, \$210/\$388 vs. \$240/\$418, which it is wrong. Keep in mind that interpreters are Independent Contractors that have to pay out of their own pockets for benefits, vacation time, sick days, medical insurance, retirement, vehicle maintenance, parking, tolls and higher costs of car insurance due to distances covered while driving to and from assignments. I pray that you will reconsider the proposed fees for Spanish language interpreters because as currently proposed, it would make it impossible for Medical and Legal Certified Interpreters to continue providing services in this industry.

Number Two: The roll of Language Service Providers (Agencies) is vital for this industry. As I stated earlier, interpreters in this industry are INDEPENDENT CONTRACTORS, and therefore they rely on Agencies to be able to obtain assignments and to receive timely payments for their services. An independent contractor can’t wait over 60 days in order to receive payment from an insurance company or an objection for services provided, if that is the prerogative of the claims

adjuster. That is what Language Service Providers are for. We as independent contractors rely on these companies in order to set up appointments and report on our assignments, as well as for the submission of our billing and the timely collection of payments for services rendered. It is the roll of the Agencies to receive appointments, coordinate schedules, confirm with insurance companies, doctors and attorneys, bill the insurance companies, following up on bill status, denials and delayed payments, the researching of labors codes, as well as filing liens and sending representatives to collect on unpaid liens at lien conferences and lien trials. Agencies provide a very valuable unbiased service in this industry and they must be taken into consideration when the new fees are discussed. The DIR must not forget that in order for interpreters to be able to continue providing valuable services, we must have the assurance that Language Service Providers will be able to survive in this industry.

Another issue that must be considered and corrected is that the Regulations as written under 9931(c) gives the claims examiners license to use NON-Certified interpreters (where there is the existence of a Certification) by allowing them to only contact THREE (3) Certified Interpreters before they can claim that no one certified is available and then be able to send a NON-Certified in its place. If the language is one of the Certified Languages in the State, and the claims examiner can't find a Certified interpreter, then THIS REGULATION should allow for the Applicant and Applicant's attorney or representative to be notified with sufficient time and BE GIVEN the opportunity to obtain a Certified interpreter to render services. Also under 9932(a)(3) again the claims administrator has free license and carte blanche, to authorize and allow the use of a NON-Certified interpreter even when the language is one of the CERTIFIED LANGUAGES in the state. The regulations as written are unfair and biased against the injured worker for whom these laws have been established in order to protect their rights, benefits and due process.

It is my firm belief that injured workers rights must be protected. It is the duty of this system to oversee and assure the injured worker that it will do so fairly. Just as these laws make sure that injured workers are evaluated, examined and treated by licensed physicians, licensed personnel and licensed facilities, as well as guided, and represented by licensed attorneys, these regulations must make sure that injured workers are also assisted by Certified interpreters when the language is a Certified Language in the State of California. The Regulations must be clear and without loopholes that allow the insurance companies the opportunity to circumvent the laws and applied them to their own financial benefit overlooking the needs and rights of injured workers for their own gain.

In closing I want to mention one more concern. Regulation 9935(1) mentions the words Medical Provider Network. It is very concerning to me that NOT all INTERPRETERS AND ONLY LESS THAN A HANDFUL OF LANGUAGE SEVICE PROVIDERS are currently included as part of a Medical Provider Network. It is my belief that there is NO NEED for Interpreters to be a part of a Medical Provider Network. Under the new proposed regulations it should be determined that ALL Interpreters and Language Service Providers shall be allowed to perform services in this industry. The DIR must consider and support all Interpreters and Language Service Providers in creating regulations that will be fair, unbiased, and that will provide honest opportunities to all Interpreters and Language Service Providers and not just a few in this industry.

It is my prayer that the DIR will review and consider my concerns and opinions regarding the

issues stated.

Lilia Santana
Small Business Owner
Administrative Hearings Certified
Court Certified

May 18, 2014

The proponents of this fee schedule have forgotten what Worker's Compensation was founded for, which was TO PROTECT THE RIGHTS OF THE INJURED WORKERS, and since language is a barrier for a large number of injured workers, these rights are in jeopardy if the fee schedule proceeds. The system would be best served with keeping the current quality of communication with the injured worker to help prove or disprove a claim. The proposed fee schedule is not only detrimental to THE INJURED worker and to the Professional Interpreters but it is detrimental to the whole Worker Compensation world, although the people proposing it don't know it.

The intent is to CUT COSTS
The impact CHAOS

*Many competent professional Interpreters will leave the field and many of the new service providers will be uncertified or "provisionally certified by.... or...qualified or.... .. (and by who?) These categories are very confusing.

*Out of state Interpreting agencies will drive California Interpreting companies out of business, depriving our state of local revenue and judging by the poor service these companies give injured workers, it will create inaccurate communication as well.

*The decline in available competent interpreters and incorporation of randomly "certified or qualified" interpreters by individuals who have no idea of the delicate nature of this job, will jeopardize the injured worker's due process.

The fee schedule that is proposed is hostile to the Interpreting profession. Although interpreting services are greatly needed and Interpreters have given a professional service, pay that has not been raised for more than 15 years. To make matters worse, securing payment for these services has been always a fight. The fee schedule in itself would be good to eliminate fee disputes if it was a fair one and was only geared to cutting costs.

Please think carefully before deciding on this matter. Plans not well thought out usually backfire.

Robyn Stryd, Assistant Claims Manager
Claims Medical and Regulatory Division
State Compensation Insurance Fund

May 18, 2015

State Fund appreciates the opportunity to provide the following comments regarding the proposed regulations for interpreter fee schedules.

As the revised regulations will require programming as well as publishing and distribution of forms, State Fund recommends that claims administrators be allowed 90 to 120 days from the date of adoption to implement the changes.

§9930. Definitions.

Comments

The definition of certified interpreter is clear, concise and straight forward for medical and non-medical settings. This eliminates the existing provision for certified interpreter or provisionally certified interpreter which appears lengthy and confusing.

The added definitions for Hearing and Hearing officer are terminologies used in the entire regulations and the addition was necessary.

Listing each service type defines a “medical appointment”. This will avoid confusion and promote consistency.

The change makes it easier to distinguish provisionally certified interpreters from non-certified or non-provisionally certified interpreters or qualified interpreters now that definitions are provided for each.

State Fund recommends the language in regulation 9930 (e) should be amended to say, (1) “Services performed during all or any part of a morning or afternoon session at any Workers’ Compensation Appeals Board hearing, day-time arbitration, or – (2) “Services performed at a deposition, all or any part of 3.5 hours, or (3), “Services performed at an evening arbitration, all or any part of 3 hours.”

§9933. Requirements and Restrictions On Performing Interpreter Services As a Non-certified or Non-Provisionally Certified Interpreter for Medical Treatment Appointments.

Comments

The situations that are applicable for non-certified or non-provisionally certified interpreters should be clarified or specifically stated in this section.

Comments

Section (b) (2) for non-provisionally/non-certified interpreter is the same as the requirements set forth in Section 9932. (b) Provisionally certified interpreters. Both apply to interpreter languages other than one of those designated pursuant to Government Code 11435.40.

§ 9934. Events Qualifying for Interpreter Services.

Comments

9934(a)(4)

Applicant attorneys sometimes schedule one interpreter for deposition preparation and a different interpreter for the deposition. This causes two interpreting bills for each deposition. Attorneys claim this is necessary because they do not want confidential information leaked during the deposition. However, certified interpreters are prohibited from disclosing confidential information by The National Code of Ethics & Standards of Practice published by the National

Council on Interpreting Health Care. Since confidential discussions in the deposition preparation cannot be disclosed there is no need for two interpreters. State Fund recommends the regulations state a single interpreter is adequate for the deposition and deposition preparation. If an applicant attorney insists on a separate interpreter for the deposition preparation, the attorney should bear the cost.

The proposed regulation described in (C) (7) appears to have a typographical error. Please confirm if it is the WCAB or the Administrative Director who determines the appropriate settings where an interpreter is reasonably necessary to ascertain the validity or extent of injury or issues related to entitlement to benefits.

§9935. Selection of Interpreter; Duty to Notify of Selection; Duty to Assure Presence of Interpreter.

Comments

Section 9935(a) is potentially ambiguous regarding the responsibility of the injured worker to arrange for an interpreter when attending hearings at the WCAB. State Fund recommends that the regulation clearly state that the injured worker is responsible for arranging for the presence of the interpreter pursuant to the same requirements set forth in § 9935 (c).

State Fund recommends that the clause “or if the treating physician is not within a Medical Provider Network” in Section 9935(c)(3) be deleted to avoid creating a loophole that would allow for the selection of a non-ancillary network interpreter when interpreter services are an ancillary service of the employer’s Medical Provider Network.

The fact that the treating physician is not in the MPN should have no bearing on whether the injured worker must select from the interpreter ancillary services network. This is because the access standards are completely different for physicians and ancillary services providers. An MPN may not meet access standards for physicians in the injured workers’ area while at the same time meeting access standards for ancillary services.

§9937. Fee Schedule for Interpreters at Hearings and Depositions.

Comments

The section for cancellation fees should be revised to state if the cancellation notice is provided less than 24 hours prior to the time of service, the interpreter is entitled to no more than the minimum fee. Allowing for a maximum versus a minimum prevents disputes and litigation in the future.

§9938. Fee Schedule for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Comments

The increase in rate will compensate for travel and mileage which are eliminated from the regulations. Eliminating the market rate option will prevent unneeded complexities to the fee schedule.

State Fund agrees establishing a different and reasonably higher set fee for language other than Spanish is appropriate. This eliminates excessive billing amounts for what providers claim as “exotic language”.

Lower payment for provisionally certified interpreters than for certified interpreters is appropriate. State Fund agrees establishing a reasonably higher set fee for language other than Spanish is appropriate. This will eliminate excessive billing for what providers claim as “exotic language”.

§9939. Minimum Time Period Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Comments

9939 (a) –

“A qualified interpreter at ~~medical treatment appointments~~ and medical-legal exams, who meets the billing requirements for payment of section 9941, shall be entitled to be paid for a minimum of two hours for each medical-legal exam conducted. For the same medical-legal exam exceeding two hours, the interpreter shall be paid an additional amount, pro rata, in fifteen (15) minute increments.”

In the above section “at medical treatment appointments” appears to be a typographical error. Medical treatment appointments are provided for in section (b).

§9940. Cancellations and Cancellation Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

Comments

Subsection (a) (2) for cancellation fees should be revised by the DWC to clearly state that an interpreter scheduled by the claims administrator who is provided with a cancellation notice less than 24 hours before a med-legal exam, is entitled to no more than the minimum fee. If the cancellation notice is provided more than 24 hours prior to the time of the appointment, the interpreter is not entitled to a fee.

This proposed regulation appears to hold claims administrator responsible for paying late notifications for interpreters not provided by the claims administrator. When a timely cancellation notification is not provided the party responsible for providing the interpreter should be responsible for paying the late cancellation fee.

Bosco Boksh
State Certified Interpreter

May 18, 2015

I write to voice my strong opposition to the recommended changes in the proposed fee structure for individuals providing live language interpretation during Workers Compensation proceedings.

Pursuant to SB863, the Workers Compensation Reform Bill, the Department of Industrial Relations, Workers Compensation Division, was given the task of reducing costs in the workers' compensation system.

I support this goal, but not at the price of damaging the interests of injured workers and the members who provide the vital services necessary to make the Workers' Comp system function for persons of limited English proficiency.

The Department recently issued a proposed fee schedule which:

*Negatively impacts the quality of interpreting services to injured workers in that it provides for doctors and hearing officers to provisionally qualify non-professionals to serve as interpreters. Research has proven without doubt that relying on non-professionals introduces unacceptable levels of inaccuracy into official cases.

*Sets fees for freelancer services and removes the existing "or market rate" language from the fee schedule. Quality service demands fair reimbursement, and the proposed fees fall well below the fairness standard.

*Dictates what an interpreter can charge for hearings, depositions and medical proceedings.

*Dictates impractical working conditions, such as extending the hours that interpreters work.

*Takes away mileage and travel time compensation.

The fee schedule revisions proposed directly affect all of the interpreter members of IGA and Local 39521. All told these changes affect approximately 3,000 or more interpreters of all languages.

The DIR cost-cutting proposals would infringe on the members' ability to earn a fair living as independent contractors and would impose unfair changes in working conditions.

The fee schedule also fails to account for the extent to which Language Services Agencies function in the system and makes no provision for agency mark-ups.

I wish to be on record in opposition to the proposed fee revisions as drafted.

Kimberly Rowland, MA, Ph.D
Government & Industry Relations
One Call Care Management

May 18, 2015

The Draft Interpreter Fee Schedule is an adequate effort by the Division of Workers' Compensation ("Division") to address some of the myriad challenges for interpreting services in the state of California. These comments are not intended to solve nor address all of the concerns, but only those that are the most material and germane to ensuring adequate supply of interpreters

for injured workers within the state of California and to ensure the interpreters receive a market-competitive rate for the interpreting services.

Article II §9930 (c) Claims Administrator – The current definition of “Claims Administrator” fails to contemplate an intermediary between the paying entity and the interpreter. The claims administrator could delegate the interpreter selection to a third party and the definition should include a provision that allows that arrangement.

Recommendation – Claims Administrator should include those acting on behalf of or those that have been contracted, delegated or requested to perform services for the benefit of the Claims Administrator.

Article II §9932 (c) “Cannot be Present” – The current definition does not consider any electronic scheduling protocols. For example, if an electronic system is unable to connect to a certified interpreter, the requirement to locate three implies a manual process and is cumbersome and inefficient.

Recommendation: The definition should also include a concept that allows for those delegated to arrange the service must certify that they were unable to procure a certified interpreter notwithstanding their efforts to do so.

Article II §9937 – Fee Schedule for Interpreters - The rate reduction for provisionally certified interpreters is neither competitive nor consistent with the market dynamics in California.

Recommendation: While we recognize the desire of the Division to incentivize the use of certified interpreters, the supply and demand challenges continue to exist. We suggest an increase in the fee schedule for provisionally certified interpreters such that the differential between certified and provisionally certified is decreased. This will minimize or eliminate the cost incentive to utilize non-certified interpreters as well as encourage claims professionals to pursue the highest quality service providers available. Additionally, this will continue to stimulate growth by encouraging interpreters to become certified thus increasing the supply and further reducing the need for provisional certification.

There are no travel time rates or reimbursement for mileage or travel to or from appointments.

Recommendation: Travel time and reimbursement rates are a critical component of the reimbursement for interpreters. The time between appointments can be substantial and the cost incurred by the interpreter traveling between various appointments could significantly reduce the reimbursement rates for the appointment.

Article II §9940 Cancellations and Cancellation Fees for Interpreters at Medical Treatment Appointments and Medical – Legal Exams.

There is a mechanism for cancellation fees but no mechanism for no shows by interpreters. No shows by interpreters can significantly cost the system and delay treatment. Claims Administrators should be permitted to:

1. *Assess the following fees to an interpreter for failure to provide at least 2 hours notice prior to missing an appointments:*
 - a. *\$100 for all appointments except depositions and Independent Medical Examinations.*

- b. \$250 for all depositions.
- c. \$750 for all Independent Medical Examinations.

- 2. *Additionally, if an interpreter cancels three (3) or more appointments to the same Claims Administrator within a six month period, the Claims Administrator shall have the right to report the details of the missing appointments to the Division. The Division may assess additional fees against the Interpreter and/or remove the certification for a specified period of time. If the Interpreter is provisionally certified, the Interpreter shall be prohibited from being Provisionally certified for a period not less than 4 months.*

Bret Graham
Past-President LatinoComp
Nava & Graham

May 18, 2015

LATINOCOMP makes the following comments on the proposed regulations regarding Interpreter Fee Schedule:

As you know, the Legislature previously extended the interpreter certification period so as to ensure there were adequate numbers of certified interpreters available for medical and legal proceedings in the workers' compensation system following changes brought about by SB863 regarding interpreter certification. The current proposed regulations purport to solve a "problem" of inadequate numbers of certified interpreters by, in essence, eliminating the requirement that certified interpreters be used for medical exams and WCAB proceedings. Nothing is solved by substituting unqualified "provisionally certified" interpreters for actually certified interpreters. Under the proposed regulations, literally anyone can be "provisionally certified" as an interpreter – irrespective of their qualifications and/or ability to speak the language in question.

Injured workers who do not adequately communicate in English have the basic right to be able to fully explain their injuries, complaints and their cases to doctors and judges without being forced to use an unqualified "interpreter" simply because the claims adjuster was unable to find a certified interpreter after making three telephone calls.

LATINOCOMP also is concerned that the lowering of overall reimbursement for all interpreters below market rate will further erode the quality of interpreters. This is especially the case with Spanish language interpreters who are singled out for even lower reimbursement rates than all other languages. This on its face appears discriminatory towards Spanish speakers.

Lastly, when the above changes are combined with the ability of employers/carriers to agree to even lower, below fee schedule, reimbursement (as is typically seen with medical providers in the MPN context), the claimed inability to find certified interpreters will be self-fulfilling – no certified interpreters will be found willing to work for the new (lower) rates paid by the employers/carriers under these proposed regulations. Unfortunately, injured workers' ability to communicate with doctors and judges will be sacrificed in the name of "costs savings". This violates fundamental fairness, and, again appears to discriminate against immigrants and other

non-English speakers – the very injured workers who are most vulnerable and need the most protection in the system.

Tonantzin Bolanos	May 18, 2015
Maria Tapia	May 18, 2015
Johanna Parker	May 18, 2015
Angelina Miramontez	May 18, 2015

The dumbing down of Professional Language Services in the State of California is abhorrent and ill advised.

- 1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.
- 2) The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, “provisionally certifying” an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.
- 3) Assuming laypeople shall be allowed to “provisionally certify” individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a “provisionally certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.

- 4) We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter for medical treatment, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.

The Pre-requisites are:

- a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languagetesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.
- b) Having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI’s CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD’s must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker’s civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

- 5) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter

services, much like it has done so for all other providers of Workers' Compensation services. The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

- 6) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.
The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.
- 7) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the

interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

- 8) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?
- 9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

Francisco Cabral

May 18, 2015

The fee schedule is biased. The State Certified list of interpreters is missing. You only list the two other testing agencies. The new rates are low and you eliminated the two hour minimum. As usual you gave the power to the insurance companies to decide the fate of all involved in WC.

David McCoy

May 18, 2015

Over the years the medical interpreting profession has undergone positive changes and gained recognition as a critical component in the health care system; however, many points on the new California fee schedule for interpreters reverts these results by regressing to an age where the philosophy of utilizing a professional certified interpreter was considered superfluous and unnecessary.

It is with dismay that we, certified interpreters, view this new fee schedule proposal in which the role of an interpreter is deemed menial and secondary to all other professionals involved in the workers' compensation system.

Certified Interpreters undergo arduous, extensive and expensive training. They participate in continuing education programs to further their knowledge and to maintain their credentials valid. Hence the unreasonable proposed fee is not congruent with the actual cost of living, education, transportation, traveling time and free market in which we live today, 2015.

Furthermore, giving authority to an interested party in a case to grant provisional certification upon any bilingual individual may be characterized as a conflict of interest that benefits the party that appoints the interpreter of its choice. It is evident that this tactic is aimed at displacing certified interpreters in order to replace them with cheaper labor at the injured worker's peril. Such a result would undermine the underlying premise upon which the workers' compensation system is based.

The logic of having a physician, attorney or insurance representative provisionally certify a bilingual mortal is simply preposterous. The aforementioned professionals have earned degrees that do not qualify them or accredit them to evaluate, validate or certify another person's level of bilingual proficiency, interpreting skills, ethical behavior or cultural competence.

Additionally, there will be no incentive for provisionally certified interpreters to get formally certified and participate in continuing education because employment will eventually be assigned to them based on the assumption that three certified interpreters are not available.

The heart of the matter in workers' compensation claims is efficient communication. If this critical job is relied upon unqualified ad hoc interpreters, you can expect no guarantee as to the validity and fidelity of the medical reports or depositions; the injured LEP will be unable to give a clear and meaningful history of the incident and injuries, such obstacle will result in the undue and wrongful process of the case. If competent medical and legal interpretation is unavailable or mismanaged, the costs can be enormous; these costs include human costs such as unnecessary pain and suffering and the substantial financial consequences of a lengthier course of treatment, litigation and appeals.

Moreover, this proposal clearly violates the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

The entire concept of underpaying certified interpreters and substituting them with uncertified interpreters, flagrantly violates the fiduciary duty to act in the best interested of the injured worker. We thus conclude that the new proposed fee schedule, if implemented, will cripple a system that was created to guarantee fair compensation to the injured worker, and that it will deprive the injured LEP from the legal right to competent linguistic services.

Veronica S. Perez

May 18, 2015

I must express my deepest concerns with the proposed language regarding the Interpreter Fee Schedule. I was on the Issues Plans & Objectives Committee with CWCIA (California Workers Compensation Interpreters Association) during the time information was gathered for and upon the request of the Berkley Research group, along with a detailed proposal that was sent to Destie Overpeck last year. I find it appalling that the regulations reflect an almost \$7 dollar increase from the fees that have been in existence for 20 years for medicals and an even more appalling rate for boards and deposition related events. I know firsthand what information was sent to the powers at be, that reflect the Market Rate for all languages state wide; and the fee proposal most definitely does NOT reflect that information. I feel that the language and fees are biased and only reflect the interests of the Insurance Carriers.

I was under the impression that the language changes in SB863 were to insure equal access for LEP's to CERTIFIED interpreters ONLY? The language you are proposing will most definitely give the carrier the green light to use the cheapest interpreter available, the non-certified, not to mention completely dumb down the system. Why does the DIR feel it necessary to take 100 steps back? What is the need to give the carrier complete control? Do you really think that by giving them complete control, it will elevate lien hearings? If that is the case I can tell you right now it will not. The reason there is even a problem is because the carrier continually denies, delays and just chooses not to pay. Why, because you the DIR and the WCJ's allow it to happen. The carriers are never reprimanded for their bad faith tactics and unreasonable delay of payment, all they ever get is a slap on the wrist.

This proposal will put 100's out of business. I know this for a fact, due to the changes alone with SB863 the LSP I worked for, for 11 years had to let me go because work had significantly slowed down. I strongly urge the DIR to go back to the drawing board and revise the proposed language, if you do not, you will regret it.

Alyce M. Hernandez
Certified Medical Interpreter – Spanish

May 18, 2015

With regard to Sections 9932 and 9933 - Using non-certified or provisionally certified interpreters can be simply illustrated. Just because someone is able to drive a motor vehicle does not mean he/she is qualified to drive. How confident would you be to ride in a public transport bus if someone said the driver was qualified but the driver does not have a license?

Section 9931- only attempting to contact 3 certified interpreters is a disservice to the injured worker who is expecting a certified interpreter.

Sections 9937 and 9938- to pay Spanish interpreters less than other language interpreters is discriminatory.

Section 9939- the one hour minimum for medical treatment appointments does not compensate for the time we must schedule for these appointments, which necessarily includes travel time.

Ariel Torrone, President
California Federation of Interpreters

May 18, 2015

I write to register the California Federation of Interpreters' robust opposition to recommended changes in the fee structure and policies for in-person interpreters at Workers Compensation proceedings. If adopted, these changes will circumvent established language access quality control mechanisms while driving professional interpreters out of the Workers Compensation field and promoting the use of unqualified substitutes. The results are predictable: Miscommunications will lead to faulty diagnoses, defective legal records, and improper determinations – with no way to catch the mistakes or even know they occurred.

Legal and medical interpretation are highly specialized fields that require many years – often, a decade or more – of education, training and practice, as well as financial investments reaching into the thousands or tens of thousands of dollars. Yet the fee schedule being proposed is not commensurate with the degree of preparation and skill entailed, and would be so low as to preclude interpreters from making ends meet.

The proposed changes would remove current language that allows interpreters to charge the market rate for their services. Instead, they establish fee ceilings at about half the current market rate for certified/registered interpreters – before accounting for agency mark-ups. Effectively, legal and medical interpreters with proven qualifications would likely earn about one-quarter in Workers Comp of what they earn elsewhere.

The changes would also prohibit interpreters from being reimbursed for mileage or travel time – even though Workers Comp interpreters must regularly travel among different counties in a given day and rarely earn a full day's pay. This constitutes a considerable hardship for highly trained professionals who provide essential services yet don't enjoy basic labor law protections and already shoulder the additional costs of providing their own benefits and insurance and paying higher taxes as independent contractors.

It's not sustainable, much less equitable or fair.

At the same time, the new language being recommended by the Department in Sections 9932(a) (2) and (b) (2) and 9933 (b)(2) creates a loophole to bypass acceptable language access standards by empowering hearing officers and physicians to “provisionally qualify” persons to interpret at medical evaluations, legal depositions and hearings, and even allowing for the use of non-provisionally-qualified interpreters to cover medical treatment appointments. Hearing officers and physicians do not normally receive any training in language access standards and may not even speak the language to be interpreted. They are no more qualified to assess an individual's ability to interpret than an interpreter would be to qualify non-professionals to practice medicine or law.

We caution against the use of the term “provisionally certified.” The term “certified” should be reserved to describe an interpreter who has been tested and who has demonstrated skills and proficiency. To our knowledge, there is no formal or informal process proposed for hearing officers or doctors to determine the actual proficiency of interpreters who are not certified. As noted above, we assert that the use of such interpreters is inappropriate, jeopardizes the integrity of the legal process, and the health and rights of injured workers. To the extent that use of untested interpreters is permitted in the regulations, we recommend that this term be modified to read “provisionally qualified.”

We also object to the proposed changes in Section 9931(c) which would eliminate the requirement that the the claims administrator or party responsible for providing the interpreter service make meaningful efforts to locate a certified interpreter.

Under the proposed rule, those responsible for providing interpreters would only have to contact three certified interpreters to claim a certified interpreter “cannot be present” at a hearing or deposition. Adopting this provision would make the requirement for certification meaningless and would codify the circumvention of certification requirements for the sake of expediency. The requirements should be much more stringent, requiring a diligent search and good faith effort to find an available, certified interpreter. This is critical to protect the quality of communication between non-English speaking injured workers and their treating doctors, hearing officers, evaluators, and attorneys.

We recommend deleting “at least three certified interpreters” in this section and adding “all certified interpreters as 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> .” This would be similar to the standards applicable to the requirement to use certified interpreters in court proceedings, which require a diligent search as defined pursuant to Government Code Section 68561 and related rules of court.

Finally, the changes would create considerable financial incentives for using unqualified persons in place of bona fide professional interpreters: The rates they establish for “provisionally qualified” and non-qualified replacements are much lower. They include a shorter minimum hours requirement and prohibit the “interpreter” from receiving payment for appointments cancelled with less than 24 hours notice.

The DIR’s recommended changes to the interpreter fee schedule represent a cynical race to the bottom for language access in the Workers Compensation field that jeopardizes the very functioning of the system. They are an assault on working professionals who provide a critical and highly specialized service, as well as on the injured workers with limited English skills who rely on the Workers Compensation system for protection. We urge you to reject these changes.

We would also propose that a broader review of the process for ensuring quality language access in state agencies and administrative hearings is overdue. We stand ready to work with all concerned to find effective ways to recruit more interpreters, control costs, and at the same time protect the health and rights of California’s millions of limited-English proficient residents and workers.

I am addressing the following issues for your review, in response to the proposal for new interpreter fees as proposed by the DWC.

1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially to a Medical Interpreter such as myself, as well as the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard-not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.

2) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers’ Compensation services. The fees that are proposed in the draft are NOT ONLY WELL BELOW current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP’s have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers’ compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. **To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers’ rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate**

Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

3) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?

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The Pre-requisites are:

- a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languageTesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.

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Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI's CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD's must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker's civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

7) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

8) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

Guillermo Artigas
California Certified Medical Interpreter

May 18, 2015

I am writing to address the Department of Industrial Relations for the first time in 12 years of practice as a California Certified Medical Interpreter.

It may also be the last time I address you because I may be put out of business by the proposed changes.

In the time I've been a medical interpreter, since 2004, I've seen a lot of changes take place already. None of them to the advantage of freelance interpreters.

We happen to be caught in the middle of various interests.

It is a very uncomfortable place to be.

I have never been satisfied that my profession has a secure future In the past two years, I've felt quite the opposite.

It is under threat, more so than ever before.

This is hard to comprehend since we are neutral parties in the WC system, and should not be subjected to any difficulties or unnecessary burdens in performing our job.

We are assets to both sides, applicant and defense.

When allowed to do our job properly, we save insurance companies money in the short and long term.

When we are able to bill for our services at a fair rate, it ensures that we will be around for the long run.

When we are not forced to deal with intermediaries or middlemen (agencies) in order to get assignments, we do not have to split 30 to 50% of the fee with these parties who are doing nothing but picking up the phone and placing a phone call or sending an email or a text message to find an interpreter to fill a job.

When we are all expected to be accredited, we avoid the pitfalls of medical or legal mistakes being made in the name of cost-cutting by not sending unqualified people to do the job.

I have seen numerous language service providers (LSP) come and go. The ones that remain are the ones that are doing things by the book, not taking advantage of freelancers, not gaming the system, as well not hiring unaccredited people as interpreters.

The LSPs that are causing the most problems, the ones that perhaps the insurance company should single out in terms of abuse of the system, are mainly the ones associated with the Applicant Attorneys' offices. At least that is my experience here in San Diego County.

A different type of abuse is taking place at the other end of the spectrum.

With companies like [redacted] taking over several language companies and bringing all the services under their umbrella, they are creating a monopoly for language services that is not ultimately benefiting the actual providers, which is us the individual, freelance interpreters.

We operate in an environment of high uncertainty, high costs, and little actual reward.

I for one cannot afford to buy a house in the county where I work. Unless I move away to a different state, it's not likely to happen in the next 10 years.

I declare, that I will leave the profession if something is not done to reverse the tide. Either that or the formation of a union to be able to have bargaining power.

We, the interpreters, are not the problem.

Please re-examine and reevaluate your positions, and take all this information into consideration.

Livelihoods are at stake, and in the medium to long term, the bottom line of the insurance companies is also at stake.

Marisol Pinos

May 18, 2015

I am a certified Spanish interpreter in Pacifica, CA. While we sit here and bicker about fair pay, interpreter qualifications, etc. we forgot that as healthcare interpreters, our objective is ensuring patient wellbeing through meaningful communication. The \$52 per hour fee does not create an environment where we can do that in a sustainable way. I oppose it and suggest that the \$45 rate be increased by 100% to \$90 per hour with a two hour minimum to account for two decades of inflation and cost of living increases. That is what agencies are charging carriers for our services right now. To reduce costs, all agencies should start earning a commission on the services we provide instead of charging the insurance carriers double what we charge them and paying us less than 50%.

I have heard agencies claim for years that they only get paid \$45, and that is why they can only pay us \$40. Agencies, give me a break. You expect us to believe you only make \$5 per hour? Everyone seems to be taking advantage of interpreters.

I think that by having agencies only charge a commission, costs can be reduced greatly and interpreters can get paid more.

Patricia M. Lyman
State Certified Interpreter

May 18, 2015

This is to voice my grave concerns with the proposed Interpreter's Regulations and Fee Schedule.

As a certified interpreter of 16 years, I think it's unrealistic to expect the DWC to be familiar with all the many details and variables of working as an independent contractor or operating an interpreting agency within the workers' comp system. It is my hope that by participating in these public comments, I can help to highlight some of the serious problems with this proposal.

I am strongly opposed to the overall direction of this proposal. Although we work within the administrative system that is workers' compensation, we are not public employees. We are independent contractors and business owners and as such, it should be the free market that determines what our fees will be. The entities that we work for are largely private businesses, namely law firms and the insurance companies they represent. These companies already routinely contract with LSPs with services and fees to their liking. Why the need to suspend free market principles and impose this unrealistic fee schedule?

The fees proposed are well below current market rates and will serve only to drive professional certified interpreters out of the workers' compensation system. This will not only be a great disservice to the LEP injured worker, but to all others involved as well. Defense attorneys, applicant's attorneys, physicians and court reporters will all find it more difficult to accomplish

the task at hand when having to work with unqualified bilingual persons. This will of course prolong the time it takes to do their jobs which will in turn increase the cost to the employers, not to mention the added expense of suspended depositions or excluded medical reports due to lack of competence on the part of the “provisionally certified” interpreter.

As a former injured worker, I can also attest to the fact that going through a workers’ compensation case is a very frustrating, stressful and complicated process. I can’t imagine how incredibly difficult it must be to have to go through it all and also not speak English. Let alone when the person who is to be your voice is unqualified and of dubious expertise, having only been “provisionally certified” by another person who is likewise unqualified and possibly biased.

Again, there are so many variables and it seems that many have been overlooked with the broad strokes being attempted by this proposal. Following is a point by point list of just some of the problems I see:

1) §9930 (b) There is no mention of medical interpreters listed on the State Personnel Board <http://jobs.spb.ca.gov/InterpreterListing>. There are currently 269 State certified medical interpreters, eliminating them will greatly reduce the already limited pool of available certified medical interpreters.

2) §9930 (e)(2) The 3.5-hour half day has always posed a problem for both independent contractors and agencies alike. It was established for interpreters working in court where they have a morning and afternoon session and remain in one place, but is not realistic when working as an independent contractor traveling from one assignment to the next. The majority of morning depositions start at 10am, and if contracted for 3.5 hours this means an ending time of 1:30pm, making it virtually impossible to take on an afternoon assignment. A 3-hour half day would be much more practical.

3) §9931 (b)(2)(C) How exactly will a hearing officer determine if the interpreter present has sufficient skill to be provisionally qualified? What qualifications does the hearing officer have to do so?

4) §9932 (a)(2) Once again, exactly what qualifications does a physician have to determine if an interpreter has sufficient skill to be provisionally qualified? This, I fear, would open the door to physicians “provisionally qualifying” their staff to do the work of an interpreter and then billing as an agency, a problem that has been encountered in the past. In such cases, a physician’s staff would not only be unqualified to do the work of an interpreter, but would also be unfairly biased towards the physician, namely their boss. This will adversely affect LEP injured workers.

5) §9932 (c) Requiring that only 3 certified interpreters are contacted before hiring a non-certified interpreter virtually guarantees the use on non-certified interpreters. How would such a requirement even be enforced? This is a great disservice to the LEP injured worker and effectively limits their access to the workers’ compensation system.

6) §9937 (a) Fees listed are well below current market rates. Market rate language should be included.

7) §9938 (a) Again “reasonable maximum fees” are far below current market rates. Market rate language should be included.

8) §9939 (b) Reducing medical treatment appointments to a 1-hour minimum. It is not reasonable to expect an interpreter to travel to an appointment for a guarantee of only 1 hour of work.

9) §9940 (a)(1) Should include language stating that the interpreter is guaranteed payment for amount of time contracted. For example, most interpreters require a 4-5 hour minimum for psychological evaluations which typically last all day. Otherwise, are we expected to reserve an entire work day and only be guaranteed 2 hours of payment?

10) §9940 (b) Eliminating the cancellation fee for non-certified interpreters is yet another incentive to use them.

11) §9944 (b) Again, no mention of State Certified Medical Interpreters.

There are several serious problems with this proposal. Please reconsider.

Anonymous

May 18, 2015

Quite simply, these rules are a recipe for covert discrimination of a class of people based on national origin to increase insurance companies' profits.

The non-English speaking segment of the working population in California also becomes injured on the job, and they also have a given right to resolve their workers' compensation claims as the rest. Inasmuch as English is the official language of the State, one of those rights is language assistance by the use of competent interpreters. The California Government and Labor Codes establish that interpreters qualified as such be certified, a process that calls for a diverse educational background, training, passing tests, and obtaining and maintaining a certification. There is also an allowance for a non-certified person to act provisionally as an interpreter, but only under exigent circumstances and under certain conditions, with uncertain results.

These present rules contain several loopholes that promote the use of "provisionally certified" interpreters over truly certified ones in workers' compensation cases.

"Provisionally certified" is a misleading newly-coined name for an uncertified person with unknown qualifications who is allowed anonymously to "interpret" for somebody's benefit except that of the injured worker. Disturbingly, that person would be provisionally certified by those who need an interpreter themselves and on the spot. In the California Workers' Compensation system, we don't have "provisionally licensed" attorneys or doctors. So, why do we have "provisionally certified" interpreters? Simple. To shortchange non-English speaking injured workers, mainly during their medical visits, the majority of whom do not know any better because of their shortcomings due to the fact that they came from outside of the United States. The current interpreter fee schedule has lasted for twenty year for a reason, even with loopholes that have allowed unqualified and unaccountable people to "interpret" to the benefit of insurance companies, which ignore many of their bills, pay less than the minimum, or get no bills at all when the "interpreting" is done by staff members at the place where an interpreter is needed.

These loopholes are kept in check mostly by ethical physicians and their staff who do not want to engage in this practice, but now these rules would make the loopholes bigger and official.

According to these rules:

- 1) A “provisionally certified” interpreter would be paid half of what a real one gets. Who can resist a 50% discount?
- 2) Three certified interpreters should be contacted before using a “provisionally certified” one. How can I get that 50% discount? Nobody is looking, so let me count the ways...
- 3) Claims administrators will have the last word on who can be an interpreter in a medical case, and with the power to haggle over the fee, to boot. I’m in charge, so I’ll get that 50% discount, or even better. Nobody can tell me otherwise. Talk about conflict of interest! If there were ever a good example to illustrate the idea of “putting the fox in charge of the chicken coop,” this would be it.

The consequences of these rules can be easily foreseen because of the appalling lack of accountability on the part of those who are supposed to abide by them. There are no clear and unambiguous provisions to enforce the mandate that certified interpreters be contacted before those who might qualify as “provisional,” and neither are there similar provisions to enforce Government Code §11435.35(b) that “the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation.” These rules should contain effectively enforceable means of documenting the identity of those involved and the circumstances under which an interpreter was assigned to provide services. There should be no room for trickery for profit whatsoever. Otherwise, non-English speaking injured workers will be treated as lesser human beings who are not worth the trouble. Due to their communication limitations, these employees generally are engaged in physically demanding labor, and as such, they are prone to suffer injuries. If there are employers who don’t want to pay the price that this predicament entails, they should not hire them in the first place.

Bill Posada, Controller
California Interpreters Network

May 18, 2015

Proposed fees are drastically too low, should be increase by 100% to meet current labor market conditions

As the controller of a Language Service Provider (LSP) the following are my observations and comments for the proposed fee schedule.

Fees for interpreters vary greatly according to the geographical area. Areas with large interpreter population and low cost-of-living the interpreter fees are low. In the San Francisco Bay area with its very high cost-of-living and few interpreters the cost of the interpreters is high.

Based on our historical costs of operation and in order to provide adequate interpreting services to the injured worker all proposed fees **NEED TO BE INCREASED BY 100%**.

If you review the breakdown in fees, there's the MPN and LSP burden cost, interpreter would be compensated 47% of the proposed fees. The Certified Hearing interpreter proposed fee of \$210 for 3.5 hours. His/her net compensation will be \$210 less MPN and LSP fees or \$112.56 (\$32.16 per hour).

The \$32.16 per hour is to cover; wage and operation costs (vehicle, insurance, overhead (medical insurance, phone, gas, parking, retirement, etc.). As you can see, it is not cost effective for an interpreter to continue providing services. Thus, I believe there would be a mass exit of interpreters from the workers compensation community. As you know, there is currently a shortage of interpreters, thus this proposed fee schedule further provides for fewer interpreters to the workers comp community.

If the proposed object is to pay worker comp interpreters similar to judicial interpreters. Then the burden cost should be factored to both fee schedules; judicial and workers comp. As it is clear, they are not!!!

Make two hour minimum for all medical assignments:

There are NO 1 hour medical assignments. It is very clear, in the majority of areas in California it takes an interpreter more than one hour from place of employment (or home) to a medical facility, report to the doctor, interpret at medical appointment, and return to the place of employment. Whenever an interpreter commits to do an assignments; he/she blocks of 2 hours and DOES NOT accepts any other assignment for that period of time. Having one hour minimum, it is unjust to the interpreter.

Eliminate double standard on certified interpreters:

Current regulation allows the insurance carrier to authorize non-certified interpreters to provide services, this is a card-blanch to provide less than qualified interpreters. Proposed regulation allows for wide base abuse of the system. Provisional certified interpreters should only be authorized by the parties at the hearing i.e. judge / medical appointment i.e. doctor and/or injured worker.

Section 9931 (3) contact 3 certified before determining no one is available. This should change to contact all certified interpreters within 60 miles before.....

Clarified selection of interpreter at hearings.

While the language in the regulation indicated, the party bringing the witness selects the interpreter. How or where does an applicant attorney select the interpreter, in relation to MPN? Historically, the applicant attorney has selected someone he is familiar in the industry (and not in the MPN). Does this still hold truth?

Include travel time, mileage and other costs (parking, etc) in fee schedule:

These items are missing from the fee schedule and should be added.

The Administrative Director for the Department of Workers' Compensation (DWC) is wrongfully attempting to discriminate against Spanish speaking individuals. Recently, the Administrative Director has proposed regulations, made public on April 27, 2015, for interpreters providing services to injured workers. These proposed regulations, as they are currently drafted, are not only unfair, but are unconstitutional and discriminatory. Furthermore, the proposed regulations are highly offensive to the Latino community and cannot be allowed to become law without some changes.

In California, many injured workers speak solely Spanish and require the service of a qualified interpreter, who most commonly is of Spanish-speaking origin. The proposed regulations set different rates of pay for certified and provisionally certified interpreters in Spanish, compensating Spanish interpreters at the rate of \$52.50 per hour, whereas other languages will be compensated at \$82.50 per hour. For a Workers' Compensation Appeals Board hearing or deposition, certified Spanish speakers would be compensated \$210 for a half day and \$388 for a full day appearance, whereas all other languages will receive \$240 for a half-day and \$418 for a full day appearance. Provisionally Spanish certified interpreters would be compensated at the rate of \$103 for a half day and \$187 for the full day appearance, whereas all other languages will be compensated at the rate of \$133 for a half day and \$217 for the full day appearance. This is a \$30 difference simply based on the language that is being interpreted.

The Civil Rights Act of 1964 forbids the government to discriminate on the basis of race, color, and national origin. The proposed regulations by the DWC will have a huge negative impact on Spanish speaking communities, creating a discriminatory wage gap based on those factors. Nothing in the proposed regulations even suggest a proper basis for paying interpreters differently based on the language that is being interpreted. Spanish to English interpreters are doing the same work as their counterparts in other languages. The requirements for providing interpreting services are not any different for the Spanish language then the requirements for any other language.

The classification structure will cause translators of Spanish to not only be subjected to less pay but also more duties under the proposed regulations. Further, Title VII of the Civil Rights Act of 1964 demands equal pay for equal work. The Administrative Director must not be allowed to violate the heart of the Civil Rights Act by setting the rates for certified and provisionally certified interpreters in Spanish at a rate far less than other languages.

Marybel Carino

May 18, 2015

The following letter contains zero opinions about interpreting rates. It is my hope that this letter will raise awareness for those who concern me most:

Injured workers.

As an interpreter who holds a medical as well as the CA court certification, I am constantly assisting with medical appointments and legal proceedings. It wasn't until I began interpreting during depositions and hearings/trials at the WCAB, that I realized how important the information transmitted at the doctor's office really is. I have witnessed many discrepancies between doctors' reports and applicants' testimony. Of course I am not naïve to think it is always due to an incompetent bilingual person acting as an interpreter. The discrepancies are due to a variety of factors. Applicants' bad memory, doctor's error, misunderstandings, etc. However, many times, I have been a witness to faulty interpreting. Please read the following episodes I have come to know about. Now, this letter is not to serve as some kind of "testimony" on my part. I am simply relating some things I have been present for and some things I have heard first hand from people I trust. I do know specifics to the following cases, but here will only tell them in a general manner.

**** I was sitting in a doctor's office waiting for my patient to be called. In comes a young man, looks latino, but as soon as he introduces himself to the applicant, it is evident that he doesn't speak Spanish very well. I asked him if he was certified; he said he was not. He stumbles through the paperwork he must fill out with his applicant. I remember one thing he said to the lady in particular. Looking at the paper in front of him, he says in broken Spanish "tiene algun otro sintoma junto al dolor?" In English "do you have any other symptoms next to the pain?" I look down at the copy of my paperwork and spot what he is inquiring about. The paper reads "Do you have any other symptoms besides the pain?" Granted, the paperwork in English could have been worded better. However, trained interpreters know what the question is calling for. The lady told this young man, who is semi bilingual, (but who is getting paid for this appointment today as an interpreter) "next to my back pain... no". I thought it very sad. If this applicant had pain radiating from her back down one of her legs, that would go unreported. Numbness anywhere, unreported. I could picture in my mind, at her deposition, the defense attorney saying "you did not tell the doctor about the numbness in your leg until xxxx date." *****

It may seem that I am exaggerating, but I have seen 100 other of these happen. I have been medically certified for 10 years.

***Agencies are not held accountable for the "interpreters" they send out to appointments. When the labor code allows for interpreters to be deemed "qualified", on paper, it sounds legitimate, but in practice it's a free pass for everybody to do whatever they want. There are scores of uncertified people being sent to appointments to "assist" in interpreting. Since there is no accountability, agencies send whoever they can find. Anyone from a relative, to a bilingual person they met at the store, to their hairstylist. Anyone will jump in on this game, after all, it's money in exchange for no physical work.

***A new law passed in early 2013, claiming that only certified interpreters were to be used. People are not abiding by this law. It feels like now the insurance companies can have their cake and eat it too. Through this new law, carriers now get to deny every single invoice for services in which there is no proof the interpreter was certified. There were many, many people, serving as interpreters in doctors' offices who were not certified. I very much agree that they should go out and pass the exams to prove their competency in the field. However, since these large insurance carriers continue to approve services of uncertified people to save money, it feels like the new law passed, not to get things done correctly, nor to truly respect the right of the non English speaking applicant to a competent interpreter. Actually, it seems that the law was manipulated for the carrier to deny thousands of interpreting invoices that they previously had to deal with,

but at the same time have hurt the profession of all those who actually have the training to interpret efficiently. We interpreters, on a daily basis, run into half a dozen uncertified interpreters at doctor's offices and attorney's offices.

These services are approved by insurance carriers! We see it all the time.

I would like to offer my humble opinion as to the solution of what some claim to be a "shortage" of certified interpreters. People use that as an excuse to hire the cheaper uncertified people.

It is my belief that things would run smoothly and there wouldn't be a shortage of interpreters if:

Ø For QME, AME, and IME, court certified interpreters are on site.

(Please do not buy into the idea that I've heard some adjustors try to promote: that "court certified" interpreters do not have the vocabulary to interpret in medical settings. Court certified interpreters are well rounded interpreters who assist in many settings. IME's in personal injury cases, which are the same idea as the med legals in work comp.)

Ø For treatment appointments and physical therapy, medical and administrative interpreters.

The services of court certified interpreters are more costly, but QME's (for the most part) only come along once or twice in the life of a case. There are many court certified interpreters available, as they do not keep as busy with all the follow up treatment appointments. They mostly interpret at depositions and in court.

If medical, administrative and court certified interpreters had more work, it is my strong belief that the fees wouldn't be as great of a concern.

Tania England

May 18, 2015

I am a state certified court interpreter and I strongly disagree with several points of this draft. The most important are the following:

1- I firmly oppose section 9931 which authorizes adjusters, physicians, hearing officers and/or by agreement of the parties to provisionally certify an individual after only three unsuccessful attempts to find an available certified interpreter. I also strongly disagree with section 9932(a)(3) which gives adjusters the authority to choose non-certified interpreters just because they authorize it. NO non-certified interpreter should be used at any point for any reason. There are plenty of certified interpreters in our State (more than a thousand) to reduce the search to only three attempts. Also, certified interpreters go through rigorous training, grueling exams and continuing education programs to be able to maintain our certification and improve our skills. How can a person such a judge, attorney, doctor (or much less an adjuster) who doesn't speak the foreign language be qualified to qualify anybody to interpret. There are State and National associations that exist for that purpose. Not only will this end the quality standards and completely undermine the interpreting profession but, most important, this measure will be a disservice to the injured worker who completely depends on competent interpreters to convey his concerns, testimony, symptoms and so much more. Many injured workers have already been abused by their employers, suffered permanent disabilities (that may affect them for the rest of their lives in addition to limiting their earning capacity) and their benefits have been greatly

reduced in the past, but now this measure will deprive them from real due process. What is left after that? And what about the legal consequences of having a less than adequate interpreter? The lawsuits, appeals, and legal actions that can and will occur just because this proposal seemed more "cost effective".

Injured workers are entitled to be represented by a attorney licensed in California and treated by licensed physicians. By denying them from having a certified interpreter, their rights are being violated since their attorneys and physician's communication (and hence their professional services) will be compromised with the use of an unqualified interpreter. This makes no sense at all. They might as well represent (and treat) themselves.

2-Another important point is section 9935(a) which authorized adjusters to select interpreters for medical appointments. If the main goal of this system is to provide an even ground and protect the rights of injured workers, we need to maintain the neutrality of the interpretation. Claim administrators who represent the insurance companies can not choose no-certified interpreters for these settings. This measure is clearly a conflict of interest since adjusters' only goal is to reduce costs. The attorneys who represent the injured workers should select certified interpreters for depositions, hearings and all medical appointments to guarantee the quality and accuracy of the interpretation. The value of the case, the kind of treatment provided, the applicant's decisions, health and life are on the line. I agree that some guidelines are important to improve the efficiency of the billing process and to streamline costs and valuable time spent at the WCAB but this shall never be done at the expense of the injured worker. We need to keep a few safeguards to protect their rights.

3- My final point is related to the suggested fees throughout this proposal as outlined in sections 9937 and 9938. Most interpreters do not act as agencies, in other words our job is to interpret and translate. We don't receive appointments, coordinate, schedule, confirm, bill, collect, follow up, file liens and/or petitions, research labor codes for billing and responding to the denials of payments, or show up to lien conferences and trials. We simply can't do it all. Agencies have a very important role in this industry, they provide a valuable service and must be taken into consideration when fees are discussed. The reality is that the rates as they are delineated in this proposal are not sufficient to compensate interpreters and agencies, specially medical and deposition fees.

The state legislators need to think very seriously about this reform and act accordingly to what is best for the people they have sworn to protect. The injured workers are the constituents, not the insurance companies.

Camilo Castano

May 18, 2015

I find this proposal appalling. We are an instrumental part in the workers compensation system and we should be paid with fees that allow us to feed our families and make a decent living. If this proposal is passed many of us and our families are going to go through some really hard times. Hopefully some common sense will prevail and the fees will reflect our concerns.

April Macedo

May 18, 2015

I just graduated as a Spanish medical interpreter from the Healthcare Interpreter Certificate Program at City College of San Francisco. I plan to take the certification tests shortly.

I read the proposed fees and comments, and I found it hard to believe the state had not increased the rate in 20 years. What I found most revealing is the opinion the state has of interpreters suggesting an increase of only 7 Dollars. Needless to say, I oppose this meager increase and request the increase be equivalent to the minimum wage increase since 1995. I expect nothing less from the Department of Industrial Relations.

I would like to know how the state arrived at this fee. I read somewhere there was supposed to be a market study, but I could not find it. Regardless, I do not see how the results of the market study would help. It is nonsensical to base your fees on it because you are most likely to find that medical interpreters are getting paid around \$45.

As I read further, I also found out the state wants to give adjustors the power to provisionally certify an interpreter. I oppose this on the basis that they do not have any qualifications to make those determinations. Neither do healthcare providers, for that matter. The only people allowed to interpret in healthcare should be certified medical interpreters, or trained medical interpreters.

I also oppose the regulation that authorizes the adjustor to provisionally certify a medical interpreter after only asking three certified interpreters. I propose a web platform be activated where all the assignments would be placed. Give access to certified medical interpreters, and provisionally certify an interpreter only if nobody accepts the assignment within a specified timeframe. It seems like an easy solution, so I wonder why the state has not done it. Everyone knows where to find the contact information of certified medical interpreters, so it should not be hard to do. This way, certified medical interpreters can maximize their interpreting potential helping out more patients per day.

I would also request that travel time, mileage, and bridge tolls be compensated.

I request that only healthcare providers be in charge of scheduling a medical interpreter because they know when the visit will take place, for how long they need the interpreter and are the firsts to know if the appointment is rescheduled or cancelled. It frequently happens that the appointments are changed, and the interpreters are the last persons to find out when they check in. This is a waste of money because the interpreters still get paid the minimum. Another waste is when two medical interpreters are scheduled by different parties for the same session. These last 2 examples are not only a waste of money, but also a misuse of qualified interpreters because the interpreter could be assisting another patient.

Jo Ann Guitierrez Bejar
Pazamor Certified Interpreting & Translation Services

May 18, 2015

I am a court Certified Spanish Interpreter and I would like to express my discontent with the proposed Fee Schedule Regulations.

The proposed rate of pay is intended to mirror the Court Certified Federal rates. However, they have recently been set in January 2015 to \$223 for a half day and \$412 for a full day. These rates are meant to go directly to the interpreter providing the service. But your new proposal does not take into consideration that a vast number of independent contract interpreters use agencies to receive assignments and subsequently its how we get paid. Interpreting agencies only give a portion of the rate paid to the interpreter and with this new fee, it will not only bring down the rates paid to interpreters but it will in fact attract low skilled, unqualified bilingual lay persons to render highly sensitive material, given that these new rates will lower the profit margin for agencies.

The cost of living in this state has skyrocketed dramatically and while all service fees for medical treatment, legal representation and in fact Insurance Company Premiums are on the rise, why is it that the interpretation fee has remained virtually stagnant in the last 20 years? It appears that the Department of Industrial Relations is greatly favoring the Insurance Companies rather than the injured worker who is the sole purpose of which the department was established to protect. In order to protect individuals' Civil Rights and allow them to be legally present against highly organized and well-funded insurance companies, the DIR required all interpreters to be certified. Why? Because having a court certified interpreter, insures that a worker will be able to voice and fight his/her case just like an English speaker would. Is the DIR willing to create a two-tier system of Workers Compensation, one for English Speakers and another for everyone else?

As to the ability given to a 'hearing officer,' an 'adjuster,' and/or to a 'physician' to 'provisionally qualify' an interpreter completely disregards and undermines the interpreting profession. The sole purpose of having a certified interpreter that has gone through the rigorous training and testing process is to guarantee that this person is competent to interpret. Those that determine the competency of the individual are professional linguists themselves that speak the same language. How can you expect or even allow that the abovementioned persons 'provisionally qualify' another person when they themselves are not competent to speak the language? How will this be regulated or enforced? Will physicians, hearing officers, or adjusters be obligated to take written language tests in order to determine the competency of an interpreter? Of course not, it would be absurd, as is the provisional qualification amendment. I am also against the 'half day' being set at 3.5 hours; it should remain as 3 hours, and a full day at 6 hours. These proceedings are not set at regular business hours as the courts abide by. Morning proceedings start at 10am and 2pm for afternoon proceedings. Provided that the interpreter is not requested to assist in the preparation of the deposition, it is not feasible for an interpreter living in a metropolitan area, such as Southern California to attend 2 depositions in one day, given so many outside factors that could cause a delay, for example a deposition goes on for more than 3.5 hours or there is traffic.

I believe that the 1-hour minimum for the cancelation of medical appointments is unjust and the 24-hour cancelation period should always be honored. When an interpreter is assigned an appointment, they block out the approximate time the appointment will take. This allows the interpreter to schedule and organize their workday, not to mention how much they will earn on a specific day. Many times the appointment is canceled or rescheduled by either the clinic, doctor or patient, having absolutely nothing to do with the interpreter, therefore the interpreter should

still get paid for the time frame that was blocked. It seems that only paying for a 1-hour minimum places an undue burden on the interpreter, when it is out of their control. In cases of psychological evaluations, which take anywhere between 4-6 hours, (and sometimes more), the interpreter can only take that 1 appointment for the entire day. With the proposed 1-hour minimum, if the appointment doesn't go through, the interpreter is now left with only making 1/6 of the proposed earnings for that day. It takes simple math to realize what will happen when an interpreter has several cancelations or rescheduled appointments in 1 week. Interpreting no longer becomes a sustainable career.

I urge you to reconsider your proposed regulations and honor the endless hours of training and education interpreters invest into our careers and profession. Thank you for considering my comments and concerns as well as those of my colleagues.

Zulema Estrada

May 18, 2015

With all due respect, I am not in agreement with such proposed regulations and believe it so unfair. At this time I am a qualified medical Interpreter that worked as freelance Interpreter for years for Independent Agencies. I have had the opportunity to work and educate myself throughout the years as I wait for my Medical Oral Exam results to find out now all of the dedication, preparation I have accomplished may not be awarded. These so called proposed regulations are very unfair. Insurance claims administrators, judges, physicians may have the authority to choose and provisionally qualify an Interpreter? Where does this leave us? Negatively impacts the quality of Interpreting services to our Injured worker that is the Insurance Carrier are authorized to select a non-professional interpreter. Quality of communication between non-english speaker -injured worker and the evaluator, physician and attorneys are being jeopardized by these regulations as well. I am not in dispute about a reasonable market rate fee schedule but 50 percent decrease is a ridiculous amount of cut back.

Jesus Rivera
Certified Court Interpreter

May 18, 2015

DIR's recent fee schedule proposal has serious flaws. The most glaring, in my view, is the one authorizing laymen – especially laymen with vested interests – to “*provisionally* certify” an untrained and inexperienced individual as an interpreter. Since other contributors to this forum have already dealt with that flaw, I will focus my comments on DIR's confiscatory and penalizing fee proposals based on Federal Court rates.

Using Federal court rates as the criterion for arbitrarily deciding interpreters' pay in workers' compensation depositions misses the mark completely for a simple reason: interpretation assignments in Federal Court and interpreting in a workers' compensation deposition are not at all equivalent. (And a secondary point: CURRENT Federal Court rates for Federally Certified Interpreters are \$223 for a half day, \$412 for a full day, not the \$210 and \$388 DIR proposes.)

In Federal Court, an interpreter working a half day is usually assigned two or, very rarely, three matters that normally last between 10 and 30 minutes each. And that's it. That has been my

experience. For the occasional trial, the work is divided between two interpreters who alternate every 30 minutes, which *is necessary* because of the tremendous mental focus needed.

A half-day deposition, on the other hand, entails three hours of non-stop interpretation by one interpreter, save for pauses requested by counsel. By code, that lone interpreter is also required to interpret everything said in the deposition, including any colloquy between attorneys.

Every independent interpreter that I know certainly enjoys the challenges of a deposition, but also insists on being compensated commensurately. Thus, any mandate that arbitrarily pegs what one interpreter may bill for a WC deposition to what another earns in Federal Court, as if their assignments were comparable in *intensity, duration* and *stress*, reveals a flimsy grasp of basic facts about this profession.

Regarding the duration of assignments, interpreters schedule their time with the expectation of working full days, either through full-day assignments or two half-day jobs. Using the Federal Courts as an example, again, a half-day morning assignment there is over by noon, leaving an interpreter plenty of time to travel to an afternoon assignment.

By contrast, the interpreter working a three-hour deposition starting at 10 a.m. is already not able to accept a 1:00 p.m. assignment, but she could conceivably make it to a 1:30 p.m. assignment if it is nearby, and most certainly to a 2:00 p.m. job. However, a 3.5-hour “half day” starting at 10 a.m. would definitely make any of that impossible, violating the interpreter’s right to earn a full day’s fee.

But only is DIR’s 3.5-hour proposal a fundamental violation, it is way off-target. After all, it is attorneys, not interpreters, who set the starting times and determine the duration of depositions and other procedures. If all parties involved, including DIR, oppose having interpreters bill for a full day when depositions exceed three hours, why not direct attorneys to schedule procedures for 8:30 or 9:00 a.m.?

As for the proposal to extend a certified interpreter’s full day from six to eight hours with no extra pay, it seems to me as if no one in this decision-making process fully understands what it is interpreters do. I also believe no one in DIR has any idea what even a 3-hour deposition would look like if done by a lone “provisionally certified” individual (read: inexperienced and non-certified/non-registered), considering that in Federal Court, DIR’s benchmark, the requirement is for two Federally certified interpreters to alternate every 30 minutes. Is it fair, then, to arbitrarily limit what an independent Certified Interpreter can earn for providing all by herself a service that in Federal or Superior Court must be provided by two Certified Interpreters?

DIR’s proposed fees and definitions of half and full days have not been thoroughly thought out; there’s a worrisome ignorance of the interpreting profession. And it is a profession, a demanding, evolving and gratifying profession, and not an easily acquired “knack” for language, as so many on the outside believe.

First of all I would like to thank you for taking the time to read all the public comments. Taking this feedback under serious consideration is paramount to drafting a final regulation that is both fair and just.

I am a medically certified interpreter. As with the majority of people who have commented on the proposed regulations, I have grave concerns about what is being proposed. Broadly speaking, the proposed language gives complete and utter control of interpreting services to the insurance companies. This is unacceptable.

The Regulations, as written, give claims examiners license to use non-certified interpreters through two major loopholes. Only three certified interpreters must be contacted before they can claim no one certified is available and send a non-certified one. The claims administrator can also send a non-certified interpreter as long as THEY authorize it. Why should the claims administrator have that kind of authority? What qualifies any of them to provisionally certify an interpreter?

Another major problem with the proposed regulations is that it completely Applicant Attorneys of the ability to choose their interpreter for depositions, med-legal appointments and treatments. Applicant attorneys traditionally hire local language service providers (LSP's) who use mainly certified professionals. These regulations will essentially put all LSP's out of business, hurting the local job market and sending countless jobs out of state.

This brings me to the rates. The rate proposed for certified interpreters is a 50% reduction of our current market rate. The Med-legal rate proposed is a meager \$7 more than the suggested minimum published in LC 9795.3 some 20 Years ago! The billable legal rate is less than what certified interpreters charge currently in some areas. The proposed fees are completely out of touch with inflation and geographical differences of cost of living.

I urge you to make serious changes to the proposed regulations, keeping interpreting services out of the hand of the insurance companies who are the ONLY beneficiaries of the regulations as they are now written.

Carlos Garcia

May 17, 2015

I am a certified Spanish medical interpreter in San Francisco, CA. I am the immediate past Executive Director of the National Board of Certification for Medical Interpreters, former California Chapter Chairman of the International Medical Interpreters Association, and current Interim Secretary of the California Healthcare Interpreting Association. These are my comments regarding medical interpretations and do not reflect the opinions of those organizations.

I agree with the 1-hour minimum and compensation rates for non-certified medical interpreters. It will entice them to get certified, invest in their careers, and raise the standard of care.

SB 863 allows for provisionally certified interpreters. I recommend that only healthcare providers be assigned the task of qualifying a provisionally certified medical interpreter. They

should only qualify interpreters that provide a copy of a certificate of completion of at least a 40-hour medical interpreting training program, which is the minimum national standard established by the National Council on Interpreting in Healthcare. A list of programs that meet the requirement can be found in the online training registry of the International Medical Interpreters Association.

Healthcare providers need to insert a copy of the certificate in the medical chart to have valid supporting evidence backing their decision. The practice of provisionally certifying an interpreter by a party that does not have the qualifications to perform such a task will open the door to unnecessary litigation jeopardizing the proceedings. More importantly, it will endanger patient health.

SB 863 calls for a maximum fee to be established for interpretations. I second the method of calculating it presented by Carlos Chang on May 1 analyzing minimum wage increase over 20 years, and I add the additional consideration that nationally credentialed medical interpreters have to meet a continuing education requirement. The requirement did not exist prior to 2010, and state certified medical interpreters are not required to meet it, but nationally certified interpreters have to accumulate 30-32 hours of continuing education during a period of 4-5 years. This requirement costs at least \$2,000. With this in mind, the maximum fee for Spanish certified medical interpretations in California should be at least \$105.89 per hour with a two-hour minimum. In San Francisco, the maximum fee per hour should be at least \$130.24 with a two-hour minimum because our cost of living is higher reflected by our minimum wage, which is 23% higher than the state's minimum wage.

Lastly, the minimum wage in San Francisco is set to increase yearly after July 1, 2016, so revisions to the fee schedule must regularly be made to avoid the situation we are in where the rates have remained stagnant for over 20 years. These changes will ensure a sustainable workforce throughout California.

Teri Bullington
Court Certified Interpreter

May 17, 2015

I, am very concerned about the proposed fee schedule by the DIR. I join with my colleagues that the fee schedule that is being considered is absurd and does not consider Certified Court Spanish Interpreters as professionals with a right to earn a fair wage. Many of us use to work primarily in the Superior Courts for years. However, when many Interpreters chose to become employees, Independent Contractors needed to start working more in the private sector. Most of the jobs that request our services are for Workers' Compensation cases, In addition, the majority of the jobs that are assigned to us are through Interpreting agencies which have an extensive client base and which must also negotiate a fee with us that will allow them to earn a profit as well as allow the interpreters to earn a decent hourly fee.

The rate that is being proposed by the DIR, \$210.00 for a half day which is supposed to last up to 3.5 hours, and \$388.00 for a full day which could be up to 8 hours, is completely ABSURED and UNFAIR. Currently, the market rate for a Certified Court Interpreter contracted to do a

comparable job that would last 3.5 hours is around \$315.00 - \$350.00. I do not know what the agencies are charging their clients.

The DIR does not understand the complexity of how an Interpreter manages his/ her work schedule. Independent Contractors do not have guaranteed work from month to month to. Our calendars are filled up gradually as we are offered assignments and if we have the availability to accept an AM and / or a PM or a FULL day assignment. Every new month is a clean slate that must be filled with assignments that are offered. We must be careful not to accept assignments that might overlap. The agencies do not know exactly how long or short an assignment might last.. They usually only want to offer a 2 hour minimum and 3 at the most in case it should cancel at the last minute.

I have been contracted for Pysch Evaluations, for IMEs, AMEs, QMEs in which the agency only contracted for a 2 or 3 hour minimum. Sometimes these evaluations have lasted 4-6 hours and the Doctors are not very pleased when an Interpreter needs to leave to go to another assignment.

Assignments start at many different times. They may start at 8 am, 9 am, 10am or 11 am. If an assignment starts at 10:30 or 11:00 am for example, an interpreter must bill for a 3 hour minimum because it is most likely that an afternoon assignment could not be accepted due to timing conflicts. Many afternoon jobs start at 12:30, 1:00, 1:30, 2:00 pm. Each interpreter has to be careful about the assignments accepted in order not to have conflicts. In addition, the time necessary to travel from one job to the next as well as the opportunity to have a lunch break. There are times when there is not enough time to take a lunch break.

A lot of jobs are requested at the last minute. Sometimes the Independent Certified Court Interpreters are able to accept an assignment, simply because it was a time available that he or she had not been able to fill previously. We don't know why Attorneys, or Doctors, or the Insurance Companies, hadn't been able to plan ahead and make the arrangements to contract a Certified Interpreter.

The idea that someone could contract a provisionally certified interpreter, or make THREE attempts to contract a Certified Interpreter and then contract whoever they wanted to violates the new law that went into effect on January 1, 2015 which requires that Certified Court Interpreters state their certification number on the record., in depositions and show the certification badge to doctors for Medical-Legal evaluations.

I, along with many of my colleagues, are in complete disagreement with the proposed fixed fees.

Gloria M. Rivera
Certified Medical Interpreter
English/Spanish Translator
Faculty Member – Agnese Haury Institute
National Center for Interpretation – University of Arizona

May 17, 2015

We are a group of certified medical interpreters located in San Diego, CA.

We have read your proposal and discussed it at length in several meetings and have the following to contribute.

1. Interpreters are professionals.

We cannot stress this enough. Our profession has standards, rules, and regulations. We are not “just bilingual people.” We are trained professionals who know about ethics, procedures, vocabulary, HIPAA regulations, methods of interpretation, and other subjects. Certified interpreters, just like other professionals, have to take courses in order to keep their knowledge up to date and maintain their certification valid through CEUs. This draft is portraying certified interpreters as individuals who can be easily replaced by people claiming to be bilingual and, consequently, endanger patient’s health and welfare.

2. LEP patients have the right to an interpreter.

Title 6 of the Civil Rights Act of 1964 states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” Since language is a main component of a person’s national origin, when a patient’s access to an interpreter is denied, his or her rights are violated. Based on this premise, we believe that LEP patients should be offered interpreter services instead of having to request the service themselves. In our experience, most patients are not even aware that having access to language service is their right.

3. Healthcare providers are not qualified to certify interpreters.

The National Board and the Certification Commission for Healthcare Interpreters (CCHI) are the only entities that certify medical interpreters nationwide. They have validated tests in place to assure that the person who becomes certified precisely conveys meaning in a culturally appropriate manner, ensuring accuracy in diagnosis, treatment, and obtaining informed consent while preventing medical errors. Therefore, how can a healthcare provider be qualified to test the ability of an interpreter in Spanish, Farsi, Tagalog, or Korean? This Fee Schedule Regulations document would lower the quality of service and even endanger the health and welfare of the patient.

4. Remuneration should be equal among certified interpreters

According to the SB 863: Assessment of Workers’ Compensation Reforms, issued in July 17, 2014 (Appendix A), the DWC is using the Berkeley Research Group study and recommendations to determine appropriate fees for all interpreting services.

The report states that most of their source of information was compiled from a nationwide entity, which is a multi-service provider of services for the workers’ compensation system. This entity claims itself as a "loss leader" regarding interpreting services and states as well that interpreting services are a "small part of their business. In addition, it compares interpreting rates in California to states like Kentucky and Georgia, which have a much lower Hispanic population and cost of living. Instead, this study should have compared California to New Mexico and Texas that have a comparable Hispanic population, and adjust their values to their lower cost of living.

This study also establishes that interpreter fees should be divided as Spanish vs Non-Spanish languages since there is a much higher offer of Spanish interpreters and they recommend maintaining a slightly higher wage for interpreters of other languages in order to find qualified interpreters. The fact that this rationale is used to pay Spanish interpreters less than their peers,

implies discrimination since we render the same service, but in a different language and, therefore, should be equally compensated.

Therefore, we disagree that a report elaborated with these sources and based on this rationale be used to establish interpreting fees in California.

5. Minimum time for appointments must be adjusted as well as fees.

In our experience, medical appointments take up to 2 hours; first medical appointments and medical-legal appointments take up to 3.5 hours, and psychological and surgical appointments (which have not been included in this draft) take up to 4.5 hours.

The word “maximum rate” should be excluded from § 9938 (a). To include it would eliminate the right of every interpreter to establish and negotiate a fair market rate with the individual or company requesting their interpreting services.

We also believe that the interpreter, as in any similar profession, should be compensated for mileage (rate adopted by the Director of the Department of Personal Administration pursuant to Section 19820), toll payments, parking fees, and travel time

6. We live close to the border.

Baja California, Mexico is located south of San Diego. Many interpreters and “bilingual” people live in Tijuana and come to San Diego to work as interpreters. This raises three issues: rates, quality, and accountability. People who live in Tijuana have a lower cost of living and thus cover assignments for a much lower rate than certified interpreters who live in San Diego can possibly accept. People who live in Tijuana are not as bilingually fluent as they portray to be, they are not familiar with the US medical system nor Workers’ Compensation laws and regulations, which threatens the quality of service when compared to an interpreter who is certified and living in the US full time. Also, interpreters living outside of the country are not as accountable as US based interpreters.

7. Initial medical visits, psychiatric/psychological visits, and surgical appointments should only be covered by certified medical interpreters.

We believe that medical-legal appointments, initial medical visit, psychiatric/psychological visits, and surgical appointments should ONLY be covered by certified interpreters. The nature of these appointments that include filling out extensive paperwork, handling very specialized terminology, and a very thorough medical examination, require the proficiency and skills of a certified medical interpreter. Therefore, we believe these appointments should be treated as a medical-legal appointment and compensated as such.

8. More than 3 interpreters should be contacted to cover appointments that require a certified medical interpreter.

This document states that at least 3 certified interpreters should be contacted to provide services for an event. We agree that this statement leaves a lot of room for interpretation. It should state that said interpreters should be in the same geographical area (i.e. 25 miles) and that given the fact that there are more interpreters getting certified the interpreters on said lists should be contacted before authorizing the use of a non-certified interpreter.

9. There are enough certified interpreters to cover medical assignments in San Diego.

There are enough certified medical interpreters to cover all the medical-legal assignments, initial medical consultations, psychiatric/psychological visits, surgical appointments, AND regular medical visits (follow-ups). In the event that a certified interpreter could not be available, a non-certified medical interpreter who has the CoreCHI™ credential should be used as an alternative.

The CoreCHI™ exam “focuses on managing an interpreting encounter, healthcare terminology, interacting with other healthcare professionals, preparing for an interpreting encounter, and cultural responsiveness” and we believe these soon-to-be certified interpreters have proved their commitment with our profession as well as the patient’s safety.

To sum up, we believe that our profession should be treated with respect and compensated based on a more realistic market study and minimum time frames for appointments. Also, certified Spanish medical interpreters should be compensated in a comparable manner as their non-Spanish colleagues.

Cordially,

- Sandra Aragon, California State Certified Medical Interpreter 500282
- Enrique Aragon, California State Certified Administrative Interpreter 100046
- Guillermo Artigas, California State Certified Medical Interpreter 500346
- Ruth Ballard, Medical Interpreter*
- Eva Barasch, CMI 100905
- Patricia Beer, California State Certified Medical Interpreter 500280
- Rina Bessudo, CMI 101048
- Annette Bewley, Medical Interpreter*
- Alina Castañeda, California State Certified Medical Interpreter
- Carlos Chang, CMI 100915
- Sarah Cohen, Medical Interpreter*
- Adriana De Dominicis, CHI 002430
- Maria Edrington, CMI 101106
- Donna Ezcurra, Medical Interpreter
- Uvistano Lucatero, Medical Interpreter*
- Mary Mac-Leay, California State Certified Medical Interpreter 500294
- John H. Martin, California State Certified Interpreter 301614
- Julie Massa, Medical Interpreter*
- Marina Mevi, CMI 101243
- Carolisa Morgan, CMI 101164
- Esther Moscona, CMI 101197
- Monica Porteny, CHI 003780
- Dolores Righetti, CHI 003679
- Gloria Rivera, CMI 100853, CHI 002761
- Nancy Rossenouff, Medical Interpreter*
- AnaElvia Sanchez, CHI 003938
- Veronica Schraeder, Medical Interpreter*, CoreCHI™
- Alejandra Serrano, CHI 003804

* Interpreters who have passed the National Board’s written exam

Interpreters should be entitled to charge whatever rate they believe they can demand in the free market, just like any other commodity or business, the free market through competition will determine the rate according to the interpreter's ability and experience. If an interpreter asks for a fee that exceeds the market norm, they simply will not get hired. Insurance companies, through expensive lobbyists, should not be able control the free market for their pecuniary benefit. Buying legislation to get an economic advantage over individuals should be illegal and unenforceable under the law. If allowed to stand, the rule of law has no meaning and relegates individual workers and independent contractors to slaves of the corporate state. Corporations and insurance companies are not individuals and get their charter from the government and should be tightly regulated for the benefit of our citizens. There is no precedent in law to allow insurance companies to set rates for interpreters who are not employed by them. Freedom of contract is the foundation of our economic system, and if allowed to be legislated away, there will remain no economic freedom for anyone.

Bernard Arana, Esq.
Christina Arana & Associates, Inc.

May 17, 2015

I am a owner and operator of a family owned all language Interpreting Agency, or what is now referred to as a Language Service Provider (LSP). We have been in business as a LSP for over thirty-five years. As an operator of a LSP, a licensed attorney and a small business owner, I am greatly concerned with the draft of the recently published recommended fee schedule for interpreters. I offer the following comments and urge that the proposed draft be reconsidered.

In its current draft, the recommended fee schedule will greatly hinder the non-English speaking injured worker's civil rights by diminishing the competency of those who provide these necessary language services in both legal and medical settings.

The draft regulations are to include an "emphasis on a qualified Interpreter", but the fee scheduled is far below what would be necessary to secure Certified Interpreters in all languages and in all settings. This "emphasis on a qualified Interpreter" further sets forth the use of provisionally certified Interpreters, at an even lower fee schedule to provide questionable language services. The indicated restrictions on the use of these provisionally certified Interpreters is nothing more than three attempts to procure a Certified Interpreter at a deflated fee.

This "Emphasis on a qualified Interpreter" coupled with the draft regulations "Selection and arrangement of Interpreters" ensures that claims administrators will be the party to determine who gets an interpreter, and then the selection, qualifications and arrangement for interpreters.

I have been told far too many times by a claims administrator that an injured worker can "get by" without an interpreter, or that they should just bring a family member who speaks English. There are also the times I was told by claims administrators that an injured worker did not really need to appear at the Status Conferences.

The advocacy of the injured workers rights should not be in the hands of claims administrators, but that is exactly what is happening here plus the way to do it at the lowest cost and quality. There is prevalent bias towards the injured workers by those in the employ of the insurance companies and a tremendous conflict of interest. This will inevitably lead to a violation of the injured workers rights. The rights of the injured worker should be in the hands of the advocates who represent them.

I believe that this draft of recommended fee schedule will greatly undermine the proper functioning of the WCAB. The WCAB has no staff interpreters of its own and has historically relied on private interpreters and Language Service Provider to meet its needs for interpreter services. The fees as set will certainly make it difficult, if not impossible to provide Certified Interpreters for all languages. The same will be true for other legal settings.

The overwhelming majority of the comments submitted in regards to the fee schedule draft, suggest that those Certified Interpreters working in the Workers Compensation arena will ultimately be driven out of this profession by far less qualified and paid. The other overwhelming thing commented on is the seriousness that people take with regard to their professionalism as Certified Interpreters. An exodus of these professionals from this field will be a serious detriment.

In reading through the draft of the interpreter fee schedule regulations, I am puzzled by all that is missing from it, and the idea that this is supposed to replace the current fee schedule that has been in place for over two decades. The original fee schedule set a minimum rate and a market rate, which allowed for varying differences in the cost of these services. The use of the market rate has allowed for presence of any needed Certified Interpreter in all languages and settings.

The specific language in the new draft reads as follows “the reasonable maximum fees payable for interpreter services”. This creates a ceiling which does not account for anything beyond what is marginally set. This also suggests that insurance companies can and most likely will pay less than the reasonable maximum. There will be nothing keeping an insurance company from paying less for a Status conference than a Trial settings.

I hope that all the real benefits the Interpreting profession be respectfully considered and the role of Language Service Providers (LSP) be included. I urge that the proposed draft be reconsidered and that a Fee Schedule be drafted in light of comments & concerns forwarded by those professionals and the organizations that represent them.

Julia Elizarraraz
State Certified Spanish Interpreter
Language Service Agency Owner/Administrator

May 17, 2015

I have reviewed the proposed changes and frankly, I am appalled. As a business owner and independent contractor, I can definitely understand the desire to keep costs as low as possible, but you must understand that when you dip too low, you end up scraping the bottom of the barrel. I don't think you have really considered the true cost of making it impossible for a

certified/professional interpreter to make a decent living. I know you think you will be saving money in the long run, but believe me, the cost will be much higher than you think.

First of all, no agency can afford to accept the proposed rates. They will shortly go bankrupt or out of business. I know I could not afford to contract a decent interpreter at those rates.

Second, you may think that we can just eliminate the need for an agency to contract these interpreters. Perhaps you believe that interpreters are willing to work directly with the adjuster (or whoever is contracting) and that both parties can continue without a middle man. But you clearly have not thought about the time and effort and WORK that it takes to secure interpreters for appointments. And that is just the easy part. What about when someone has an emergency, or there is a cancellation, or there is a last minute need...Do you know how long it takes to get an adjuster on the phone just to agree on a settlement amount? I personally have witnessed this to take HOURS. What happens when you need an interpreter immediately? The agency is an indispensable part of the Workers Compensation system. We do the work that no one wants to do. But to continue doing this hard work, we MUST be properly compensated. We will NOT work for free. There is no way around that.

Third, you cannot force the system to use provisionally certified interpreters, much less non-certified interpreters. There is a very good reason we have the certification process in place. I know that you are all geared toward saving a buck...believe me, I do understand that. But you have to understand that we are talking about people whose lives and well-being are at stake. If your mother were the applicant and she needed an interpreter, would you honestly be ok with her having a random, non-certified, or otherwise unqualified person as her sole liaison between the medical and legal worlds? You cannot possibly tell me you would be ok with that.

Fourth, even if you don't care about the applicants as people, at least consider the long term costs of implementing the proposed changes. Can you be sure that the lack of qualified interpreters will not cost you more in the end? How about when the applicant is injured, harmed, or otherwise wronged because you wanted to save a dollar in the short term? How much more do you think the subsequent lawsuits will cost you? Why not pay the proper amount to get it right the first time? Don't you think it is better to cover yourselves by insuring quality interpretation rather than making a mess and then paying double to clean it up?

Fifth, if you are going to impose a specific rate of pay, then you have to understand that this now legally makes you an employer according to IRS standards. And if you're going to set our pay, we will demand that you also give us a benefits package that includes all the standard items: medical and dental coverage, paid sick and vacation leave, personal time off, disability insurance, WORKERS COMPENSATION INSURANCE, 401k/retirement plan...Do you see where I'm going with this? We are independent contractors by nature of the fact that we must set our own rates. We are aware, as you must be aware, that the market will settle itself. You cannot act as an employer only when it is convenient to you. Be fair. Be just.

Please consider the long term implications of these changes. I am sure that if you do, you will see that our comments against them are completely justified, and I am sure that you will do the right thing and retract them.

I've only been an interpreter for the past 3 years but I love my profession and take it very seriously. I started interpreting only after preparing myself and going through the appropriate channels to obtain the necessary certification. It should be mentioned that to obtain said certification one must have a strong command of both languages (English and Spanish in my case) and undergo a very rigorous exam.

While it's true that there has been a certain level of abuse of the workers comp system, as there is in just about any other system, think social security or welfare, simply because people are just people and there are those who will take any advantage they can at every level, it is also true that the workers comp system is being manipulated to the benefit of only a few, namely insurance companies.

The proposed rates for interpreters are a fine example of the complete disregard for the profession as a whole, and of the injured worker who has the right to a competent interpreter.

There are a few things I plainly don't understand.

First of all, interpreters are warned time and time again, about the anti-trust laws and the illegality of price fixing, yet it is ok for the insurance companies to lobby for their own benefit and do the very same price fixing for us. Seems contradictory to me.

Second, the rates proposed don't seem very practical for anyone involved. On one hand, I don't see the interpreters agreeing submissively to a roughly 50% pay cut overnight at the whim of legislators or rule makers, on the other hand I don't see the agencies being ok with folding over night to save the insurance companies the expense and I don't see the insurance adjusters making their own calls to book interpreters for every single deposition and doctor appointment. Something's got to give.

If the rates are cut as drastically as proposed, all or at least most of the competent interpreting professionals would be forced to look for another source of income as these new rates would not allow us to make a living and the system would be left with only a few certified interpreters and the "provisionally certified" ones, which bring us to another point.

What qualifies an insurance claims adjuster to "qualify" an interpreter? Insurance adjusters have no knowledge of the skills necessary to be an interpreter. Interpreting is a profession. It takes preparation and skill to be one. To become an attorney, you must first learn the law and then prove that you do by passing the bar exam, only then someone would consider that individual an attorney and at any point before that, at best that person would only be considered a law student! So what gives the adjuster (insurance companies, or legislators for that matter) the authority to arbitrarily decide who is or can perform the job of an interpreter?

There is also the point about the definition of half and full days. These proposed rules don't take the private sector into consideration. I understand that someone who is in court or the Board doesn't have to go anywhere and they would be done with his/her morning at 12 noon but in the private sector, the schedule is very different than at the board. Depositions are hardly ever taken before 10 am and time must be allowed for the interpreter to commute from one assignment to another. I'm not even considering a reasonable amount of time for a meal here! The only possible way to accommodate these necessities is by maintaining the current private sector standard in

which a half day is considered anything from 0 to 3 hours and a full day anything from 3 to 6 hours.

I truly believe these changes if approved, would adversely affect me as a professional but it would also affect the hundreds or thousands of applicants who would find themselves without the benefit of a competent interpreter in an important medical appointment or legal proceeding. These may very well be life changing events to someone and being denied a competent interpreter may be as detrimental as being denied competent counsel.

Ramiro Martin

May 17, 2015

I have been involved in the interpreting profession as State certified Interpreter since 1990 and would like to express the following concerns in regards to the proposed fee schedule for the interpreting profession.

1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.

2) The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, “provisionally certifying” an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.

3) Assuming laypeople shall be allowed to “provisionally certify” individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a “provisionally certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a

provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.

4) We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter for medical treatment, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.

The Pre-requisites are:

a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.language-testing.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.

b) Having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI’s CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD’s must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker’s civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

5) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers’ Compensation services.

The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

6) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

7) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

8) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?

9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

Cornelia M. Zeidner Harmon
CMI Certified Medical Interpreter
VoiceCast Interpreting Network

May 17, 2015

1) It is imperative that there be a 2 hour minimum for all Medical and Med-Legal appointments. Medical interpreters normally do not interpret at only one location. It would be impossible for an interpreter to stay in business if the 2- hour minimum does not prevail. Interpreters travel from one location to another, without compensation for mileage if it is less that 25 miles. Normally a workers compensation treating or med-legal appointment lasts at least 1.2 hours, and travel time is at least 15 - 20 minutes or more if there is no traffic. This

necessitates an interpreter to require a 2- hour minimum. Many times an appointment can last 2 hours or more, due to waiting time at a providers' clinics.

2) The right for the party producing the witness to choose his/her interpreting service. This is imperative in order to keep the legal process neutral, and the quality of the interpretation true to both languages. There are hundreds of small, local Language Service Providers (LSPs) who comply with the certification regulations in California. Unfortunately insurance companies have outsourced their interpreting services to large corporations, and due to the lack of transparency it appears these large corporations' fees are much higher than those of the proposed fee schedule. How is it possible that these corporations can pay much more than the market rate of smaller agencies to certified interpreters?

3. The new laws from 2013 stated that all interpreters need to be properly certified according to the classification of the type of appointment. This proposal totally eliminates the necessity of certification, due to the loop-holes that have been included. How can it be that a profession that medical providers rely upon to relay important, if not life and death information do not need to produce a certification to prove competency?

In the state of California practicing professionals need to prove competency via a certification process. This helps establish a fee schedule. Why shouldn't this apply to interpreters?

Charlotte Bockman

May 17, 2015

After reviewing the proposed fee schedule it was very clear to me that the work of an interpreter is seriously underestimated. The reason the interpreters certification process was created was to transform interpretation into a profession and to guarantee that limited English professionals and their doctors, lawyers or other person who they speak to can communicate in an effective way. Limited English professionals make extremely important decisions based on what they hear from the interpreter. If there is an interpretation mistake, the limited English professional can make an extremely wrong decision. The interpreter has an enormous amount of responsibility due to this.

Another issue that has to be taken into consideration is that the certification process an interpreter goes through is an arduous process. It takes years of studying and training in order to pass the certification tests, and once the certification is obtained we, interpreters, still have to meet continuous education requirements in order to keep our abilities and knowledge up to date.

Interpreters are professionals and should be considered as such. No one would negotiate with or set a fix rate to a doctor or attorney. They simply do not allow it. Interpreters as professionals should receive the same treatment.

The proposed fee is extremely low, and it does not consider that interpreters work, in most cases, is obtained through agencies that receive a share of that fee. A person can't work under these conditions. I'm pretty sure that if this proposed fee goes through certified interpreters will start leaving the profession because it is just not possible to make a living, and in some cases would end up costing the interpreter money cover an assignment.

Anparo Ramirez

May 17, 2015

I work as a receptionist at an orthopedic office that works primarily with work comp patients. Most of the interpreting that is done at our office is handled by certified interpreters working in conjunction with applicant attorneys who send their clients to treat at our office. There are times when these interpreters are asked by the insurance companies not to provide interpreting services because they would rather use an interpreter provided through their preferred vendor. When this happens, more often than not it seems that their vendor either sends a non-certified interpreter or fails to send an interpreter all together. Sometimes an interpreter will appear at the first appointment only to never come again. Although I am bilingual, I am not a trained interpreter, and when this happens I am the one who ends up having to interpret for the injured worker. This isn't fair to me as that is not my job nor is it fair to the injured worker who doesn't get the quality interpreting service they deserve. It is my understanding that under these new regulations the insurance companies will have complete control to use their preferred vendors for all interpreting assignments. The problems that this would create are immense for the reasons mentioned above and I can only imagine that it would be much worse since they would be responsible for providing services for so many more patients then they are now. I strongly urge you to reconsider giving so much control to the insurance companies regarding interpreting services. This is going to create a lot more problems then it's going to solve.

Lucinda Aragon

May 17, 2015

The following is in response to the interpreter regulations and fee schedule proposal. The proposal clearly gives the insurance companies a blanket license to use non-certified interpreters. This would clearly be a detriment in that it would deprive injured workers due process by denying them the right to have a skilled interpreter and it would displace certified professionals who have had to go through a rigorous certification process. The following points specifically address the inherent weaknesses of the proposal:

There is a double standard when it comes to certification. Certification is emphasized and mentioned throughout the Labor Code and proposed text but the requirement applies to independent contractors and not to the insurance companies and the agencies that they use. Many of those agencies already have "rate negotiator reps" whose job is to contact their vendors and recommend that they take a 50% reduction in pay because according to them, many areas are "saturated" with interpreters who are willing to work for much less. This would clearly result in a massive displacement of professional interpreters who have had to study and pass rigorous certification exams in order to get certified. This would give the insurance company the ability to hire inexpensive interpreters and this would surely deny the injured worker due process. The proposed regulations give adjusters whose job is to cut costs for the insurance companies the ability to use non-certified interpreters through the following two loopholes:

- a. Section 9931(C) states that adjusters only have to contact three certified interpreters before they can claim that no certified interpreters are available. Does this mean that an adjuster can call a certified interpreter in San Francisco to cover a job in Los Angeles? The rate of pay for interpreters would clearly make it cost prohibitive for any interpreter

to travel a long distance to cover an interpreting assignment. There is no language that defines the parameters within which an adjuster can look for a certified interpreter. There is also no mention as to who will monitor and this. Is there a budget for hiring someone to enforce this? If an interpreter is on an assignment and can't answer a call from an adjuster, does this qualify that interpreter as unavailable?

- b. Section 9932(a)(3) gives the adjuster the authority to send non-certified interpreters as long as THEY authorize it. I don't know a certified interpreter who hasn't been sent home from a job that has been double-booked because the adjuster has chosen to use the non-certified interpreter. Allowing adjusters to authorize interpreters to cover a job for what is clearly only for monetary reasons is a tactic which blatantly denies the injured worker due process.

Section 9935(a) strips the Applicant Attorneys of their right to choose their interpreter for depositions, med-legal appointments and treatment. Who will be able to choose interpreters for WCAB hearings is unclear but is definitely skewed in favor of the adjuster. Is it fair to let the adjusters who are clearly not interested in anything but saving money for the insurance companies choose who will interpret at hearings where the injured worker will be making life-changing decisions? Should an adjuster be allowed to choose the cheapest and thus least qualified interpreter possible for a med-legal appointment where something as significant as the value of an injured worker's case is being determined?

The most egregious aspect of this proposal is that it clearly denies the injured worker due process. This is just one more attempt at drafting laws whose agenda is to save money for the insurance companies at the cost of the almost completely powerless injured worker. This proposal will also create a whole new sector of "injured" workers in that it will make it almost impossible for certified interpreters to earn a living wage. Will the many certified interpreters who will most likely be forced to leave their profession if the new regulations are passed become another burden on the state? This proposal does not represent the spirit of our great nation as so beautifully stated by John D. Rockefeller on a plaque outside the Rockefeller Center, "I believe that the law was made for man and not man for the law; that government is the servant of the people and not their master. I believe in the dignity of labor, whether with head or with hand, that the world owes no man a living but it owes every man an opportunity to make a living."

Carla Huey
California State Court certified Spanish Interpreter & Translator

May 17, 2015

I am a CA Court-certified Spanish interpreter with 4 years of experience interpreting in civil, workers' compensation, criminal, and immigration proceedings. I have also interpreted for non-profit organizations. I started my career as interpreter in 2009 at Southern California School of Interpretation in Santa Fe Springs, CA. I studied for about one and a half years and passed the CA state court interpreter exam in January 2011. I also have a B.S. degree in Family and Consumer Sciences from Cal State Northridge.

I chose this career because I was confident about my knowledge in both languages, Spanish and English. I also had the desire to assist individuals who couldn't communicate because of language barriers. In my short 4 years of working as an interpreter I've had a chance to meet excellent interpreters as well as mediocre ones. Unfortunately, lack of certification is what distinguishes these two groups. I have approached and talked to 'non-certified' interpreters and in every single case it has come down to one of two situations: they are either working towards their certification (by taking classes or studying on their own) or they are doing this as a 'side job' and are not interested in pursuing an education or obtaining a certification. This is a big problem. We see it often. Why allow individuals who have no serious interest in this field be channels of communication? I don't think anyone would want to follow the advice (whether it is medical, legal, etc.) of someone who has no education or experience in the subject matter. Are we just too focused on the dollar amount that we don't care what we get or how we get it? This is not a business transaction!

As court certified professionals, we are required to undergo minimum educational requirements and work/practice hours every certain period of time. This is extremely important for this ensures a certain level of competency which leads to accuracy and quality of interpretation. Ignoring these current guidelines and requirements will lead to detrimental results and potential serious consequences. Also, as certified interpreters, we are neutral parties. We do not work for either 'side'. We are officers of the court and no individual, business or profitable entity should mandate what guidelines we are to follow.

The proposed rates are unrealistic. Please understand that we are independent contractors, not employees and we have to pay for private insurance and pay our own taxes. Also, the cost of living and inflation are not being taken into consideration. Furthermore, we spend a lot of money taking courses to improve our skills and become better interpreters every year. We do this for us and for everyone else we work with.

Please take this profession seriously. We are competent, professional individuals who make an honest living helping people. We provide quality, neutrality, and accuracy. I do not agree with your proposed changes and unfortunately, I will not choose to work and get paid a fee that I do not deserve.

I'm sure you will find many individuals who call themselves 'interpreters' (on and off during the day!). Just like the insurance companies, they see this as pure business. They will take the money and won't care about anything else since their reputation is not on the line. This will be detrimental in the end, not just for the LEPs but for insurance companies as well. It will cause them millions or even billions of dollars in the long run especially since they are so concerned about the money they have to spend. Hopefully, they can see the big picture.

I would like to leave you with one thought. If for one moment, you can just imagine yourself or a family member injured in a foreign country. Would you want just *anyone* interpreting for you or your family member? Would you want that person, the so called 'interpreter', to give the doctors inaccurate, incomplete information about you or your family? Wouldn't you want someone who is competent and skilled to be your voice when you need to be heard in such a critical situation?

California State Certified Medical Interpreter
California State Certified Administrative Hearing Interpreter

The basic and most fundamental question in setting a fee schedule for interpreters should be, how will it affect the injured worker?

It is a well-known fact that there is not enough certified interpreters for the Spanish language, let alone for the hundreds of languages of lesser diffusion.

According to the data obtained from Census 2000, which refers to the population age five and older speaking a given language at home, California ranks number one in the number of languages spoken, a total of 207, more than any other state.

Another factor to consider is the law of supply and demand. The law of supply and demand defines the effect that the availability of a particular product or service and the desire (or demand) for that product or service has on price. Generally, if there is a low supply and a high demand, the price will be high.

The last adjustment to the fee schedule was 18 years ago, 1997 when the fees for translating at a medical appointment went from \$80 to \$90.

It is my humble opinion that the proposed fee schedule for interpreters will 1) Draw interpreters away from the Worker's Compensation arena due to the unreasonable compensation that has been proposed for our services, 2) Dilute the integrity of the profession with the introduction of non-certified/provisionally certified interpreters to do the job and 3) Create an unfair bias against small business owners that provide interpreting services throughout the state, since the proposed regulations will allow only the claims administrators to retain the services of non-certified/provisionally certified interpreters.

The DIR should be working on making a career as a certified interpreter more attractive. The current proposed fee schedule does just the opposite.

Breaking it Down

Section 9930, definitions, does not mention **MEDICAL CERTIFIED INTERPRETERS HOLDING A CURRENT CERTIFICATION FROM THE STATE PERSONEL BOARD. THE LIST IS FOUND AT <http://jobs.spb.ca.gov/InterpreterListing/>**

Section 9930(f) "Hearing" includes a workers' compensation appeals board hearing, arbitration, a settlement conference presided over by a hearing officer, an information and assistance officer conference, or other similar settings determined by the Administrative Director to be reasonably necessary to determine the validity and extent of injury to an employee, or issues related to entitlement to benefits.

Historically, there has been to types of interpreting services provided within the Worker's Compensation arena, Medical settings and Legal settings.

DOES “other similar settings” INCLUDE THE TRANSLATION OF A SETTLEMENT DOCUMENT TO THE CLAIMANT or THE TRANSLATION OF A DEPOSITION TRANSCRIPT?

§9931. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Hearings and Depositions.

(b) The interpreter present is determined to be provisionally qualified to perform interpreter services at hearings and depositions by either: WHO WILL DETERMINE AND HOW WILL BE DETERMINED THAT THE INTERPRETER PRESENT IS QUALIFIED TO TRANSLATE AT THE DEPOSITION OR HEARING. WILL ANYONE BI-LINGUAL DO?

WHAT QUALIFICATIONS, IF ANY, BESIDES SPEAKING TWO LANGUAGES, WILL BE REQUIRED TO DEAM THE INDIVIDUAL PRESENT TO DO THE DEPOSITION OR HEARING A “PROVISIONALLY QUALIFIED INTERPRETER TO PERFORM SUCH SERVICES?”

(B) The parties’ efforts to obtain a certified interpreter for hearings and depositions, and AT A DEPOSITION THE PARTIES SHOULD STATE ON THE RECORD AND UNDER PENALTY OF PERJURY, WHAT EFFORTS WERE MADE TO OBTAIN A CERTIFIED INTERPRETER.

(C) That the hearing officer finds the interpreter who is present has sufficient skill to be provisionally qualified in the required language; and HOW WILL THE MONOLINGUAL ENGLISH SPEAKING HEARING OFFICER WILL DETERMINE THAT THE INTERPRETER PRESENT IS QUALIFIED TO TRANSLATE AT THE HEARING. WILL ANYONE BI-LINGUAL DO?

WHAT QUALIFICATIONS, IF ANY, BESIDES SPEAKING TWO LANGUAGES, WILL BE REQUIRED TO DEAM THE INDIVIDUAL PRESENT TO TRANSLATE AT THE HEARING, A “PROVISIONALLY QUALIFIED INTERPRETER TO PERFORM SUCH SERVICES?”

(c) “Cannot be present” as used in this section means that the party, claims administrator, or individual responsible for providing the interpreter service is unable to obtain the services of a certified interpreter for the particular event, after contacting at least three certified interpreters who are certified for the event in question, and in the language required. WHO WILL MONITOR THE COMPLIANCE OF THE CONTACTING AT LEAST THREE CERTIFIED INTERPRETERS?

§9932. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Medical Treatment Appointments and Medical-Legal Exams.

(2) The physician determines the interpreter present has sufficient skill to be provisionally qualified to interpret in the required language and notes in the record of the medical evaluation or treatment that a provisionally qualified interpreter is being used; and WHAT QUALIFICATIONS, IF ANY, BESIDES SPEAKING TWO LANGUAGES, WILL BE REQUIRED TO DEAM THE INDIVIDUAL PRESENT TO TRANSLATE AT THE MEDICAL EVALUATION, A “PROVISIONALLY QUALIFIED INTERPRETER TO PERFORM SUCH SERVICES?” WILL ANY DOCTOR BE WILLING TO VOIR DIRE THE INTERPRETER REGARDING HIS/HER QUALIFICATIONS IN ORDER TO DETERMINE

THAT THE INTERPRETER PRESENT HAS SUFFICIENT SKILLS TO PROVISIONALLY INTERPRET AS A MEDICAL INTERPRETER?
HOW CAN A MONOLINGUAL ENGLISH SPEAKING DOCTOR OR JUDGE, PROVISIONALLY CERTIFY AN INTERPRETER IN THE HMONG LANGUAGE OR ANY OF THE OTHER 206 LANGUAGES SPOKEN IN CALIFORNIA?

§ 9934. Events Qualifying for Interpreter Services.

If interpreter services are ancillary services provided under the employer's Medical Provider Network, the injured worker may select either an interpreter services provider listed or if interpreters are individually listed, the interpreter to be used, and must notify the claims administrator in sufficient time to make arrangements to provide for the presence of the interpreter. WILL THE CLAIMS ADMINISTRATOR PROVIDE THESE INSTRUCTIONS OF HOW TO PICK AND INTERPRETER AND THAT THE CLAIMANT MUST NOTIFY THE CLAIMS ADMINISTRATOR IN SUFFICIENT TIME TO MAKE ARRANGEMENTS TO PROVIDE FOR THE PRESENCE OF THE INTERPRETER IN THE CLAIMANT'S NATIVE LANGUAGE? THIS WILL BE BURDONSOME TO THE MONOLINGUAL INJURED WORKER. THIS TASK SHOULD BE LEFT TO THE INJURED WORKER'S ATTORNEY.

§9935. Selection of Interpreter; Duty to Notify of Selection; Duty to Assure Presence of Interpreter.

If interpreter services are not an ancillary service of the employer's Medical Provider Network, or if the treating physician is not within a Medical Provider Network, the injured worker may select any interpreter who meets the qualifications of this section, and is responsible for notifying the claims administrator in sufficient time to make arrangements to provide for the presence of the interpreter. WILL THE CLAIMS ADMINISTRATOR PROVIDE THESE INSTRUCTIONS OF HOW TO PICK AND INTERPRETER AND THAT THE CLAIMANT MUST NOTIFY THE CLAIMS ADMINISTRATOR IN SUFFICIENT TIME TO MAKE ARRANGEMENTS TO PROVIDE FOR THE PRESENCE OF THE INTERPRETER IN THE CLAIMANT'S NATIVE LANGUAGE? THIS WILL BE BURDONSOME TO THE MONOLINGUAL INJURED WORKER. THIS TASK SHOULD BE LEFT TO THE INJURED WORKER'S ATTORNEY.

§9935. Selection of Interpreter; Duty to Notify of Selection; Duty to Assure Presence of Interpreter.

At hearings, depositions, and for preparation of the deponent immediately prior to their deposition, it is the responsibility of the party requesting the presence of the witness or deponent at the hearing or deposition to select and arrange for the presence of a qualified interpreter. THIS NEEDS TO GO BACK TO THE PARTY "PRODUCING" THE WITNESS.

FOLKS, "If it isn't broke, don't fix it!"

There at least two (2) other sections of the labor code that indicate "the party PRODUCING the witness" is to arrange for the presence of a qualified interpreter.

By changing the wording from the "party Producing" to the "party Requesting" you are going to create conflicts between this section and other labor code sections.

§10564. Interpreters.

Subject to the Rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

Labor Code § 5811

(b) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

The DWC-CA form 10250.1 Page 3, item #4 (Declaration of Readiness to Proceed) states that “The party requiring an interpreter must arrange for the presence of an interpreter, except that the defendant(s) must arrange for the presence of the interpreter if the injured worker is not represented by an attorney.”

If you change the wording, this will result in both parties scheduling interpreters for the same assignment. It will create confusion for both the applicant and defense attorneys. It will ultimately be more expensive for the claims administrator since both sides could back up their claim that is their right to schedule the interpreter and the claims administrator would receive bills from two interpreters.

With a fee schedule in place, there would be no cost savings to the claims administrator as to who schedules the interpreter since the fees would have been already set.

§9936. Notice of Right to Interpreter.

(a) The notice of hearing, deposition, medical-legal exam, or other setting shall include a statement explaining the right to have a qualified interpreter present if the injured worker does not proficiently speak or understand the English language. Where a party is designated to serve a notice, it shall be the responsibility of that party to include this statement in the notice. **WILL THE PARTY DESIGNATED TO SERVE A NOTICE PROVIDE THESE INSTRUCTIONS** explaining the right to have a qualified interpreter present if the injured worker does not proficiently speak or understand the English language **IN THE CLAIMANT'S NATIVE LANGUAGE?**

§9939. Minimum Time Period Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

(b) A qualified interpreter at medical treatment appointments, who meets the billing requirements for payment of section 9941, shall be entitled to be paid a minimum of one hour for each medical treatment appointment conducted. For the same medical treatment appointment exceeding one hour, the interpreter shall be paid an additional amount, pro-rata, in fifteen (15) minute increments. THIS MUST BE CHANGED BACK TO A TWO (2) HOUR MINIMUM.

You are proposing that an interpreter get on his/her car at 8:00 AM to be at 9:00 AM appointment which is located 50 miles away from his/her home. Arriving at the location of the

appointment at 8:55 AM. And after making contact with the office staff and the injured worker, for the interpreter and injured worker to wait 30 to 45 minutes in the waiting room to be called into the examining room, were both the interpreter and the patient will normally wait another fifteen minutes before the doctor pops-in. Then spend 15 to 30 minutes with the doctor. Then wait for the office staff to give the claimant a follow-up appointment. By then the interpreter has two hours invested in round trip travel and at least an hour at the clinic. Considering that you are taking away any travel time or mileage, \$52.50 is hardly a reasonable compensation for these services.

There many areas in the Central San Joaquin Valley where there are no certified interpreters. I have traveled South two hours one way from Fresno to Bakersfield and two hours North from Fresno to Modesto to cover a medical appointment. I would not be able to cover those assignments any longer. At a minimum, that would be four hours round trip travel time and one hour with the doctor, a total of five hours of my life for \$52.50? Really?

You folks really have to think this one thru. An attorney traveling from Fresno to Modesto for a deposition would bill his usual and customary hourly rate, let's say \$250.00 an hour. The current regulations allow for the interpreter to bill not as his usual and customary hourly rate (like an attorney can) but only at \$20.00 per hour. Now to add insult to injury, you are proposing that the travel time and mileage be taken away?

How does this help the injured worker? Instead of making the profession more attractive, you will be pushing away skilled, dedicated, certified, professional interpreters.

It was indicated that you were using the Federal Court rate to extrapolate the fee that you think is fair for the "Legal" assignments in the worker's compensation arena. In like manner, you should consider using the federal medical interpreting guidelines from the Federal Government. The medical interpreter rate for the Social Security Administration medical appointments is \$72.00 per appointment. All appointments are scheduled forty-five minutes apart, so basically \$72.00 per hour.

Your current rate proposal for medical interpreter fees for the Spanish language will not work if there is no 2 hour minimum.

For provisionally certified medical treatment appointments and medical-legal exams interpreters in all languages other than Spanish: \$33.25 per hour.

You will all but have eliminated any interpreters for claimants that speak languages of limited diffusion (LLD), such as Hindi, Punjabi, Hmong and Lao. There are many LLD speaking claimants in the Central San Joaquin valley, but yet there are very few interpreters that have mastered the necessary medical/legal terminology language skills both for the source and target languages to the degree necessary to be able to interpret proficiently at a medical or legal appointment. No one will accept \$33.25 for a one hour medical exam when they have to take a day off their regular job to fill the assignment.

I do not know of any other profession that has a "provisionally certified" category. I have never heard of a provisionally certified mechanic, or a provisionally certified surgeon, or a provisionally certified anything. Why are you provisionally certifying interpreters?

How did you come out with the proposed rate for my profession? What happened with the results of the Berkley study?

I just had my alarm system service at my home. The service fee for a service men to come to my home to take a look at the problem was \$85.00 for the first fifteen (15) minutes and \$85.00 an hour thereafter. They automatically charger forty-five minutes travel time just to answer the service call.

I had my car undergo a smog inspection a couple of months back. The labor rate for the mechanic was \$125.00 per hour.

Many interpreters have a college degree or better, yet you are suggesting that our time and talents is only worth \$52.25 per hour? Really?

Even if you had applied the Cost Of Living Allowance (COLA) used by the federal government to the \$45.00 per hour rate established by the labor code back in 1997, the rate for 2015 would be above \$66.00 per hour.

	Social	Security	Cost-Of-Living Adjustments
1997	\$	45.00	
1998	\$	45.59	2.1%
1999	\$	46.18	1.3%
2000	\$	47.80	3.5%
2001	\$	49.04	2.6%
2002	\$	49.73	1.4%
2003	\$	50.77	2.1%
2004	\$	52.14	2.7%
2005	\$	54.28	4.1%
2006	\$	56.07	3.3%
2007	\$	57.36	2.3%
2008	\$	60.69	5.8%
2009	\$	60.69	0.0%
2010	\$	60.69	0.0%
2011	\$	62.87	3.6%
2012	\$	63.94	1.7%
2013	\$	64.09	1.5%
2014	\$	66.00	1.7%
2015			

Conclusion

This proposed fee schedule will undermine the interpreter profession as a whole. It would definitely would be counter active to the Worker's Compensation system and will directly affect the access to skilled, professional interpreting services to the non-English speaking injured worker as it would create an exodus of interpreters to other fields of interpreting outside this arena.

By creating a two tier fee schedule for certified interpreters and provisionally certified interpreters, it would allow claims administrators to, after a minimal effort, contract sub-standard cheap labor, which again it would be a detriment to the non-English speaking injured worker. Create an unfair bias against small business owners that provide interpreting services throughout the state, since the proposed regulations will allow only the claims administrators to retain the services of non-certified/provisionally certified interpreters.

Ignacio Villarreal
State Certified Court Interpreter

May 17, 2015

I am a State Certified Court/Administrative/Medical Interpreter and am writing to express my concerns about the recently published recommended fee schedule for interpreters.

I strongly oppose the following:

- Insurance adjusters or doctors determining whether an individual is qualified to interpret.

As per Article 4, Section 68561 (b) of the Government Code, as of January 1, 1996
"Interpreters shall not be deemed certified unless they have completed the procedures for certification adopted under subdivision (c) of Section 68562. Interpreters approved by any other agency or entity for use in administrative and non-judicial settings, shall not be deemed certified as court interpreters".

"Certification of these interpreters shall be based on criteria determined by the Judicial Council, such as recent interpreting experience, performance in court or at administrative hearings, training and continuing education".

Based on just these criteria alone, to have a hearing officer, an adjuster or a doctor "qualify" an individual to interpret accurately during any given session flagrantly violates the Government Code, the Evidence Code and the directives of the Judicial Council of California regarding interpreters, not to mention previously enacted legislation.

Regarding how many attempts are to be made to find a certified interpreter, the proposed three attempts significantly undermines the profession. Why only three attempts when there is an official master list of certified interpreters issued by the Judicial Council at everyone's disposal?

Why should there be a "provisionally certified" interpreter when there are plenty of Court Certified interpreters not working on any given day and not by choice?

Which regulatory body will ensure that there were indeed three attempts to secure a certified interpreter each and every time?

How will a physician, an adjuster or a hearing officer be able to determine that the individual called to interpret has the required skills to interpret in any given language?

The answer is simple:

None of them are qualified to make such determinations.

This is precisely why the government of California has gone through a long and costly process over many years to ensure equal access to the judicial system for those who are limited in their language proficiency (LLP) by means of certified interpreters.

- **The imposition of a "Half day" as 3.5 hours in deposition or arbitration settings.**

Morning proceedings usually begin at 10:00 am and afternoon proceedings at 2:00pm provided the interpreter has not been requested to arrive early to assist with the preparation prior to the deposition, or that assignments are not scheduled at 10:30am or 11:00 a.m. This automatically turns into a full day assignment (and fee) since there is no possibility of covering a second job.

- **No interpreter can make a living on one assignment per day.**

Having a 3.5 hour half day would make it IMPOSSIBLE for an interpreter to get a meal and arrive on time to his/her afternoon assignment. Company employees have a set lunch time period, independent contractors do not. We have to make adjustments as best we can to "squeeze in" something to eat. The 3.5 hour half day is ONLY reasonable when an interpreter is working on site at the WCAB.

- **Establishing Lower Rates for Spanish Interpreters.**

Interpreters of any language, aside from bringing their cultural knowledge and many years of experience- go through rigorous schooling and training to obtain their corresponding certifications.

- **New Proposed Fees.**

The \$210.00 and \$388.00 proposed fees do not provide for meaningful means of subsistence when taking into account that most of us work though interpreting agencies, entitled to make a living as well.

Current average standard market fees charged by a State Certified Court Interpreter · are between \$165.00 to \$185.00 for a half day, and \$350.00 to \$370.00 for a full day. Half day is three (3) hours, and full day six (6) hours. Insurance companies are not entitled to dictate to an independent professional what a half day or a full day is.

The proposed fees would not provide for both agency and interpreter to make an acceptable living in California which is one of the most expensive states to live in the nation. Housing is extremely expensive. Gasoline prices are much higher in Southern California than in any other state. Our taxes are the highest as well.

WCAB rates are lower than these based on current legislation and are antiquated and insufficient to make a decent living.

- **The Exclusion of Free Market Language.**

We live in a "free country" and have "free market" conditions. Where a free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.

• **The Exclusion of Mileage and Travel Time Compensation.**

We live in California and distances from one assignment to another frequently exceed 20-30 miles one way, occasionally up to 90-100 miles one way to cover ONE assignment. The Judicial Council of California and the I.R.S. provide this legal deduction for independent contractors.

According to the I.R.S.:

"The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating a vehicle, including depreciation, insurance, repairs, tires maintenance, gas and oil".

It is mindboggling to comprehend the proposal that mileage be eliminated. There is neither reasonable nor legal justification for this.

• **The Elimination of a Two Hour Minimum for Medical Appointments.**

No interpreter will accept only a "One hour guarantee" assignment.

This in turn would be reflected in the lack of "Equal Access to the Legal System" for those who are limited in their proficiency of the English language. Med-Legal appointments are part of a legal proceeding. Insurance companies are not above the law, and these proposed exclusions are clearly outside the margins of previously enacted legislation.

If professional interpreters are eliminated from the equation because they can no longer make a sustainable living, and non-certified interpreters are allowed to interpret in all med-legal and legal matters, the quality of interpretation will decrease dramatically. This will in turn cause a slew of legal problems, including but not limited to depositions being thrown out in court and lawsuits being filed. Additionally there is a high risk of irreparable damage to injured workers and their claims due to misinterpretation and/or lack of professional and ethical performance.

In closing, I am a highly trained and skilled interpreter who complies with all required continuing education courses, state certification renewal fees and I constantly strive to better myself as a professional in my field. I provide culturally competent interpretation and MOST importantly, I bridge the communication gap for the injured worker in an educated, professional, and ethical manner.

As a professional certified interpreter -and one who takes pride and cares greatly about this profession- I urge you to revise the proposed fee schedule. We all need to make a meaningful living. The current proposal and rules would simply make this impossible.

Julene M. Yanez

May 17, 2015

I am a State and Federally Certified Spanish Court Interpreter and am writing to express my dismay about the recently published recommended fee schedule for interpreters. While the \$210.00 half day and \$388.00 full day recommended interpreter fees may seem generous, this proposal does not take into account that virtually ALL interpreters work through agencies contracted by the Worker's Compensation insurance companies. Many of these companies have exclusive contracts with agencies. The proposed fee schedule does not allow for the interpreter or the agency to make a sustainable living.

As a State and Federally Certified Court Interpreter, I have had rigorous training and schooling in order to be able to render the most accurate interpretation possible in the legal setting. I have passed difficult oral and written exams. Interpreting in the legal field requires skill and precision that goes far beyond being simply bilingual.

Additionally, the proposed “three attempts” to try and contact a certified interpreter is an absolute travesty and gives insurance companies a sneaky loophole to fabricate said attempts and pay a non-certified interpreter far less. The Judicial Council has published a master list of certified interpreters with their corresponding contact information. This list is easily accessible to everyone via the internet.

The proposal flagrantly violates the law and the directives of the Judicial Council regarding certified interpreters. Instead of saving money, this proposal will galvanize a slew of lawsuits from many angles. I realize that the Worker’s Compensation system is a costly one, and cuts need to be made. However, there are PLENTY of other areas rife with waste and excess that could be handily trimmed while leaving the interpreting profession intact, and thereby preserving the integrity of each legal proceeding.

The Interpreters Guild of America

May 17, 2015

IGA -- The Interpreters Guild of America is an organization created by and for independent interpreters, and committed to advocating for the interpreting profession. As a unit of The Newspaper Guild and Communications Workers of America, which represent interpreters around the country, IGA responds to the particular challenges professional interpreters face.

On behalf of the Guild and our members, we find the proposed Interpreter Fee Schedule to be problematic for a number of compelling reasons; these are the three issues that we consider most in need of revision:

- **The proposed fee schedule sets an unworkable price ceiling and constitutes a serious reduction in what an individual interpreter can earn.**

The removal of the current §9795.3 language-- “*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 ... or (ii) at the market rate*”—This omission makes the proposed fee schedule and the rates included essentially an unworkable ceiling for what independent interpreters are paid for their services.

While we understand the cost containment goals of SB863 and the state’s insurance industry, the proposed changes would make it impossible for Language Service Providers (LSP’s) to cover their overhead, lien expenses and profit and still pay independent interpreters reasonable fees. The LSP’s would be forced to either greatly reduce what they pay interpreters or go out of business. If the objective of the proposed fee schedule is to do away with LSP’s and replace them with an insurance industry controlled Medical Provider Network (MPN) system, then the impact

on the quality and availability of interpreting services for injured workers would be catastrophic. The insurance companies would own and control middlemen chosen by them to be exclusive providers in their MPN system. As a result, independent court certified and registered interpreters would be forced to find work elsewhere.

Under the proposed ‘provisional certification’ guidelines, the insurance companies themselves would have the power to unilaterally provisionally certify bilingual individuals without proof of expertise, ethics training or ability, simply those who are willing to work for a rock bottom salary. How could such a change possibly serve the injured worker or ensure fairness in the Workers’ Comp system? What would happen to the availability of competent, state certified independent interpreters? How could it possibly serve anyone other than a shortsighted insurance industry? There might well be some cost containment but only in the short term and at the high cost of crashing the system.

We instead recommend the **setting of a floor for the fees paid directly to the individual interpreters on site, doing the work.** The minimum fee to the interpreter could be based on the current U.S. Court per-diem rate.

The LSP overhead can then be negotiated as an add-on premium to cover their costs and profit and so ensure that all the parties are operating on a level playing field. Lien costs can be pre-negotiated and so can be addressed in a similar, more direct manner. This is a way for service providers and insurance companies to retain some control in the process and reduce uncertainty as well as lien litigation costs. We see this approach as one that would bring about cost savings by doing away with price gouging and increasing efficiencies of service delivery rather than by cutting the quality of service.

- **The fee schedule under consideration proposes putting the qualification of judicial and medical interpreters in the hands of hearing officers, claims adjusters and doctors:**

“(j) “Provisionally certified interpreter for hearings and depositions” means an individual who a hearing officer has determined is qualified to perform interpreter services at a hearing or deposition, who has met all the requirements set forth in section 9931. (k) “Provisionally certified interpreter for medical treatment appointments and medical-legal exams” means an individual who a physician has determined is qualified to perform interpreter services at a medical treatment appointment or medical-legal exam, who has met all the requirements set forth in section 9932.”

California does not suffer from any widespread shortage of certified and registered interpreters, especially with respect to Spanish language interpreters. In addition, the empowering of hearing officers, insurance adjusters or medical doctors to determine “provisional” certifications would be the wrong way to address such a problem if it did exist.

The state judicial system has spent years and considerable sums of taxpayer money developing and refining the court interpreter certification and registration system. Interpreters study, practice and train for years to reach the level of competency needed to pass the stringent court interpreting exam. Interpreters also undergo 30 hours of continuing education every 24 months and pay yearly fees to maintain their certification current in our state.

This fee schedule proposal would short cut that established process with only the requirement that an effort be made to contact three state certified professionals. How that requirement could be enforced or verified is not addressed. Nor does this proposed change address how the determination of competence in interpretation can possibly be made on the spot by anyone, least of all someone – hearing officer, doctor or claims adjuster – who may have no language training at all. While there exists a mechanism in the statutes to provisionally qualify interpreters, its use is extremely rare and only to be adjudicated from the bench and on the court record.

We propose that the blanket **provisional certification language be omitted** in favor of strict certification guidelines that take into account the competency required for different interpreting assignments.

We recommend that the different requirements for medical-legal appointments (PQME, IME, etc.) be acknowledged, since these assignments take longer and require additional judicial interpreting expertise in comparison to medical treatment assignments.

We recommend that in the limited case of ‘other than Spanish’ or ‘languages of limited diffusion’, there be a clear, equitable, targeted mechanism to address the language access needs of those injured workers.

- **The current fee schedule proposal establishes working conditions and definitions that are generally impracticable:**

“(d) “Full-day” means services performed which exceed one-half day, up to 8 hours. (e) “Half-day” means: (1) All or any part of a morning or afternoon session, when appearing at any Workers’ Compensation Appeals Board hearing, day-time arbitration, or (2) When appearing at a deposition, all or any part of 3.5 hours, or (3) When appearing at an evening arbitration, all or any part of 3 hours.” §9930. Definitions.

We strongly recommend setting feasible work conditions that abide by the 3.0-hour half-day and 6.0-hour full-day industry standard that has been established as workable and efficient in California.

While the 3.5-hour half-day may be feasible when interpreters work at a fixed location with an early call time, like WCAB trials or hearings, the typical work of interpreters has us travelling from one appointment in the morning to another appointment in the afternoon. Therefore, at least for those types of appointments, including **Deposition Preps, Depositions, C&R Reviews, Transcript Reviews, IMEs, QMEs, AMEs, and the like**, the industry standard minimum of the 3.0-hour half-day and 6.0-hour full-day must apply.

The suggestion of an 8-hour standard for the interpreters’ work day doesn’t acknowledge the fact that interpreters in the field are not working in teams as they do in State Court or U.S. Court. Team interpreting (2 interpreters taking turns every 20 minutes) has become the standard there based on research that proves that continuous interpreting can be grueling and mentally exhausting work. In the WC system, team interpreting is at this point not feasible, but neither is the notion of an 8-hour interpreting day.

Our intention here is to work closely with the DIR, to help refine and improve the effort to address waste in the WC system and improve the fairness and efficiency of this process. We hope that these comments and our suggestions can be seen in that light and can help focus your efforts. The Interpreters Guild of America remains committed, along with our members and labor affiliates, to helping the DIR and DWC ensure fairness for all Californians.

Carmen Pejack

May 17, 2015

ISSUES TO BE LOOKED AT:

- 1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI) as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.
- 2) The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, “provisionally certifying” an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.
- 3) Assuming laypeople shall be allowed to “provisionally certify” individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a “provisionally certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.

4) We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter for medical treatment, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.

The Pre-requisites are:

- a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languagetesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.
- b) Having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI’s CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD’s must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker’s civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

5) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers' Compensation services. The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

6) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

7) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters,

together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

8) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?

9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

Rosalia Calderon

May 17, 2015

I am writing to express my disagreement on your proposed fees to us interpreters.

It concerns me that you do not even mention State of California certified interpreters. We have been the first group of interpreters in the field, and we pay our \$100.00 fee every year to renew our certification. Now, for you to leave us out completely would mean that you lose hundreds of professional interpreters. What are we to do?

I am a State of California certified interpreter, and I am very proud of the fact that I am a professional who strives to provide the best interpreting service to all those LEP injured workers to whom I provide this service.

As a single parent, head of household, I rely on the income from my interpreting work. I free lance, since this allows me the flexibility to adjust my work hours so I can be home raising my 2 children. The fee, my paycheck, that you propose will not allow me to survive and make a living.

I have been in many doctors' offices in which the interpretation is being done by either the receptionist or the medical assistant. This is very unprofessional, to say the least. Just because they "speak" the language which they learned who knows where, and every other word is "Spanglish" does not make them interpreters. Many, many times I hear the incorrect word or sentence being "interpreted" by these employees. The same is true for non-certified or less-than-qualified "interpreters" who are sent by the insurance companies.

My next concern is the discrimination that the LEP injured worker is subjected to by not being provided the professional service of an interpreter. To have the out-of-state companies monopolize the industry and assign unqualified interpreters to whom they can pay "the minimum" to make a profit, is the equivalent of being a "Walmart" industry - anything to make a profit!

I hope that you reconsider your decision before you impose unfair tactics and less than market value fees for services. We, the State of California certified interpreters, are professionals who enjoy our work and are here to give the best interpretation service, but we want to be paid as professionals.

Carol Tonelli

May 17, 2015

As a State and Federal Court and former Administrative Hearing interpreter in the Spanish language who still does work in Workers Compensation cases, I strongly oppose the proposed revisions to Interpreter Fee Schedule, which will seriously undermine the high standards of our profession and dramatically slash what we earn.

It's odd that these proposals come just months after new state law AB2370 went into effect requiring interpreters to identify ourselves and verify our certification and oath on the record. With this law our high standards and hard-earned certifications are supported in California, and with what the DWC proposes they are disregarded and disrespected. For example, by allowing a doctor who doesn't speak the language suddenly become an expert with the right to authorize the use of non-certified interpreters opens the door to potential

contradictions between what a doctor notes in reports and evaluations and an injured worker's sworn testimony at a deposition, putting the worker's case in jeopardy.

The fact that interpreters are targeted in these cost saving measures, and not the attorneys, doctors and judges who also work in this system is blatant discrimination, perhaps because we are perceived as somehow closer to the non-English speaking injured workers we are called to interpret for? Further discrimination is the two-tiered fee structure for Spanish and other languages.

We are committed and highly trained professionals under the same sort of attack that the injured workers themselves have suffered in the slow dismantling of the WC system in this state. Already, too much power is in the hands of the insurance companies, and one can't help but see this as another change designed to increase their profits in a system that was intended to protect the health and rights of those injured at work. I urge the DWC to take a fair and unbiased look at what this will mean to the integrity of the Workers Compensation system as a whole and join my voice in protesting these changes.

Maru Dana
CMI, Conference Interpreter & Language Teacher

May 17, 2015

The purpose of this missive is to address a very important issue regarding interpreters continuing education and preparation on the different, daily topics professionally rendered either at a doctor's medical office, at a deposition or in a conference setting.

Reducing the professional monetary remuneration is synonymous to reducing the possibility and undermining the incentive to keep unfolding the ample gamut the professional interpreter is able to tap into on a daily basis.

The certification obtained through arduous focus and dedication is to be admired and monetary rewarded so that the professional interpreter feels motivated to keep unfolding his/ her passive potential and offers the best rendition one a daily basis whether s/he is working with an experienced neurologist, orthopedic doctor, applicant's attorney or in a (tele) conference setting. A competent and efficient professional interpreter dedicates focused time to keep developing his/her fast thinking, fast talking and short-term memory techniques on a daily basis along with endless glossaries.

The saying goes "you get what you pay for." Well, you may now get a mediocre level of rendition that may present mistakes unable to be resolved or repaired.

Don't undermine our enthusiasm to keep learning and unfolding our potential by reducing our well-deserved professional fees. Yes, it maybe true that many interpreters will not the time to take more courses, do research and get really prepared for each special assignment but I strongly urge to not steal this educational possibility from us. It requires time, money and dedication to keep taking courses in order to ameliorate our professional skills. Do not undermine our motivation to be/come efficient and competent interpreters by reducing our professional fees and time allotted assignments.

Tracy Ma
Court Certified Mandarin Interpreter

May 16, 2015

The approved fee schedule for worker's compensation interpreting is a concern. And it is against the principles of a free market.

It takes at least a decade or two of work to achieve the level of skill needed to be certified – the pass rate for the certification examination is extremely low, far lower than that of the California state bar examination. Personally, I spent 20 years of study to reach this point – 4 years of college; 15 years of non-certified, general interpretation work; a year taking the UCLA certification program and another year to prepare for and pass the exam. This is highly skilled work, and if the compensation is set artificially low, there is little incentive to spend the tremendous effort to be certified. As a result, the difficulty of the certification exam will need to be lowered, and the number of legal actions due to faulty interpretations will consequently rise sharply.

But more than this, it is a question of fairness. We are not civil servants, we are private contractors – how can government unilaterally set the price without negotiation? Will they set a fee schedule for attorneys next? I doubt that would happen.

One thing I know for sure is that I won't accept any rate that is lower than the current market price.

Julia Rodriguez
State Certified Medical Interpreter

May 16, 2015

It is obvious that the language in the proposed fee schedule is designed to further consolidate the insurance carrier's control over professional interpreters and independent language service providers. I urge and pray that this fee schedule be scrapped and that you at least start over with the old fee schedule as a minimum template; since it at least accommodates for market and language differences (market rate), a two hour minimum for any professional service, and State Certified Medical Interpreters are still considered "certified". The way this proposed fee schedule has been written is a complete injustice to the non-English speaking injured workers and all independent language service providers and interpreters.

Claims adjusters already are expert at distancing themselves from any responsibility to pay for any service THEY personally deem unauthorized, unreasonable or too expensive. They are extremely difficult to get on the phone or to respond directly to any billing problem. They have figured out how to use "bill review" teams that can deny payments without being accountable to fee schedule or even hard documentation and/or adjuster authorization. What gives them the ability to exercise this unjust power even with an established "fee schedule"? It is actually quite simple: they already have NO CONSEQUENCES for not paying or providing benefits. An independent person or small business does not have the extra resources to dedicate to continued invoice resubmissions and hours on the phone trying to resolve past due receivables. A simple

hearing at the Board of Appeals requires filing a lien, pay a \$150 filing fee, waiting until the Case in Chief has finally been settled and taking another morning or afternoon off work. Claims adjusters, post SB863, no longer even need to settle claims. They have Utilization Review to deny benefits and treatment and IMR's to back those decisions up. The legal notices we have seen, requiring a written response from the injured worker within 10 days, are mailed to them in English. Even applicant attorneys are being blocked from closing cases by C&R, since it is cheaper for the carrier to deny, not pay and kick the can down the road.

An independent interpreter or small business cannot hope to operate in this current environment on \$52.50 per assignment. Not to mention the proposed "provisionally certified" interpreters that the carriers and MPN "preferred vendor" are going to contract for \$25.75 per assignment. The carrier that designates individuals with no training, supervision, and/or accountability as "provisionally certified" is negligent and irresponsible. Is the \$25.75 per assignment going to be paid to the individual interpreter or the agency? This will truly be a race to the bottom.

The insurance carriers already have enough tools post SB863 to not pay for any services they deem unreasonable or too expensive. In the past five years, we have seen them shift interpreting for medical treatment to an out-of-state "preferred vendor" that continues to monopolize language and transportation services. The insurance carriers are not at all interested in adding the professional certified interpreters and independent language service providers of California to their MPN. Following is an example of a typical interpreting denial, for authorized medical treatment, we just received from a claims adjuster today: "Services are ***NOT*** authorized for the requested dates of service. I have been instructed that I must use [redacted] for translation services". We have been not paid by out of state vendors in the past, who is going to be responsible for collecting unpaid/underpaid interpreting fees from an agency in Florida?

All of us are witness to the unbelievable reductions of rights and benefits of current injured workers. Please take a step back, imagine for a moment yourself or loved one in the shoes of a non-English speaking injured worker or even a language service professional and reconsider what is ethical, honorable and just. In the end, we will all be judged and accountable by how we treated the most vulnerable and weak among us.

Maria I. Schoeffler, State Certified Interpreter

May 16, 2015

I would like to let you know that I strongly oppose the new proposed Interpreter Fee Schedule.

It will affect the injured worker tremendously.

It will affect the Certified Interpreters in particular and our profession in general.

It will affect the quality of service provided.

It will affect the Interpreting Agencies.

A half day is 3 hours. After 3 hours (\$180) the Certified Interpreter meets her/his full day quota (\$330). After 6 hours the interpreter charges overtime (\$60/hour).

Also, the Certified Interpreter is reimbursed for mileage per the current year's IRS rate.

Roman Valdivieso, Certified Medical Interpreter
National Board of Certified Medical Interpreters

May 16, 2015

There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are a medical certified interpreter listed on the State Personnel Board Interpreter Listing or the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI). To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.

Also, the fee schedule is completely off as far as it being a realistic form of paying interpreters for their services! There is no mention of allowing us to charge for mileage which a lot of us interpreters have to put on our cars. We travel quite a bit to cover one appointment sometimes. Also, allowing a medical provider to provisionally certify someone could open a Pandora's box of problems! Case in point, sexual harassment concerns. Most male medical providers now tend to prefer the more younger attractive female interpreters that go to medical appointments to help them. Who's to say that these types of unprofessional medical providers won't give a female interpreter more work for some "special" favors after work? It has happened already among my colleagues, now with this new proposed law, I feel like it give most interpreters an unfair advantage.

Shilpa Kapadia

May 16, 2015

I am a LSP currently doing business in Southern California. I have been in business for over 15 years and continue to fight against all the new laws and regulations that have been thrown out at us by the greedy congressmen and politicians in Sacramento who listen to big businesses to get their vote. As a LSP we in my opinion, are considered to be at the “bottom” of the so called “totem-pole” in the workers compensation arena. We are the ones no one wants to pay or feel they don't need to pay and that we are not necessary or need to be part of the workers compensation system. Quite to the contrary however, as we all know, we live in California where there are people from all nationalities who don't speak English. In fact, it has become the law in California that every person has the right to an interpreter if they are not fluent in the English language. Despite all this, we are still being harassed by the insurance companies who don't want us around and make their own rules for their interpreters and don't follow anyone else's. Below are some faults in the new proposed regulations:

- 1) Certification double standard: although there is emphasis on certification of interpreters all over the Labor Code and proposed text, the requirement only applies to independent language service providers but NOT to the insurance companies and the interpreting agencies that THEY use. We foresee this causing a massive displacement of certified professionals by inexpensive 'interpreters' used by the claims adjusters.

The Regulations, as written, give claims examiners (whose main goal is to save insurance companies money) a blanket license to use non-certified interpreters through 2 loopholes:

* Section 9931 (c) - they only have to contact THREE certified interpreters before they can claim no one certified is available and send a non-certified one. Three only, a big change from the previous Regs that required that they exhaust ALL certified before using a cheap non-certified 'interpreter'

Who will monitor and enforce this?

* Section 9932 (a)(3) - again, the claims administrator can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the latest regulations will give carte-blanche for adjusters to do it systematically.

2) The proposed Regs have completely stripped Applicant Attorneys of the ability to choose their interpreter for depositions, med-legal appointments and treatment (Section 9935 (a)). The language is unclear as to who can choose the interpreter for WCAB hearing, but it leans towards the carrier having control over it too.

Because attorneys traditionally hire local language service providers (LSP's) who use mainly certified professionals, in other words YOU, as they must comply with the certification mandate. If these independent LSP's cease to exist and big out-of-state agencies like One-Call and their agents can use cheaper, uncertified people, where do you see your work going?

3) The rate proposed for certified interpreters is a 50% reduction of our current market rate. The Med-legal rate proposed is a meager \$7.50 more than the suggested minimum published in LC 9795.3 some 20 Years ago! The billable rate for Legals is less than what certified interpreters charge currently in many areas. If you work for an agency, it's only inevitable that your hourly rate will be lowered. And if you bill directly, you won't have enough resources to navigate the costly, litigious lien process. The proposed fees are completely out of touch with inflation and geographical differences of cost of living. They have put the Med-legal wage on the same level as treatment sessions. The 2-hour minimum for treatment was eliminated. There is a flat fee for depositions and WCAB hearings.

Other important themes left out of this draft was the inclusion of State of California Certified MEDICAL Interpreters, travel time reimbursement and requirements/procedures to follow in order to be included in the infamous MPN's.

Many organizations have voiced their opposition to the proposed fee schedule. These organizations include the California Applicants Attorney Association Interpreters Guild of America, National Association of Independent Judicial Interpreters in California .

As an LSP, due to the above-mentioned I believe that this new proposal will do more harm than benefit the workers compensation arena and the entire interpreter community as a whole.

ISSUES TO BE LOOKED AT:

- 1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI) as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.
- 2) The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, “provisionally certifying” an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.
- 3) Assuming laypeople shall be allowed to “provisionally certify” individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a “provisionally certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.
- 4) We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter for medical treatment, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.
The Pre-requisites are:
 - a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languagetesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.

- b) Having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI's CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD's must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker's civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

- 5) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers' Compensation services. The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the

California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

- 6) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

- 7) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

- 8) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?
- 9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

THESE ARE ALL POINTS THAT CONCERN ME AND WANT YOUR OFFICE TO LOOK INTO THEM AND MAKE THE APPROPRIATE CHANGES.

Melis A. Lopez

May 15, 2015

I am writing to you to express my opposition in the DIR proposed draft for interpreter regulations. I am a certified medical interpreter with the National Board of Certified Medical Interpreters. I am a freelance interpreter, who spends most of my earnings in gas and paying taxes. Small business, and self-employed citizens, are the back bone of this country. Eliminating us is a bad decision.

Monolingual individuals are not able to explain their injuries, symptoms, and issues arising from their bad fortune. Numerous misunderstandings can be made from the very beginning. The lack of a certified/qualified trained interpreter has led to serious consequences for the less fortunate injured worker. This is only one example, not to mention the misconceptions of cultural differences. This is where a certified/qualified interpreter is greatly needed.

The elimination of the 2 hour minimum, the less than 24 hour cancellation fees, and travel miles will be very devastating. Since most of freelance interpreters do not have an 8 hour schedule every day, 5 days per week. The 2 hour minimum helps us to assure an income to provide for our families. Our job requires for us to travel from one site to another in various cities. In your proposal, you are targeting Hispanics. That is discrimination by suggesting to lower the rates for Spanish interpreters more than other language interpreters. We do have a diversity of ethnicity

and Hispanics are one of the largest. The lobbyist for the powerful insurance companies are only giving you the high end examples of what some freelance interpreters make. This is not the same for all the other interpreters, especially the interpreters who cover medical assignments. I have worked so hard and spent numerous dollars to become a medically certified interpreter. This included the fees for the written, oral and travel expenses to take the test. I do hope that you do not approve the reduction of our scheduled fees.

The proposed regulation to provisionally certify an unqualified interpreter (CCR 9795.3 (e)), is very dangerous. You are opening a window of lawsuits. I do not think that any of the law makers will allow themselves, or their loved ones to have any medical procedures by a provisionally certified surgeon, dentist, radiology technologist, or to be represented by a provisionally certified attorney, etc. I found this citation from the www.calinterpreters.org: "Due process not only requires an interpreter, but a *competent* interpreter". *ex rel. Negron v. State of N. Y.* (2d Cir. 1970) 434 F.2d 386, 390-91 " In the case of *People v. Aquilar*, (1984) 35 Cal. 3d 785, 790.) I am a strong believer in certified and qualified medical interpreters. A certified/qualified professional, has a high level of knowledge, and competency to carry out their duties. Please, continue with the compliance for medical interpreters certification. The "interpreters" that some language provider services are hiring, are not even screened for the knowledge of code of ethics for medical interpreting, or required to provide competency proof in the target language and English. Many unbelievable stories of injured workers, whom have been affected by lay back individuals who can barely speak either language, nor have any knowledge of the medical interpreting code of ethics. Certified/qualified interpreters are essential, for bridging the communication for injured workers in critical situations to help them get back to work and support our state and their families.

I encourage you to not eliminate our profession with the suggested pay cut. Certified/qualified interpreters have invested money and time. I believe that most of my colleagues have a passion for what we do, running from one site to another, to help monolingual voices be heard and understood. We are professionals who uphold the standards of practice and code of ethics. We are self-employed and we carry out a very important task.

Lilia Hazlett, CMI
Spanish Medical Interpreter

May 15, 2015

I am a Spanish medical interpreter and I would like to express my displeasure and disappointment in the proposed Interpreter Fee Schedule Draft proposal. I feel Spanish interpreters are experiencing discrimination compared to other language interpreters which I find appalling and unfair. Spanish medical interpreters incur the same hike in cost of living expenses, traveling time and gas expenditure than other language interpreters living in the same area and should be paid accordingly. How exactly will "efforts to obtain a certified interpreter" be enforced? It is to the agencies and service provider's benefit not to find a "certified" medical interpreter and pay a less qualified cheaper interpreter. The interpreter should expect to be reimbursed at the appropriate hourly fee schedule for their service, travel time and mileage. We have to travel long distances in California and gas is expensive. Also, the 1 hour minimum is

ridiculous! It takes us 20 minutes to half an hour just to arrive at our appointments, another half an hour to 2 hours to complete our assignment, and another 20 minutes to half an hour to get back home. We cannot possibly finish a job in an hour and be expected to accept and arrive to those job assignments in such little time. The 2 hour minimum is fair and reasonable.

Furthermore, agencies should give us the maximum time they think they will require our services to reserve our time for the job. This assures no other jobs will be accepted during this time and that we do not miss out on other opportunities as well. I respectfully request that you remove or modify this unfair proposed fee schedule for interpreters of all languages to be able to receive proper compensation for the difficult work that they do.

Carlos Jimenez, President & Director of Business Development
EXARO Corporation

May 15, 2015

I hereby submit the attached white paper on the subject of fee schedules for interpreter services for your consideration in finalizing the new fee schedule. Please note that it has taken several decades to finally develop the infrastructure, skill level of the interpreting community, and educational and training programs which ensure the proper level of services is provided to the injured worker. The proposed fee schedule will, with great certainty and probability, cause current interpreters to leave the profession, and in turn, agencies will close, as will the training schools. In the end, the only interpreter willing to accept the low fees, is the very interpreter who should be precluded from doing so, as he/she would not be qualified. The level of skill required for this profession takes training and the proper mastery of both languages as the foundation upon which the technical language and skill set is built upon. Persons with this skill set have hearing capacity much higher than the proposed fee schedule would allow their compensation to be.

Attachment/Enclosure follows:

RELEVANT FEE SCHEDULE PROPOSED FOR CURRENT TIMES AND IN OPPOSITION TO THOSE CURRENTLY BEING PROPOSED:

Explanation and Justification for Fair Economically Adjusted Fee Schedule For Interpreting Services

Authored by Carlos F. Jimenez, Certified Interpreter. (Submitted 05/15/2015)

1.0 **LC 9795 2014 ECONOMIC RELEVANCY** Today, adjusters, defense attorneys, and public employees are paid as much as 50% or higher wages compared to 21 years ago, all thanks to the annual cost of living (COLA) considerations they receive in the name of fairness and justice, and argued for based rising costs of living. In great contrast, the real income of interpreting personnel has dropped by half or more over that same period. To illustrate this point, a \$90.00 payment issued today is equal to only \$47.70 of the purchasing power of a \$90.00 payment in 1993, to which LC 9795 referred to in 1993. Yet, concerted efforts to deny interpreters considerations of "fairness and justice" persist at all levels of the private and public powers that be. Their insistence to persistently misapply the intent of 1993 LC 9795 \$90.00 nominal floor rate, as a ceiling, is a travesty of justice and a hypocrisy. This begs the question: is this a "Do as I say, not as I do" form of justice that is preached in the Workers Compensation system and community? We should avoid the dangers of such cultural and judicial decline consisting of the selective application of the principles of fairness and justice by those in power. It is noteworthy that the noble legislative intent of LC 9795 was specifically meant to address the problem of an inadequate level of reimbursement to interpreters, and to protect them from under reimbursement. For the interpreter alone, the \$45/hr. rate was acceptable, but not for the agencies, who incur all the burden and costs of coordinating, financing, and billing for the services. LC9795 also failed to properly account for the minimum time periods that interpreters are required to allocate for each appointment, as explained below. Table 1, first row, illustrates the 1993 market rates agencies deemed necessary to defray overhead and interpreter costs for Spanish services as ranging from \$120 to \$170 per 3 hour minimum allocation of time. In contrast, non-Spanish languages range from \$230 to \$300 depending on the availability for a specific language and/or certification near the venue. Furthermore, those rates are shown as adjusted for 21 years of inflation in the second row, and adjusted for 21 years for Federal COLA standards in the third. Lastly, the current market rates are in the fourth column. LC 9795 fees are likewise shown. Clearly, those in power to enforce the principles of fairness and justice could have valued, defended, and even pursued them equally for interpreters. The diminishing supply of qualified interpreters shown below reveals more action is needed to keep qualified interpreters in the profession.

Table 1: Interpreting Service Time & Fee Rates for California for 1993 vs. 2014 after Adjustment for Inflation and Federal COLA Standards

Market Onsite Min. Time Periods & Fees	Spanish Medical Interpreting Fees				Non-Spanish 3.5 hr. Minimum Flat Rate		
	So. Cal	Central Cal	Nor. Cal	Labor Code Floor Rates Adjusted	So. Cal	Central Cal	Nor. Cal
1993 Market Minimum Flat Fee up to 3hrs. ¹ :	\$50/hr. \$150	\$40/hr. \$120	\$57/hr. \$170	1993 Floor Rate = \$45/hr.	\$230	\$260	\$300
1993 Market Minimum fee adjusted for 21 yrs. of inflation ² :	\$76 \$227	\$61/hr. \$182	\$86/hr. \$258	\$45 Adjusted for 21 yrs. Inflation = \$69/hr. 3 hrs. x 69= \$227	\$349	\$394	\$455
1993 Market Minimum fee adjusted for 21 yrs. of Fed. COLA ³ :	\$85 \$256	\$68/hr. \$205	\$97/hr. \$290	\$45 Adjusted for 21 yrs. Fed. COLA = \$77/hr. 3 hrs. x \$77= \$231	\$393	\$444	\$512
2014 Actual Market Minimum Fee up to and including 3 hours of Clinical Time ⁴ :	\$83/hr. \$250	\$77/hr. \$230	\$100/hr. \$300	Labor Code Ceiling Rate = Market Rate	\$117/hr. \$410	\$133/hr. 400	\$167/hr. \$500

¹TSI records and industry data. (Contact TSI for details), ²Historical Inflation Rates: 1914-2013; www.usinflationcalculator.com/inflation/historical-inflation-rates/.

³ Federal Employees: Pay and Pension Increases since 1969 Patrick Purcell Congressional Research Service.

⁴ Insurers, medical facilities, and customers expect and demand that interpreters plan to and remain at the venue with the patient for as long a time as the assignment takes.

2.0 **MINIMUM TIME FRAMES EXPLAINED:** It should be noted that the 3 hour timeframes used above understate the entire time costs of providing the services for each medical appointment. The requirement for interpreters to remain with the patient until the procedure concludes (see footnote 4 above), requires agencies to reserve and pay interpreters for a minimum of 3.5 hours for each assignment as follows: one half hour to travel to the venue, plus 2.5 to 3 hours at the clinic (or up to 4 hours for medical/legal appointments, for a total of 5 hours), plus arrival 15 minutes early. These are the time costs of servicing each onsite appointment that must be factored in determining both the floor rate and the market rate per onsite appointment (lest we continue to demand involuntary servitude of the interpreters). It is noteworthy that 75% of A.M. appointments start after 9:00a.m., and likewise, 75% of P.M. appointments start after 2:00 p.m., consequently, any one appointment necessarily consumes one half of the work day schedule of the interpreter. Therefore, in the interest of applying principles of fairness and justice to interpreter compensation, the minimum time allocation required for each appointment must be the measure of units of time to be reimbursed to agencies. Likewise the applied hourly rates must be relevant to current economic times, and applied as the floor rate under LC 9795 as follows: \$45/hour adjusted for 21 years of (a) inflation and (b) COLA, the minimum reimbursement rate per onsite service appointment is as follows: 3.5 hours x (a) \$69/hour, or \$241, and 3.5 hours x (b) \$77/hour, or \$269.50 respectively. Without such minimum protected compensation, agencies cannot cover their costs and pay the levels necessary to attract and retain qualified interpreters who meet the certification standards. Ultimately, market rates and the cost of doing business will determine the required rates. As illustrated below, current compensation standards are counterproductive to the objectives of certifying the numerous supply of interpreters needed. This will eventually collapse this infrastructure. Evidently, selective "Fairness and Justice" does not go unnoticed nor unfelt.

3.0 **DIMINISHING SUPPLY OF INTERPRETERS:** Note: Only 802² Certified Medical Interpreters exist in CA. as of 09/2014; and only 276¹ for W.C. cases

Current Undersupply and Unmet Demand of Certified Interpreters

Approved Registries: http://www.cchcertification.org/ : 276; http://www.certifiedmedicalinterpreters.org/ : 189; http://jobs.spb.ca.gov/InterpreterListing/ : 337 (Total=802)	
Current Daily W.C. Medical/Legal Appts. In CA: 3,000 approx.	Current Supply of CIs: 276 ^{1,2}
Current Daily W.C. Medical Treatment Appts. In CA: 20,000 approx.	Current Supply of CIs: 0 ³
	Daily Shortage of CIs: Negative 2,800 ²
	Daily Shortage of CIs: Negative 20,000

¹Only 276 interpreters remain of the 500 certified as Workers Compensation Med/Legal interpreters by CA. Cooperative Personnel Services since 1993.

²Most CIs under CCHI and CMI.org obtained certification to work in hospitals, as required, but are not interested in Workers' Comp. employment.

³All CIs are presumed allocated for the higher priority Med/Legal Appointments or hospitals. Court certified interpreters' fees far exceed acceptable levels by payers. It is noteworthy that interpreters working with LEP patients help avoid unnecessary costs due to misdiagnosis, unnecessary diagnostic tests and treatment regiments. Conversely, aided by interpreters, these better informed patients are able to successfully comply with treatment plans, and heal faster. Among others, please see:

(1) Ku L, Flores G., "Pay now or pay later..." Health Affairs, 2005, March-April; (Health Serv. Res., 2007, April, 42(2): 727-754; (2) <http://content.healthaffairs.org/search?submit=yes&fulltext=use+of+medical+interpreters&x=0&y=0>

Eva D. Barasch
Spanish Certified Medical Interpreter

May 15, 2015

Comment on “Provisionally Certified Interpreter” for an LEP patient in a Medical-Legal setting.

§9932. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Medical Treatment Appointments and Medical-Legal Exams

A healthcare provide is not a “certifying body” nor is he/she qualified to asses in any Language Proficiency setting. There is no room for “non-certified interpreters” such as “provisionally certified interpreters” in medical- legal settings. Both the California Commission for Healthcare Interpreters (CCHI) and the National Board of Certification for Medical Interpreters (NBCMI), which you have stated as the only **sources** for certification, are the only two bodies qualified to do so. Once the interpreter has become certified by either of them, there is no need for additional testing or qualifying bodies to question the validity of such interpreter’s qualifications nor would any question arise with regards to the certified interpreter’s ability to perform in any medical setting, specifically when providing LEP services on a Medical-Legal Appointment.

Moreover, since all certifications expire unless renewed, interpreters must constantly keep up with their continuing education credits, thus providing further proof of their performance ability. The cycle of re- certification and re-qualification will continue as long as the interpreter keeps up with all the requirements determined by the qualifying bodies, the CCHI and the NBCMI. In neither case will the “non-certified interpreter” nor the “provisionally certified interpreter” fit the description of a certified interpreter. The choice to utilize any other than certified, when the certified is not available, becomes a liability both for the LEP patient and the healthcare provider. Cutting corners and finding loopholes will only condone a non-regulatory approach.

The emphasis should rest on the patient's right to proper representation, thus avoiding the onus of a potential liability issue for the healthcare provider.

We will keep voicing our concerns.

Isis Bolanos Rivera
Santana, Lopez & Associates, LLC

May 15, 2015

We have been a Language Service Provider (LSP) servicing Limited English Proficient (LEP) injured workers since 1994. I am not opposed to a fee schedule because I believe it will simplify a very complicated lien resolution process. I am deeply disappointed at this resulting fee schedule proposal. Based on SB863, I believed that the DWC had an interest in protecting the LEP injured worker’s right to a certified interpreter. But now having seen the proposed fee

schedule, it seems the DWC allowed the insurance companies to write the fee schedule to suit their needs. When I found out the Berkley Research Group contacted CWCIA and many other interpreter organizations, I felt optimistic that a comprehensive fee schedule was going to be released. Now I am left wondering why the DWC wasted their money hiring the Berkley Research Group if you were going to allow the insurance companies to create the fee schedule they want. Aside from the rates being too low to even attract or keep certified interpreter to this industry, you have given the carriers the green light to hire the interpreter with the lowest rate, regardless of qualification. Having doctor's and adjusters provisionally certify interpreter is absurd. If the final fee schedule is anything close to what this draft looks like, I can imagine a mass exodus of certified interpreters from our industry. I have been preaching to colleagues to keep an open mind and be prepared to restructure to fit into the new system and fee schedule. This draft has silenced me, as there is no way to survive on these proposed rates. Independent contractors are unable to navigate through the onerous IBR and Lien Process without LSP's and there is no way for LSP's to make a profit serving and intermediaries at these rates. I will remind you that everything we do in WC is supposed to be for the benefit of the person who was injured at work. The carrier is the only entity to benefit from this proposed fee schedule. This being said, here are my specific issues:

- 1) There is **no mention** of including **California State Certified Medical Interpreters** as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, "if we build it, will they come?" The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for "provisionally certified" interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to "provisionally certifying" an individual to provide services is simply unacceptable.
- 2) The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to "provisionally certify" an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, "provisionally certifying" an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.
- 3) Assuming laypeople shall be allowed to "provisionally certify" individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a "provisionally

certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.

- 4) We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter for medical treatment, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.

The Pre-requisites are:

- a) Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of **Advanced Mid Level** (follow this link www.languageTesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.
- b) Having taken an International Medical Interpreter Association (IMIA) **approved interpreter training 40-60 hour course** (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become medical interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated government entity), and making this list available on the SPB (or other designated government entity) website, then the selection of the provisionally certified medical interpreter will be that of an individual who has satisfied basic requirements and is serious about earning certification. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those languages with no pathway for interpreting certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI’s CHI Core (which requires having completed a 40 to 60 hour introductory course in medical interpreting) plus, have scored at the Advanced-High level Oral Proficiency on the ACTFL scale. We recommend Advanced High, not Advanced Mid, which is the required level for those with a path for certification, precisely because there is no further testing available for these interpreters, and this matches the standard set for court registered interpreters. The fees for these LLD’s must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker’s civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. (see <http://www.languagepolicy.net/archives/lau.htm>). In view of its history, California should

set a high standard for language access practices, instead of a standard for minimum requirements that put LEP injured workers at risk.

- 5) While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers' Compensation services. The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

- 6) MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

- 7) Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we **all** acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

- 8) Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?
- 9) The DIR, is bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

1. Proposed Regulations 9932(a)(2), 9932(b)(2) and 9933(b)(2) authorize physicians to provisionally certify interpreters under certain circumstances. The proposals, however, give little guidance to the physician when making a provisional certification decision. CSIMS is concerned that such an open-ended authorization may lead to the inadvertent provisional certification of unqualified interpreters.

We recognize that only eight languages are recognized for certification under the Government Code, but there are several governmental and private organization web sites that contain lists of interpreters who, while not certified, have demonstrated some degree of proficiency in providing interpreting services. Some of these data bases are maintained by the Certification Commission for Healthcare Interpreters (CCHI), the National Board of Certification for Medical Interpreters (NBCMI), or the State Personnel Board. In an effort to insure some threshold level of competency, we suggest that physicians be limited to provisionally certifying interpreters who appear on one or more of these data bases.

2. Proposed Regulations 9941(b) and 9941(c) require an interpreter to obtain a signed statement from the examining or treating physician, as the case may be, “verifying time spent providing interpreter services beyond” one or two hours. CSIMS objects to this requirement because the physician is not in a position to provide such a statement.

The physician can only verify the time he/she spent face-to-face with the interpreter, yet the interpreter may have provided interpreting services to the injured worker outside the examination room when the physician was not present. For example, the interpreter may have assisted the injured worker in translating literature distributed by the physician, in filling out the patient’s history and other intake forms, communicating with office staff, nurses, medical technicians, physical therapists, occupational therapists, etc. The physician does not have first-hand knowledge of the entire time the interpreter spent and it is unreasonable to require the physician to provide a verification statement which, if inaccurate, could subject him/her to criminal or disciplinary proceedings. The interpreter is in a better position to provide an accurate recapitulation of the amount of time spent interpreting.

3. Finally, CSIMS is of the opinion that the proposed level of remuneration for interpreting services and the discrimination against interpreters who provide Spanish language interpretation are inappropriate. First, the proposed level of remuneration for all certified languages is dramatically lower than both the market rate for these services and the amounts recommended by the Berkeley Research Group report commissioned by DWC. Second, we know of no other government fee schedule that singles-out Spanish for sub-standard remuneration.

Combined, these two defects in the proposed fee schedule will reduce access to quality interpreting services, create a possible health risk to injured workers in the event of incompetent interpreting, lead to an inaccurate assessment of an injured worker’s eligibility for workers’ compensation benefits, his/her impairment and/or the need for future medical care, and produce outcomes contrary to the Legislature’s mandate in Labor Code Section 4600(g).

My name is Estela Sadler and I have been a State Certified Spanish Medical Interpreter for the past 19 years. Today I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose this proposal for the following reasons:

- §9937 (a) and §9938 (a): The proposed fees themselves are out of touch with current standards in the marketplace, and the elimination of “market rate” language from the proposal virtually guarantees that they will stay that way. These rates, combined with the exclusion of mileage and travel compensation in this proposal would severely and adversely impact professional interpreters and opens the door for untrained and unqualified individuals to step into the void.
- The exclusion of mileage and travel time compensation: We live in traffic-dense California. In the congested urban areas, travel is time- and resource-consuming, yet necessary to service the needs of the consumers. It is essential that interpreters be allowed to seek reimbursement for mileage and travel.
- The elimination of a two hour minimum for follow-up appointments: Very few medical follow-up appointments last 2 hours or less. It is unfair to expect interpreters to accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s: On average those appointments can take 3-5 hours. It is unfair to expect interpreters to accept only a “one hour guarantee” assignment for appointments of this nature.
- §9930 (b): There is no mention of including California State Certified Medical Interpreters as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing, as am I. This is not only a professional “slap in the face”. It also renders useless my struggle to study for and achieve certification, and my 19 years of working in this industry to hone and improve my skills in service of injured workers and medical care providers.
- §9931 (b)(2)(C) and §9932 (a)(2): Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language? What language expert will the physician have at his/her disposal to ensure those skills? Moreover, what safeguards will be enacted to assure that these decisions are fact- and competency-based and not based solely on profit motives? This harkens back to years past, where it was common practice in hospitals to use the Spanish-speaking hospital staff (whether they were nurses or housekeepers) or other Spanish-speaking patient or family member to interpret a conversation between a physician and a patient.
- §9930 (e)(2) The 3.5 hour half day was established for interpreters working in court where they have a morning and afternoon session and remain in one place, but is not realistic when

working as an independent contractor traveling from one assignment to the next. The majority of morning depositions start at 10am, and if contracted for 3.5 hours this means an ending time of 1:30pm, making it virtually impossible to take on an afternoon assignment. A 3 hour half day would be much more practical.

- §9932 (c) Requiring that only 3 certified interpreters are contacted before hiring a non-certified interpreter, virtually guarantees the use on non-certified interpreters. How would such a requirement even be enforced? This is a great disservice to the LEP injured worker and effectively limits their access to the worker's compensation system.
- 9) §9940 (a)(1) Should include language stating that the interpreter is guaranteed payment for amount of time contracted. For example most interpreters require a 4-5 hour minimum for psychological evaluations which typically last all day. Otherwise, are we expected to reserve an entire work day and only be guaranteed 2 hours of payment?
- §9940 (b) Eliminating the cancellation fee for non-certified interpreters is yet another incentive to use them.

There are several serious problems with this proposal that if enacted would adversely impact many professionally trained and competent interpreters and the accurate and medically precise quality of services rendered to injured workers. Please reconsider.

Edgar Ugarte

May 15, 2015

I will be brief on the subject matter that is being addressed in proper detail by many other members, and with whom I am in complete agreement regarding their comments on the proposed Fee Schedule for Spanish Interpreters in California.

Certification.-

The proposal creates an inconsistent situation regarding the certification required for interpreters, by allowing insurance company adjustors to use non-certified interpreters. The proposed method of level of effort by the adjustors is flimsy, at best, and without teeth. To properly monitor this methodology by insurance adjustor in their level of effort, the DIR should require written documentation to be submitted to the State on an annual basis for their verification and auditing. Does the DIR want this additional work?, how serious are they about enforcing this requirement on the insurance adjustors?.

Fees.-

There is a significant difference in the cost of living between Southern California and Northern California and particularly the San Francisco Bay area where bulk of the Northern California activity takes place. Housing and transportation being the main components of the cost of living. There ought to be an allowance for this differential when considering fee schedules.

Quality of service.-

In the interest of serving the injured worker, and to be fair to the interpreting industry, perhaps the Berkeley consultants could make a study of beneficial effect of using Certified interpreters, versus non-certified, or no interpreters at all. The latter is beginning to happen more and more,

with negative results for the injured worker, when sometimes medications are denied after surgeries!!! Due to poor or miscommunication between patient and insurance company.

Lawrence Morrow
Attorney

May 15, 2015

My name is Lawrence Morrow and I have been a member of the State Bar of California since 1980, SBN 95678. I am an accredited teacher of Spanish with graduate degrees, certificated bilingual by the County of San Diego in 1981, and have taught Spanish on the university level. I am also an accredited teacher of English. Additionally, I have studies in French and Latin.

As an attorney both in California and New Jersey, I have represented countless Spanish-speaking clients in civil, criminal, immigration and administrative areas for practically 35 years. Courts have requested my accredited, bilingual abilities in many jurisdictions, including the District of Columbia and the State of Virginia. At times, I was asked to monitor a language interpretation.

Let me say this very plainly. Critical legal errors occur based on as little as one word. Witness how fraught with miscommunication exchanges in the same language often are. The likelihood of material errors exponentially increases when two languages are employed. Back when I began to practice law in San Diego in 1980, there was no official interpreter certification process. But I, already well-educated in Spanish and having had lived in Spanish-speaking countries for several years, frequently caught the “casual” interpreter in error. Were it not for my well-schooled experience in Spanish, critical errors would have simply passed as correct, and outcomes of people’s lives would have been unjustly affected. That is, I was able to intervene, correct the record, and preempt a miscarriage of justice. Fortuitously, it was my role to maintain credibility in our judicial system. Our immigrants thus respected the Rule of Law in their adopted homeland.

I truthfully say that wrongful convictions were avoided, contractual understandings clarified, and witnesses were assured testimony mattered.

To expect, and much less even imagine, that anyone but an experienced and officially accredited interpreter could somehow judge another as satisfactory to interpret from one language to another defies belief. It enters into absurdity to suggest that anyone but a very well-trained interpreter could judge competency in this field. Could anyone disagree that a judge of another’s skills must himself be skilled in the same discipline? How on earth could I determine if a radiologist were able to interpret an MRI if not for his official medical accreditation. I am not a doctor!

Without casting aspersions, it would appear transparent that crass financial interests are the driving force behind any movement to diminish the necessity of employing only fully, officially accredited interpreters. If credibility is to be maintained in our judicial system, thus assuring that Rule of Law remain the hallmark of American government, accurate language interpretation

must remain the key to democratic institutions flourishing as free and unbiased. Otherwise, the cards are stacked against justice and liberty. Let us not forget that our trusted institutions - including licensed insurance carriers - are accountable.

This is not the stuff of pedantic intellectuals. It is just common sense. Please feel free to contact me should you wish sworn testimony on this issue.

Eva D. Barasch

May 15, 2015

Comment on “Provisionally Certified Interpreter” for an LEP patient in a Medical-Legal setting.

§9932. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Medical Treatment Appointments and Medical-Legal Exams

A healthcare provide is not a “certifying body” nor is he/she qualified to assess in any Language Proficiency setting. There is no room for “non-certified itnerpreters” such as “provisionally certified interpreters” in medical-legal settings. Both the California Commission for Healthcare Interpreters (CCHI) and the National Board of Certification for Medical Interpreters (NBCMI), which you have stated as the only **sources** for certification, are the only two bodies qualified to do so. Once the interpreter has become certified by either of them, there is no need for additional testing or qualifying bodies to question the validity of such interpreter’s qualifications nor would any question arise with regards to the certified interpreter’s ability to perform in any medical setting, specifically when providing LEP services on a Medical-Legal Appointment.

Moreover, since all certifications expire unless renewed, interpreters must constantly keep up with their continuing education credits, thus providing further proof of their performance ability. The cycle of re-certification and re-qualification bodies, the CCHI and the NBCMI. In neither case will the “non-certified interpreter” nor the “provisionally certified interpreter” fit the description of a certified interpreter. The choice to utilize any other than certified, when the certified is not available, becomes a liability both for the LEP patient and the healthcare provider. Cutting corners and finding loopholes will only condone a non-regulatory approach.

The emphasis should rest on the patient’s right to proper representation, thus avoiding the onus of a potential liability issue for the healthcare provider.

We will keep voicing our concerns.

Caroline Carrera

May 14, 2015

I agree with the AIJIC and IGA that these new regulations do not accurately reflect the market conditions in which interpreters work at, whether it is WCAB, medical evaluations, QME's, AME's, depositions, federal/superior courts, ICE, UIAB, jails, et al.

Wherever we are, California state-certified interpreters are bound by the same ethical rules. We deserve to be paid for our time. It doesn't matter that we are before WCAB or federal court. As a Tagalog interpreter and translator, I travel to different counties, so I can get fully employed.

As an independent contractor, I am responsible for the other half of my Social Security and the increasing costs of good healthcare. Add to that, I have to run after non-paying clients, esp. those who pass on an interpreter's bill to insurance companies after the work is done.

Sherrie Reyes
State Certified Interpreter

May 14, 2015

Esteemed members of the DIR,

With all due respect, I'm curious as to where, and based on what, has a "hearing officer", "claims administrator", "physician" or any Work Comp Administrative Law Judge obtained the training and expertise to determine who is deemed "qualified" to interpret/translate at Trials, Hearings, Arbitrations, medical exams, settlement documents, etc.? What is the criteria they will use on the spot to determine this, if in fact an actual Certified Interpreter is not available? Just to be clear, my question pertains more specifically to the languages that require certification under Government Code section 11435.40. I believe the outcome of an injured workers claim would best be served if we all did the jobs we were licensed or certified to do.

One of the reasons why interpreters are required to pass very stringent written and oral exams, aside from allowing us to be determined proficient and well qualified in translating/interpreting, is because it would leave little if no doubt at all that the med/legal proceeding or document interpreted/translated, was done so precisely and accurately.

Almost 20 years ago or more when it was determined and required that interpreters be certified, it was to prevent further unnecessary expense down the road if either side felt that a medical report or deposition should be thrown out on the basis that a Certified Interpreter was not used. Is that possibility completely being eliminated now just because a "hearing officer" or the parties have assumed the right to determine that any "provisional" interpreter should be deemed certified? Again, based on what criteria? Who other than the language experts who have been authorized to give these exams can actually say that a non certified is deemed "provisionally certified".

Wouldn't the injured workers be completely within their rights to later say that they really didn't understand what was read, or even said to them? While I am aware that this scenario could take place even while using a Certified Interpreter, the fact that one was used would guarantee that the proceeding or document stands as is and is protected based on that simple fact. Is the DIR going to permit insurance companies to blatantly minimize the injured workers rights by undermining and completely disregarding their right to a Certified Interpreter, through the indiscriminate use of interpreters that were provisionally certified by entities that in reality are not qualified to determine that?

In regards to the "new" proposed fee schedule, I would propose that if the DIR and/or any Insurance Company would like to change my status from Independent Contractor to Employee with vacation pay, sick leave, health insurance coverage, and every other benefit given to an employee, including a pay raise every year, I would be more amenable to having them negotiate my pay rate.

Until then, I am and have been an Independent Contractor for 20 years, and my rates will continue to be consistent and competitive at the very least, with the current Certified Interpreter market rates, but under no circumstance could I accept or even comprehend why I should accept much less than what I have been billing for my services, which have remained basically the same for the last 5 years or so to begin with. Thank you for your consideration.

Elizabeth A. Milos

May 14, 2015

I am appalled at the blatant favoritism that your office is showing towards the insurance industry with the proposed fee schedule and other unsustainable and unethical provisions thereof. Your office has been entrusted to safeguard the interests of ALL parties in the industrial relationship and I believe especially the injured worker since the Workers Compensation system was originally set up so workers would be able to obtain readily available treatment for their injuries and in exchange, workers would forego, and employers would be free from, the costly civil claims which backed up the courts for years.

Medical care is only as good as the communication. That is the reason that accreditation agencies like the Joint Commission established the Culturally and Linguistically Appropriate Services Standards, known as CLAS Standards. Qualified and Certified Interpreting is a central component to uphold that standard. Without qualified interpreters, the medical care as well as the legal rights of the injured worker are severely compromised.

It has been well established by most of the commentaries and examples submitted that the proposed fee schedule is unsustainable, as well as the one hour minimum, the lack of mileage reimbursements, etc.

I was a full time freelance Medical Interpreter from 2002 to 2007 and found the need to obtain part time employment in a university hospital in order to afford health insurance for my son and myself. Now, with the Affordable Care Act, it is still unclear, if I were to be completely freelance and not a part time employee, how I would be able to afford the costs of providing for my own health insurance which has now become mandated.

If not for the language service provider companies, I would not have been able to survive because whenever I tried to bill directly to the insurance companies, they, even ten years ago, were notorious for taking 6 months to one year to pay even the smallest of bills.

I am concerned about the exclusion of the State Certified Medical Interpreters. We are the ones that have the experience and qualifications to know how to place the necessary boundaries when faced with unethical practices. We are the ones that know the importance of providing impartial interpretation of ALL communications taking place in front of an injured worker since it is the standard of our profession to make sure that an LEP client have access to the same information that an English speaking worker would have. There are many reports of uncertified and unqualified "interpreters" filtering the information available to and provided by the injured worker thereby affecting his/her claimed body parts, medical decisions and legal rights.

The inclusion of the national certifications are a step in the right direction but the exclusion of the State Certified Medical Interpreters as well as allowing claims examiners to choose uncertified and unqualified interpreters and to defer to the insurance companies in their choice of the interpreters could constitute a violation of the State Business and Professions code under the unfair competition clauses.

It is a patently unlawful, unfair and fraudulent business practice to claim that an "interpreter" is qualified when they have no certification to back it up. This is true for doctors practicing without a license and lawyers practicing without having passed the Bar. Why the lower standard for interpreters? Is it because interpreters give voice to the LEP population, a politically under represented minority? These decisions, when added to the already well documented facts of disparate health outcomes for LEP patients in general could spell disaster for LEP injured workers.

Also, the lower cost incentive that insurance companies have to choose these unqualified interpreters could be considered a conflict of interest in any court of the land, just like a doctor's interests in choosing a lesser quality medical procedure or medicine in which he or she has a financial interest.

During my years as a Medical Legal interpreter, I have had out of town agencies demand I provide a "report back" to the agency about the injured worker's status. These agencies have told me that the claims examiners are requiring this. I refused because it is not within the scope of practice of an interpreter to provide a medical report, it violates privacy, code of ethics as well as ex-parte communication rules and I forwarded the documentation of these requests to my State Representative in Congress, Mark Leno's office.

I believe the Director of Industrial Relations, Cristine Baker, received a human rights award in 2012 from the League of United Latin American Citizens. Is LULAC aware that the DWC is proposing lower fees for Spanish Interpreters in particular? Is the DWC aware that Latino workers are three times more likely to face work injuries than the general population?

In citing certain legal considerations that the DIR should consider, I am not claiming any legal knowledge or expertise. I am, however, advising you that as an informed citizen and voter, I will do everything in my power to prevent the destruction of the integrity of my profession by special interests.

Alejandro Maldonado
CCHI Chair

May 14, 2015

As chair of the Certification Commission for Healthcare Interpreters (CCHI), I want to offer our comments on the proposed regulations governing interpreter services for workers compensation cases. We greatly appreciate the recognition by the Department and Division of the validity and credibility of CCHI's examination by its inclusion in the regulations.

CCHI's sole mission is to develop and administer a national, valid, credible and vendor-neutral certification program for healthcare interpreters. Currently, we have over 1,800 certified interpreters nation-wide, with 395 of them in the state of California and 195 more California candidates in the process of obtaining their certification.

CCHI offers two national certifications available to healthcare interpreters of any language:

- *The CoreCHI™ (Core Certification Healthcare Interpreter™)* certification, a full certification at the core professional level which is available to interpreters of *any* language unless a language-specific oral examination exists for that language. CCHI is the only entity in the U.S. offering the core-level certification that is valid and credible. CCHI received accreditation for this certification by the National Commission for Certifying Agencies (NCCA) in June of 2014. (For more information about the CoreCHI™ certification accreditation, please go to <http://www.cchicertification.org/news/corechi-ncca-accreditation>.)
- *The CHI™ (Certified Healthcare Interpreter™)* language-specific performance certification, currently offered in three languages: *Spanish, Arabic and Mandarin*. This certification was accredited by NCCA in June of 2012.

CCHI's Commissioners strongly believe that the proposed definition of a "Provisionally certified interpreter for medical treatment appointments and medical-legal exams" which allows a lay person – in this case a physician – who has no qualifications to make an assessment of a bilingual individual's interpreting skills, undermines the profession. Letting physicians assess competency could also violate Title VI of the Civil Rights Act because physicians have no way of assessing the skills and competencies, and thus could allow an incompetent person to interpret. Allowing an incompetent person to interpret could lead to errors and cause harm to the patient as well as to misinforming the provider and/or insurer. Should DWC endorse such a procedure, this could put DWC at risk/liability.

CCHI proposes, as a possible solution, utilization of its existing certification process to resolve the issue of lack of certified interpreters. CCHI's process may allow consideration of Candidates and CHI™ Candidates as "provisionally *qualified* for medical treatment appointments and

medical-legal exams” until they pass the corresponding certification exam(s) or lose this status upon failing the exams.

CCHI’s certification process allows interpreters of any language to achieve certification (at the level available to them) within 6-18 months and consists of the following steps:

1. Any interpreter, who submits an application and meets CCHI’s eligibility criteria, becomes a Candidate and has 6 months to take the CoreCHI™ examination.
2. After a Candidate passes the CoreCHI™ examination, they become certified at the CoreCHI™ level, unless their language is Spanish, Arabic or Mandarin. If a Candidate fails the CoreCHI™ exam, they can re-take it up to 3 times within one year.
3. Spanish, Arabic or Mandarin interpreters, after passing the CoreCHI™ exam, become CHI™ candidates and have 12 months to take the oral performance CHI™ exam. Upon passing the CHI™ exam, the candidate is awarded the corresponding language-specific certification. If a CHI™ candidate fails the CHI™ exam, they can re-take it up to 3 times within one year.

CCHI lists its CoreCHI™ and CHI™ certificants and CHI™ candidates in the online national Certified Interpreter Registry at <https://cchi.learningbuilder.com>, which can be searched by name, language, certification status, city and state. We can add the “Candidate” status to the Registry if needed. This Registry can be utilized by the state of California to identify/verify the status of certified interpreters and those on the path to certification.

If you have any additional questions about CCHI’s work or mission, please contact me. I look forward to working with DWC and ensuring that DWC and California offer the highest caliber certification program to healthcare interpreters statewide.

Anonymous

May 14, 2015

California can save money in WC matters without hurting the certified legal interpreter with the proposal below. The proposal pertains only to legal certified interpreters (court and administrative hearing) carrying out depositions, deposition reviews, deposition preps, and WC hearings as well as other related (and strictly) sensitive legal proceedings:

1. The certified interpreter pockets \$56 per hour at a 3 hour minimum. A half day is 3 hours and not 3.5. After 3 hours the certified interpreter meets her/his full day quota of \$330. After 6 hours the interpreter charges overtime at time and a half.
2. The certified interpreter is reimbursed for mileage per the current year's IRS rate.
3. The certified interpreter is contacted directly from a roster of state certified interpreters from a site much like the JCC web site for all California certified interpreters. All pertinent

contact information is there to be able to hire an interpreter. Interpreting agencies will no longer act as middle-men for WC assignments—hiring the interpreter will be handled by the state with no cut taken from the interpreters' wages.

4. Wherein a language has a certification, the list of certified interpreters must be totally exhausted before any provisional interpreter is called. These attempts must be documented.

Katie Woo
Chinese Certified Medical Interpreter

May 13, 2015

to whom it may concern

I am a Chinese certified medical interpreter and will like to share some of my experiences as an interpreter for 15 years. I had a B.S. degree in microbiology from California State University, San Diego. I was a license laboratory scientist for 20 years before I became an interpreter. Medical interpreting came very easy for me because of my background. I decided to take the effort to become certified even though I had enough jobs due to the facts that so many unqualified Chinese interpreters work in the field. Patients would tell me interpreters were not interpreting what the medical providers were saying, only to tell patients it was not important or told patients not to ask questions to upset the medical providers. Some interpreters were incompetent in filling out medical history that injured body parts were denied since it was not documented correctly. A lot of injustice are done to these non-English speaking patients. Certification is the only way to set a standard to weed out unqualified interpreters. Insurance administrators are only concern about costs. Companies always give jobs to the cheapest interpreters, no concern of qualities of work. There are a lot of loopholes in the Fee Schedule documents. Claim administrators and doctors should not be the ones to exempt certified interpreters. Please create a fair system for these LEP injured workers. Their outcome depend on you. Thanks for taking the time to read this.

Maruca Posadas
Owner
MPIT

May 13, 2015

MPIT is a small agency since 2001, providing interpretation services in all kind of settings. We were well aware that the DWC was working to set a new fee schedule for interpreters. After SB 863 came into effect we were not expecting good news, but the proposed regulations are totally outrageous, absurd and illegal.

Since 2001 our market rate for Follow up appointments was \$110.00, for Med legal appointment \$150.00 and for Depositions and hearings \$180.00. Paying interpreters for Follow up appointments \$40.00 (non certified), Med legal appointments \$60.00 (Medical certified) and hearings and depositions \$120.00 (Administrative certified). Even though they seem attractive fees we have been struggling to survive. As a business we have expenses like staff, interpreters,

marketing, litigation and administrative expenses and if you add up that in 35% percent of the cases we had to wait years to get paid, you can tell there is no much profit.

In 1987 when the last market rate was set, gas prices were .87 cents now they are \$3.88 per gallon, that is an increase of 400%, and I mention gas because sometimes interpreters are like taxi drivers, they have to drive up and down the city, to cover their appointments, they have to pay for their cell phone bills and their lunch (if they have time to eat) to try and make for a decent living. With your proposed regulations not only you want to decrease the fee schedule but you are giving total control to Insurance Companies to do whatever they want to do, which at the end is LEAVE WORKERS WITH NO INTERPRETER. I honestly do not see interpreters working for 25.75 an hour or a certified for 52.50 an hour, taking into account they will have to do their own marketing, collection and litigation. Much less Interpreting Agencies working for this rates where there is no margin for profit.

This proposed regulations will not work for anybody, I only see Claims Administrators and Defense Attorneys turning into agencies, trying to schedule or reschedule appointments confirming with patients and Doctors, having to go through more paperwork to make sure that the interpreter was at the appointment only 1 hour or more.

With this proposed regulations basically what you are trying to do is disappear the entire interpreting guild form Workers Comp, Interpreters and Language Service Providers (LSP'S).
Sincerely Yours.

Bradley Bowen
CA state certified medical interpreter #500400

May 13, 2015

I am a certified California State Medical Interpreter and I am very concerned by the proposed Interpreter Regulations and Fee Schedule. Due to changes already made to interpreter regulations over the last years, I made less money last year compared to the year before and this year looks to be the same or worse.

There are several problems with the proposed regulations and fee schedule, but first I would like to point out an oversight. In listing the types of certification, you left out the California State Medical Certification. Please include this in the list.

Another obvious problem is the proposed one-hour minimum for treatment appointments. This does not seem to take into account the time to drive to and from each appointment nor the difficulty of scheduling multiple appointments in a day when you account for drive times and appointments that often run late. The two-hour minimum is necessary for interpreters to earn a livable wage and be available for these appointments.

Another oversight is the two-hour minimum for med-legals without mentioning the standard four-hour minimum for psychological evaluations or doctors that regularly take over 4 hrs. I have to reserve an entire day for these appointments which typically last 4 to 6 hours, but can sometimes last up to 8. The 4-hour minimum is essential in getting an interpreter to reserve their whole day for these appointments.

Though there is a slight increase proposed for certified interpreters covering med-legal appointment, the proposed rate is a maximum, even though 20 years ago the suggested minimum published in LC 9795.3 was \$45/hr. We have been getting paid the same rate for years with no cost of living increases or adjustments for inflation. Nor does it take into account the fact that the Bay Area, where I live for example, is one of the most expensive places in the country for housing.

The increase is one that will in all likelihood be only on paper. It is difficult for me to see how I am supposed to charge and obtain even my current rate, let alone a higher one when the proposed regulations give several loopholes to the insurance carriers to not hire certified interpreters and several incentives for them to specifically hire non-certified interpreters. Despite the emphasis on using certified interpreters in the Labor Code and the proposed text, the requirement does NOT apply to insurance carriers or the interpreting agencies they use, only to independent agencies. Claims adjustors may provisionally qualify interpreters for a job even though claims adjustors do not work with interpreters or know if an interpreter is actually able to do their job or what that job entails. In addition, only 3 certified interpreters need to be contacted before hiring a non-certified interpreter when there are dozens of us that cover most areas with large populations. It would be very easy to contact 3 out-of-area interpreters and then move on to a non-certified interpreter.

And what incentive is there to hire me, a certified interpreter, when non-certified interpreters are paid a much lower rate, are not owed a 2-hour minimum, and are not even owed a late cancellation fee. This is basically setting up a system where insurance companies are encouraged to use non-certified, non-qualified people who will not provide injured workers or their doctors and evaluators with adequate interpretation. So the end result of these proposed regulations going into effect will be that I will have to drop my rates to a point where I can no longer make a living in order to compete with unqualified individuals to get jobs.

The proposed fees also seem to forget that we are freelance workers. We are not paid any benefits, nor do we get paid vacation or sick days. I have to buy my own health insurance, pay the entire 15.3% of social security, contribute solely to my retirement and incur other expenses like parking and tolls, which are rarely, if ever reimbursed in my experience. Any lowering of my rates will make it impossible for me to make a living.

And a last complaint I have with the proposed text is the requirement for me as an interpreter to get a signed and timed statement by the doctor for any appointment that goes over 1 hour for treatment or over 2 hours for med-legal exams, despite the fact that this is extremely common. Also in med-legal evaluations the paperwork is often finished after seeing the doctor. The doctor is busy and will not be able to sign said paper when the interpreter leaves, so a receptionist or assistant would have to do it. When I have had to get proof of interpreting signed by doctors in order to insure payment from an insurance company, the doctors have often made jokes about signing a permission slip or that it's like signing something for a good student. This is incredibly humiliating to me as a professional and the proposed text seems to imply that I am not a trustworthy professional.

These proposed regulations seem determined to undermine the quality and neutrality of interpretation in the Workers' Compensation system, to hurt local California businesses, be they local interpreting agencies or freelance interpreters, to infringe on the rights of Californian injured workers to get a fair hearing before an evaluating doctor or to get quality medical care. And all of this is being done to give a handout to out-of-State insurance carriers. I urge you to not implement these proposed regulations. And if you are determined to change the current regulations, start over and talk to and ask for input from interpreters whose profession and ability to make a livable wage are on the line. Thank you.

Mark Sektnan
Association of California Insurance Companies
Property Casualty Insurers Association of America

May 13, 2015

Please accept the following comments on behalf of ACIC/PCI

Missing from the regulations are any controls on billing for multiple appearances at the WCAB which would still be allowed since the definition of a half-day includes any portion thereof. This means if an interpreter was ordered by an applicant attorney with five conferences on calendar with Spanish-speaking clients, the interpreter would earn \$1,050 for the morning. There should be some limitation on the total time billed with the cost to be apportioned between the employers or insurers on the cases. Possibly, there should be a billing requirement for the interpreter to execute a declaration under penalty of perjury concerning the number of cases on which interpretation was provided in each half-day session.

Also missing from the regulations are any rules governing interpreters who translate the C & R to the applicant. However, there is nothing in the Labor Code that authorizes this type of service as a liability of the employer. However, WCAB panel decisions have validated this practice as an example of "settings which the AD determines are reasonably necessary to ascertain the validity or extent of injury or issues related to entitlement to benefits." The interpreters bill the equivalent of a half-day at the WCAB for a deposition. If liability is going to be imposed on defendants for this interpreter event, it should be regulated and included in the fee schedule. Furthermore, there should be a provision that the interpreter is only entitled to payment if the attorney is present to answer the applicant's questions. Otherwise, the interpreter is assuming the role of a paralegal and not that of an interpreter whose function is to facilitate communication between two persons who do not speak the same language.

David Espinoza

May 13, 2015

To Whom It May Concern,

In response to the proposed changes I would like to respectfully submit the following comments. First of all, we are all well aware of the high costs involved in Workers' Compensation claims for employers and insurers. It is no secret that the Workers' Compensation system is being abused, that it needs a serious overhaul, and that such overhaul is unlikely to happen, because there is too much money being made on all sides. However, as the system stands today, it is understandable that insurers want to cut costs. Nevertheless, of all the costs incurred in a Workers' Compensation claim, the cost of interpreters is one of the least compared to the cost of hiring attorneys, and the costs incurred by the doctors for treatment, examinations, evaluations, and so on. The state recently reaffirmed the requirement of credentialed, state certified interpreters at all depositions and court appearances by requiring interpreters to show their badge and make a statement on the record confirming their certification for the job. If the state is trying to ensure that the interpretation provided to applicants and attorneys is competent and accurate, since these are legal proceedings, it makes no sense for this proposal to allow for the use of non-certified interpreters at all.

Becoming a certified interpreter is not easy. The pass rate for the oral exam when I took it was below 15%, and this did not take into account the number of attempts. Furthermore, this was the pass rate after the test had been made easier! Now, just like in any profession, unfortunately passing the exam does not guarantee competence. There are some really bad certified interpreters out there; I've had the opportunity to witness this first hand, and you can ask attorneys and they'll tell you the same thing. Nevertheless, having to pass a very difficult test at least weeds out those interpreters who will not know the terminology, procedures, and may not have the skills necessary to do a competent job. The proposal suggests allowing a non-certified interpreter to interpret if three attempts to provide a certified interpreter do not yield results. This might suggest that it's difficult to find a certified interpreter for depositions and other proceedings, but there are LOTS of certified interpreters out there! In addition, depositions and court proceedings are scheduled pretty far out in advance, sometimes over 30 days out. Given that much time, there is absolutely no reason why finding a certified interpreter would be difficult. Finally, who is going to "police" and make sure that there really were three attempts made to find a certified interpreter? And, why should a non-certified interpreter be used when the law stipulates that these types of proceedings require a certified interpreter?

With regards to the actual fee schedule proposal, again, the cost of interpreters is one of the least by comparison to other costs, as I have already pointed out. While the proposed fee schedule would be acceptable to the individual interpreters, it does make it difficult, if not impossible, for interpreting agencies to continue to exist. Yes, they are middlemen, and most of us like the thought of "cutting out the middlemen". But, in this case, the agencies do provide a valuable service to both, interpreters and insurers. As an individual interpreter, agencies make it easier for me to get work. And, I would venture to say, they make it easier for insurers to find qualified interpreters and fill their needs. Therefore, eliminating these agencies, in my opinion, will make life more difficult for all. In the grand scheme, is it worth it, for a few dollars, to wipe out an entire group who does provide a valuable service? In my opinion, it's not.

It is my sincere hope that the changes will be re-considered and revised.

Susan Randolph
Executive Linguist Agency, Inc.

May 13, 2015

Additional comment from Susan Randolph

The Labor Code fee schedule is meaningless because it is trying to create a one-size-fits-all set of rules for wildly disparate situations.

It is a lacey network of necessary loopholes. When faced with the acute need to communicate with an injured worker, a doctor, nurse, adjuster, attorney, investigator etc will do whatever is necessary, without a glance at the Labor Code.

Conditions vary widely for depositions, treating appointments, medlegals, investigations, nurse visits, WCAB hearings. Interpreting for multiple appointments at the same medical office or WCAB court cannot be billed the same way as a one-off medlegal or deposition for an individual claimant.

If the State wants to have professional interpreting services available, the interpreters have to be able to make a living above subsistence level. If the State insists on certified interpreters for all appointments, a laudable aim, then provision must be made for interpreters to be able to get financial aid to cover the considerable cost of certification, which can then be paid back in installments.

Allowances have to be made for the huge geographical variety within the State – from dense urban areas to remote deserts and mountains - and for the grand variety of languages spoken.

All these complications are then overlaid with the distorting effect of the Florida-based nationwide services who have inserted themselves into the workers' compensation system vacuuming California money away from local interpreters and insurance companies. They offer insurance companies unrealistically low rates to provide translation, transportation, medical equipment, nursing services and finance their offer by not paying the local agencies they are exploiting. As each agency dies or withdraws services they move on to another... and from time to time, change their name as their reputation starts to smell.

In a more perfect world there would be a website where interpreters who have not been paid according to their agreement with an agency can record that fact. Then those claim examiners who understand that ethical interpreters and agencies save them money in the long run can decide whom they would like to try or whom to avoid.

An additional complication in the last couple of years has been the increasing use of bill review companies. Their overworked, under-trained staff confuse interpreting invoices with

medical bills, thereby wasting far more money and time for all involved than they have ever promised to save. They are instructed to believe that \$90 is a reasonable sum to pay an agency who pays an interpreter for two hours of their highly skilled time and that travel costs for any distance under twenty-five miles one way are negligible. They never read on to the next paragraph about flexibility for payments to agencies.

If it were not for claim examiners who develop relationships with ethical interpreters and agencies, ignoring the Fee Schedule, the whole system would collapse.

Rosa Green

May 12, 2015

To whom it may concern:

- The proposed fee schedule is Regressive and should it pass, not only would it lower the Interpreting standards but it would be detrimental to the injured worker's adequate care.
- State Certified interpreters are by far more seasoned than the newly certified interpreters and should not be eliminated. They have more seniority!
- Fee has not been increased in 20 years unlike other professions wages nor is it not in touch with current inflation.
- Claims Administrators should NOT be able to provisionally certify interpreters unless they themselves have a degree in Translation/Interpretation of Languages.
- Injured workers/applicant attorneys should be able to choose their own interpreters to avoid conflict of interests.
- Monopolies are not fair and only benefit those in control, so the Walmart-ization should be ended to promote a free market, insure better quality of services, and stimulate California's economy.
- Insurance companies should Not be allowed to have all the power if we want to safeguard the fairness of the Workers Comp industry!

Alice Fajardo
CMI

May 12, 2015

To whom it may concern,

This letter is to let you know that I strongly oppose the proposed Interpreter Fee schedule. It is not only unjust but most of all, a disrespectful act towards all the Certified Medical Interpreters. Most, if not all, have paid our education and certification while working hard as employees in other areas. Some of us had to take the exam 2-3 times and pay the same amount every time in order to take the exam. We have put our heart and mind into this profession because we love and enjoy helping those in need of communication.

We like to be up to date on every aspect of our career, this is why we also take courses to acquire more knowledge. We have to deal with traffic everyday and we have a high risk of getting into an accident due to the many hours we spent driving to and from the facilities. We also have to

leave our houses 1-2 hours earlier to be able to find free parking. We have to drive far, to and from the facilities as well, the least that can be done is paid mileage due to the high cost of gasoline. Spanish/English certified medical interpreters should get paid as much as those in other language combinations. Certification and Education as a Medical Interpreter should be requested at all times, no one else should be able to "certify an interpreter on the spot". The cost of living gets higher every year and for the last 20 years the fees have not changed, the 50% reduction of our current market fee is unfair and needs to be evaluated and kept as a 2 hour minimum with an increase.

Please, take all this into consideration and make the appropriate changes.

Sigifredo Hernandez

May 12, 2015

I strongly oppose the proposed interpreting fee schedule as it will affect the interpreting industry and therefore the injured worker will get a lesser qualified assistance service. And also, it will affect small Californian interpreting agencies that provide services locally.

Debra Schellenberg

May 12, 2015

My comments address the proposal that allows or requires claims examiner/adjuster to select an interpreter for medical appointments and the proposed rates for those appointments.

From a purely practical standpoint, it would be virtually impossible if not highly impractical for every medical appointment (i.e. every 6 weeks), for every injured worker who needs an interpreter, to be scheduled by a claims examiner and for he/she in turn, to select and schedule an interpreter for every medical appointment. If anyone from the DWC ever tried to consistently reach via phone, fax or email an adjuster, they would quickly ascertain that 99% of the adjusters in California are next to impossible to reach at any given point in time. They appear to be too busy dealing with basic issues, (like approving bills, etc.) and no doubt in meetings, etc. to schedule interpreters for every medical appointment for every injured worker in the State. When you factor in that on average for all medical appointments, there is a 20-30% cancellation rate, that increases the potential workload and number of phone calls required exponentially. The simple fact is that it will not happen, and they won't do it, regardless of any regulations that the DWC creates-because it would be so impractical as to be impossible.

My second issue is the \$52 rate for every medical appointment. Given driving times in the Bay Area and Southern California, most interpreters, even those working for the carriers directly or their agents, could schedule 2-3 appointments per day, and given wait times, 2 is more practical. That means that the DWC is expecting an interpreter to make slightly below minimum wage-if they are working a 5 day work week. Do you really believe that any certified interpreter in their right mind would continue to interpret for medical appointments at that rate? If they work through an agency, the rates would be less.

It appears that the DWC has not given this much if any thought, in their zealotry to lower costs to the insurance carriers (who always make huge profits regardless of any and all

regulations proposed by the way). Perhaps the DWC should consider trying this out in a small town, with 1 carrier to test the concept, where the risks are lower, and fewer injured workers and interpreters will be affected, because this proposal seems to be poorly conceived and not well thought out to say the least. If the legislature intended to deny injured workers competent interpreters, this will no doubt create that outcome.

Mark Sektnan
Association of California Insurance Companies
Property Casualty Insurers Association of America

May 11, 2015

Thank you for the opportunity to comment on these proposed regulations. On behalf of the Association of California Insurance Companies and the Property Casualty Insurers of America I would like to submit the following comments.

Missing from the regulations are any controls on billing for multiple appearances at the WCAB which would still be allowed since the definition of a half-day includes any portion thereof. This means if an interpreter was ordered by an applicant attorney with five conferences on calendar with Spanish-speaking clients, the interpreter would earn \$1,050 for the morning. There should be some limitation on the total time billed with the cost to be apportioned between the employers or insurers on the cases. Possibly, there should be a billing requirement for the interpreter to execute a declaration under penalty of perjury concerning the number of cases on which interpretation was provided in each half-day session.

Also missing from the regulations are any rules governing interpreters who translate the C & R to the applicant. However, there is nothing in the Labor Code that authorizes this type of service as a liability of the employer. However, WCAB panel decisions have validated this practice as an example of “settings which the AD determines are reasonably necessary to ascertain the validity or extent of injury or issues related to entitlement to benefits.” The interpreters bill the equivalent of a half-day at the WCAB for a deposition. If liability is going to be imposed on defendants for this interpreter event, it should be regulated and included in the fee schedule. Furthermore, there should be a provision that the interpreter is only entitled to payment if the attorney is present to answer the applicant’s questions. Otherwise, the interpreter is assuming the role of a paralegal and not that of an interpreter whose function is to facilitate communication between two persons who do not speak the same language.

Ronald Metzinger, Esq.
Metzinger and Associates
Applicant’s attorney

May 7, 2015

As an applicant’s lawyer, practicing workers’ compensation for 40-plus years and as an individual who tries cases in the Superior Court and in disability evaluation issues for various counties I must point out that the Workers’ Compensation Appeals Board is considered a Court

of competent jurisdiction in the State of California. Both the Superior Courts and the administrative courts require interpreters who are certified in the particular language, a requirement because they are requesting accurate interpreting which can only take place through certified interpreters. Removing interpreters and certification from the Workers' Compensation Appeals Board would render the Appeals Board not a Court of competent jurisdiction. It would also constitute a due process violation for the individual who called the interpreter. Usually it's the applicant lawyer who does that to have an individual who is appropriately documented by a State Agency to translate services. Removing that would constitute a violation of, not only the court system requirements for the Superior Court and all competent courts of California, but would render the Workers' Compensation Appeals Board and their hearing officers as not competent courts of appeal, allowing appeal of every decision.

In addition, the Labor Code has long indicated that it is up to the individual who is calling the witness to provide the appropriate interpreters. Certified interpreters again, have been and are required in all Courts of competent jurisdiction in the State of California. Fees have been long set in these cases for court proceedings, which also include depositions because they are an adjunct of testimony in a court. Changing the system so that an insurance adjuster can discuss who or what is considered a competent interpreter simply violates existing law and would violate the law in the State of California, even if the change is made by a regulation. Superior, Appellate, and other administrative courts required certified interpreters and this system must also accede to that to provide appropriate due process to an injured worker.

I speak Spanish. I can attest to the fact that the majority of interpreters who have been coming to depositions and in a number of cases actual court hearings, were not certified and that the problems that were immediately noticeable were that these people could not translate the English to Spanish or the Spanish to English in a reasonable manner. Slang words, requirements to sit and talk with the witness in order to come up with a translation are simply unacceptable and indicate that the person does not understand the language appropriately. The majority of the adjusters do not speak Spanish and have no idea as to whether an individual is competent to interpret but deal with the issue of cost to the carrier and always want the lowest cost to the carrier. I can attest that there are individuals who are involved in the system, who are being paid \$40 an hour who have no certification degrees and are just simply individuals off the street, who are translating and calling themselves interpreters. Frequent disputes arise over the actual use of the words and the language in those cases and depositions have been stopped because the interpreter was not able to appropriately translate the particular language. These are issues of the court and require certified interpreters.

I see there are other issues going on and I am concerned by them also. The issue regarding medical appointments is another problem. I believe that a certified interpreter is necessary at a medical evaluation where an injured worker is to be questioned by a doctor. Nobody wants to go to an Agreed Medical Evaluation or even a Panel QME evaluation and have a person who doesn't know how to translate the medical issues properly. Only certified individuals who had the appropriate skills in interpreting for medical appointments should be allowed and those

people can be certified and are certified through the State of California. Allowing a claims adjuster to pick an interpreter without being able to speak the language or know whether they are competent deprives the individual and even the defendants of the appropriate due process rights since the doctor will not receive an accurate translation of what the individual is saying and of course will not be able to appropriately treat the person if the translation is faulty.

Another issue that was brought to my attention is that frequently doctor's in the workers' compensation system schedule appointments but cannot see individuals at the scheduled appointment at the time. What happens with the interpreter? The interpreter is required, at least by my office, to be present when the doctor sees an individual, a patient, to provide appropriate interpreting. If the doctor is running late, I require the interpreter to stay so that the interpreter will be there when the doctor gets to them. I believe that an individual needs to get paid for the time they are at the doctor's office and I think reasonably for driving to and from the doctor's office so that the appropriate medical treatment can be provided to the individual.

I have a lot of issues also regarding people that I have seen who are not certified. I personally have literally thrown them out of depositions and have halted court trials when I know the individual is not able to translate appropriately and I am worried that this same problem will take over in medical evaluations. I also have found that in many cases, there are multiple bookings by some of the interpreting services and then they do not show up to the medical appointments which costs the injured worker problems, because the medications, the treatments cannot be administered due to the lack of communication skills. I also have some real problems with the concept of provisionally certifying an interpreter. That gives an individual who has no knowledge or understanding of the language the ability to pick any person off the street to go ahead and interpret for an individual who is involved in a court process where the interpreting service and the manner in which interpretations are done will affect the outcome of the case. That applies to the medical as well as to the legal issue and in a courtroom situation a certified interpreter must be available, not somebody off the street. The same applies for medical-legal evaluations and certainly for evaluations by treating physicians.

There need to be certification so that we are sure that we have competent individuals who are working in the system and interpreting correctly. I hope this assists in your regulatory review.

Dolores Righetti

May 10, 2015

I have 15 years experience as a Medical Interpreter, working in San Diego County. I would like to express my concerns for key components of the proposed Interpreter's Regulations and Fee Schedule.

1. The drastic measure in eliminating the 2 hr minimum for all Medical and Legal Appointments.

2. I'm opposed to allow claims adjusters and other laypersons to "provisionally" Certify anyone. Claim administrators have no knowledge in assessing the interpreter's skill and performance.
3. Section 9931 (c) to allow the claims Administrators contact only THREE Certified Interpreters, before sending a non certified interpreter a significant change from Previous regulations, that required to Exhaust ALL certified before using a non certified.
4. The 50% reduction of our current market rate fee. The Med-Legal rate proposed is only \$7.00 increase than the suggested minimum published in LC 9795.3 some 20 years ago, completely unrealistic with today's cost of living. If a minimum per hour fee is established it should not be lower than \$100.00
5. The exclusion of reimbursement for travel time and mileage.

All this not only impact our profession as Interpreters as well as the Health Care providers, but also severely damage the rights of the Injured Workers in California.

Thank you for allowing me to express my concerns.

Daniel Hsueh

May 10, 2015

I write to voice my strong opposition to the recommended changes in the proposed fee structure for individuals providing on-site language interpretation during Workers Compensation proceedings.

I am a small business owner, an entrepreneur working as a freelance interpreter. I am a proud member of the Interpreters Guild of America (IGA), a unit of San Francisco-based Pacific Media Workers Guild, CWA Local 39521.

Pursuant to SB863, the Workers Compensation Reform Bill, the Department of Industrial Relations, Workers Compensation Division, was given the task of reducing costs in the workers' compensation system.

I am in full support this goal, but not at the price of damaging the interests of injured workers and our members who provide the vital services necessary to make the Workers' Comp system function for persons of limited English proficiency.

The Department recently issued a proposed fee schedule which:

*Negatively impacts the quality of interpreting services to injured workers in that it provides for doctors and hearing officers to provisionally qualify non professionals to serve as interpreters. Research has proven without doubt that relying on non-professionals introduces unacceptable levels of inaccuracy into official cases.

*Sets fees for freelancer services and removes the existing "or market rate" language

from the fee schedule. Quality service demands fair reimbursement, and the proposed fees fall well below the fairness standard.

*Dictates what an interpreter can charge for hearings, depositions and medical proceedings.

*Dictates impractical working conditions, such as extending the hours that interpreters work.

*Takes away mileage and travel time compensation.

The fee schedule revisions proposed directly affect me personally. It will drastically reduce my immediate income and future earning potential. As a result, it may put me out of business, because Worker's Comp. cases consists of more than 80% of my total business volume.

The DIR cost-cutting proposals would infringe on MY ability to earn a fair living as independent contractors and would impose unfair changes in working conditions. In the Budget for the Fiscal Year 2014: Strengthening the Middle Class and making America the Magnet for Jobs, "the President recognizes that small businesses are a crucial engine of economic growth and a ladder for many to the middle class". Please hear the plead of one of thousands of small business owners in the language solutions industry like myself. Please allow the free marketing system to function the way it is supposed to work, without the government's further regulations which directly and adversely affects ME as a small business owner.

The fee schedule also fails to account for the extent to which Language Services Agencies function in the system and makes no provision for agency mark-ups.

I wish to be on record in opposition to the proposed fee revisions as drafted. Together with the CWA, we stand prepared to work collaboratively with agency staff and others in order to achieve the laudable goal of saving public funds while at the same time preserving quality services and fair treatment of working Californians and their families.

Marcelo G. Lopez

May 9, 2015

Please:

1. Understand that an insurance adjuster or a healthcare provider cannot bear the burden of provisionally certifying an interpreter as they are not qualified to do so.
 2. Do not take measures that will hurt the interpreting industry. We depend on our local interpreting agencies for work. They provide a valuable service coordinating interpreting services for injured workers.
 3. Include California state certification in the definition of qualified interpreter along with the NBCMI and CCHI certifications.
-

Ramon Santiago

May 9, 2015

I strongly oppose the proposed interpreter fee schedule regulation as this will negatively affect every certified or qualified interpreter who is devoted in providing the necessary communication to evaluate and treat the injured worker who at no fault of his own suffered an industrial accident, it is my opinion that the injured worker shall be entitled to a qualified and fair remunerated interpreter, please reconsider the impact the proposed regulations will have on the interpreter as a professional language provider.

Scott Silberman
Silberman & Lam, LLP

May 9, 2015

This schedule does not clarify, unless I missed it, what needs to be done for someone who is interpreting for a language for which does not offer certification to get the certificated interpreter rate. It is often harder to find interpreters in these more obscure languages, you will not find them at the low rates.

There needs to be a right for an injured worker to terminate an appointment or deposition with a non-certified interpreter because of a lack of competency or understanding. The injured worker has more knowledge than a claims administrator or physician as to the competency of the best interpreter since the speaker of the language. Just this week our office had a deposition translation with an interpreter who was not certified sent by the carrier. After 2 hours the interpreter went through only 10 pages and was using Google Translate for much of the translation. These regulations don't seem to allow the applicant to terminate such a session.

As for the three attempts there should be a provision that after three attempts to locate a certified interpreter prior to a deposition or med-legal evaluation to locate a certified interpreter and before hiring a non-certified interpreter the carrier must give the applicant an opportunity to locate a certified interpreter. If not, this is ripe for abuse as the carrier saves money if they hire a non-certified interpreter and can simply call the same 3 people each time who refuse to take work comp because of the low fee schedule.

For times over 8 hours per day the code only allows for an hourly amount equivalent to the standard rate. We have overtime laws and many of these people are employees and entitled to overtime which should be factored in.

Lastly, many of these interpreters are regularly scheduled used in civil court, especially the more exotic languages. I think they should be able to prove a higher rate by showing what they get paid, when paid directly by another court system.

Diane Worley
California Applicants' Attorneys Association

May 7, 2015

Bernardo De La Torre, esq., President, California Applicants' Attorneys Association

The California Applicants' Attorneys Association offers the following comments regarding the draft regulations for the Interpreter Fee Schedule which are currently posted on the DWC Forum.

Initially, the quality of communication between non-English speaking injured workers and their treating doctors, their evaluators, and their attorneys is being seriously jeopardized by these proposed regulations thereby denying non-English speaking injured workers equal access to the legal process. As drafted, these regulations are intrinsically biased towards insurance companies and will strike another blow to the benefits and rights of injured workers already undermined by SB863. They are also discriminatory towards Spanish speakers, as the proposed fees for Spanish interpreters are lower than other languages.

As advocates for injured workers, we are concerned with the need for quality, certified language interpreters in the system.

Section 9931 (c) provides that the claims administrator or party responsible for providing the interpreter service will now only have to contact three certified interpreters to claim a certified interpreter "cannot be present" at a hearing or deposition. This is a major change from current law which requires they contact all certified interpreters before using a non-certified interpreter. Non-certified interpreters are less expensive and this regulation provides incentive to insurance carriers to not perform a diligent search to find one. Why would they when they can save money? Unfortunately, cheap pay will only lead to cheap quality in interpreting services. To avoid this race to the bottom, we urge no change to the requirement that all certified interpreters be contacted before it is determined one "cannot be present". We recommend deleting at least three certified interpreters in this section and adding all certified interpreters as 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>

Section 9932 (c) should also be changed to continue to require that all certified interpreters be contacted before it is determined one "cannot be present" in the same manner as set forth above for section 9931(c).

Additionally, Section 9932(a) (3) provides that a claims administrator can send a non-certified interpreter to a medical appointment as long as they authorize it. We object to this provision as it is the injured employee who should give prior consent to the interpreter to be used at a medical treatment appointment or medical legal evaluation, not the claims administrator. Injured employees must discuss sensitive and private matters divulging personal details of their lives and

medical history without an attorney present at medical appointments and medical legal evaluations. Consent must come from the injured employee.

Sections 9932(a) (2) and (b) (2) and 9933 (b) all provide that the physician will be responsible for determining that the interpreter present at the appointment has sufficient skill to be provisionally qualified to interpret in the required language . A physician is not qualified to do this. Again it must be the injured worker who consents to and determines if the interpreter has sufficient skill in their native language. What would a physician base their decision on if they have no knowledge of the non-English language? We object to these provisions and can only see disputes and frictional costs increasing unless the injured worker is given some input into the interpreter being qualified to interpret in their native language, if they are not certified.

As advocates for injured workers, we are also concerned with the importance of the injured worker being able to select their own interpreter.

Section 9935(a) is inconsistent with the Labor Code. Injured workers should be allowed to pick their interpreter for hearings and depositions.

The selection of the interpreter for an injured worker's deposition is a very important issue. Any injured worker who is being deposed by the adverse party in a workers' compensation case is likely to be nervous with this unfamiliar and at times intimidating process. It is imperative to have a highly trained certified interpreter present for the deposition to translate the testimony. It is also imperative to have a highly trained certified interpreter present to meet privately with the attorney and the injured worker to prepare ahead of time for the deposition (except in those fortuitous instances where the attorney is fluent in the injured worker's native language). Both the injured worker and his/her attorney must have confidence in the integrity, expertise and reliability of the interpreter at the deposition. The interpreter sits in with the attorney and the injured worker during a privileged conversation preparing for the deposition. This is a position of trust where the injured worker is particularly vulnerable, and knowing that the insurance company is picking interpreters that it has exclusive contracts with undermines confidence in the process and gives at least the appearance of impropriety. Insurance companies should not be allowed to control the means of communication between an attorney and his or her client at a deposition.

Furthermore, at hearings the interpreter translates the injured worker's sworn testimony for the court reporter. Again, this is a position of trust that requires both the attorney and the injured worker to have the utmost confidence and faith in the integrity and the ability of the interpreter. When interpreters are selected unilaterally by an adverse party, this trust and confidence is undermined.

This issue is of statewide significance. According to the US Census Bureau, some 43% of California's 38 million residents speak a primary language other than English at home.

Further, to avoid misinterpretation of the phrase “the responsibility of the party requesting the presence of the witness or deponent” in section 9935 (a) we recommend it be deleted and the phrase “the responsibility of the representative of the witness or deponent” be added.

Section 9935 (c) provides that an injured worker must select an interpreter for a medical appointment from the MPN where they are included in ancillary services. To do this, all interpreters should be individually listed by name in the MPN Provider list, and not just by the name of the company or service provider, in order for the injured worker to make an informed choice. For an injured worker who has multiple medical appointments they may want the same interpreter to accompany them to all appointments, and this will allow for this.

Next, section 9934 sets forth events qualifying for interpreter services. We recommend that subdivision (a) (4) (B) of this section be revised to delete “prior to signing” and add “for purposes of correction” to more accurately reflect the practice of deponents reviewing their deposition transcripts after a deposition, as not all deponents will sign their transcripts.

We also recommend that a provision be added in this section that interpreters’ services will be paid before a hearing to translate submitted Spanish exhibits into English as most judges insist on this being done before a hearing.

Lastly, our final comments are with regard to the fee schedules set forth in sections 9937, and 9938, and the minimum billing times in section 9939.

There are many comments on the forum with regard to whether the proposed rates are adequate. We are also concerned with the rates, but would like to emphasize that the proposal that Spanish interpreters get paid less than other languages is by definition discrimination: “Discrimination is treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit.”

Spanish language interpreters should be paid the same higher rate provided for all other language interpreters as there is no rational basis for a different rate. To do otherwise constitutes discrimination against the Spanish speaking workers of California as well as Spanish language interpreters.

With regard to minimum billing times, Section 9939 (b) only allows one hour minimum time for a medical treatment appointment. We recommend this be revised to two hours as set forth in the current regulation in section 9795.3. As travel time and mileage has been eliminated, interpreter’s fees should not be cut any further as they must continue to travel long distances for medical appointment translation services without any compensation. Interpreters at medical appointments lasting less than one hour would have their pay cut by almost 42% without this revision.

We also want to insure that if Independent Bill Review is used for a dispute on an interpreter's bill that the fees be paid by the insurance company and not the interpreters, as their bills are generally small and it would be prohibitive for them to pursue any dispute otherwise.

Injured workers' most basic right to communicate properly with their doctors and lawyers must be protected in these regulations to maintain the integrity of the workers' compensation legal system and their due process rights.

Rosella Castillo

May 7, 2015

The DIR published a draft of proposed interpreter regulations. After reading it thoroughly I have concluded that this will probably end the career of certified and professional interpreters and hurt the non-English speaking clients as they will be provided with unprepared and unqualified cheap interpreters.

Here's why:

1) the Proposed Regulations have completely stripped Applicant Attorneys of the ability to choose their interpreting service for depositions, med-legal appointments and treatment (Section 9935 (a). The language is unclear as to whether you can choose your interpreter for WCAB hearings but it leans towards defense having control over it too.

2) It gives claims examiners (who we all know aren't well-meaning geniuses) a blanket license to use non-certified interpreters through 2 loopholes:

* Section 9931 (c) - They only have to contact THREE certified interpreters before they can claim no one certified is available and send a non-certified interpreter, THREE ONLY. Big change from the previous Regulations that required that they exhaust ALL certified interpreters before using a cheap non-certified 'interpreter'

* Section 9932 (a)(3) - Again, the claims administrator can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the latest regulations will give carte-blanche for adjusters to do it systematically.

3) This is a double standard: although there is emphasis on certification of interpreters all over the Regulations, the requirement only applies to independent language service providers but NOT to the insurance companies and the interpreting agencies that THEY use certified interpreters.

3) The rate proposed for certified interpreters is a 50% reduction of our current market rate. The Med-legal rate proposed is a meager \$7 more than the suggested minimum published in LC

9795.3 some 20 Years ago! The billable legal rate is less than what certified interpreters charge currently. The numbers are completely out of touch with inflation and geographical differences of cost of living. Cheap pay will only lead to cheap quality.

Why does this all matter to you and your clients?

- a) Because a bad interpreter at a PQME will affect the report and ultimately the value of the case.
- b) The vendors used by claims examiners also fail to send anyone and estimated 10- 20% of the appointments, causing very inconvenient delays in the case.
- c) A bad interpreter at a Deposition affects the testimony of your clients. As you attorneys best know, it affects the case adversely. Same goes for your WCAB hearings.

The regulations as written in the draft (file enclosed here) are a blatant giveaway to insurance companies and a couple of out-of-state vendors at the expense of the injured worker. The quality of communication between your non-English speaking injured workers with their medical treaters, their evaluators and their access to the legal process in general is being jeopardized.

PLEASE LOOK AT THE ABOVE STATEMENTS AND MAKE THE APPROPRIATE CHANGES TO THE REGULATIONS SO THAT MONOLINGUAL CLIENTS HAVE PROFESSIONAL INTERPRETERS ASSISTING THEM AND SO THAT CERTIFIED PROFESSIONAL INTERPRETERS CONTINUE IN THIS FIELD

Nadya Siller
Beatriz Obregon
Frank Aguayo

May 14, 2015
May 14, 2015
May 7, 2015

1. There is no mention of including California State Certified Medical Interpreters as providers of interpreting services in the draft proposal. This is of great concern, especially if you are one of the 269 medical interpreters listed on the State Personnel Board Interpreter Listing (<http://jobs.spb.ca.gov/InterpreterListing/detail.cfm>). When we sat at the table with the DIR during the drafting of SB 863 and lobbied hard to not only uphold medical certification, but to also reinstate it, we were asked, “if we build it, will they come?” The obvious answer was YES. And as a result, the DIR designated the National Board of Medical Certified Interpreters (NBCMI) and the Certification Commission for Healthcare Interpreters (CCHI as testing bodies in order to bring more certified interpreters into the system. To now eliminate an entire group of certified interpreters, would set us back and, given the other concerning proposal of allowing for “provisionally certified” interpreters earning ½ the fee of certified interpreters, coupled with the loose allowance of having the claims administrator (yet another concern) call a mere 3 certified interpreters (without specifying location) before resorting to “provisionally certifying” an individual to provide services is simply unacceptable.

1. The proposal ushers in the right for a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter. To assume that an individual, with a vested interest in the outcome of the interpretation and who is not an expert in language or interpreting, has the capability to determine whether an individual meets the qualifications to be an interpreter is as ludicrous as saying that interpreters will be able to evaluate the skills of civil engineers or attorneys, just because they work with them. Based on other information in the draft proposal, “provisionally certifying” an interpreter is likely to be a price-driven decision, not a quality-driven decision. When decisions are made this way, professional interpreters are driven out of the field into other professions. This concerns us.

1. Assuming laypeople shall be allowed to “provisionally certify” individuals to act as interpreters in the absence of a certified interpreter, what mechanism does the DIR intend to put in place to ensure that the claims administrator (who has an inherent conflict of interest) will actually call the 3 certified interpreters prior to sending a “provisionally certified” one? Do those 3 have to service the county in which the event will be taking place, or can they be anywhere in the state of California? The existing regulations require that the list of certified interpreters servicing the county in which the event is taking place be exhausted before calling upon a provisionally certified person (CCR 9795.3 (e)). We believe this requirement should be respected.

1. We recommend that instead of allowing a doctor, lawyer, hearing officer or claims administrator to “provisionally certify” an interpreter, that the DIR establish a list of individuals who meet the prerequisites established by the two medical certification testing bodies to act as provisionally certified interpreters.

The Pre-requisites are:

- a. Having passed the ACTFL Oral Exams (American Council on the Teaching of Foreign Languages) with a score of Advanced Mid Level (follow this link www.languagetesting.com) - both the OPI (telephonic) and OPIc (computer recording) are acceptable.
- b. Having taken an International Medical Interpreter Association (IMIA) approved interpreter training 40-60 hour course (<http://www.imiaweb.org/education/trainingnotices.asp>)

Individuals desiring to become interpreters must fulfill the above requirements in order to sit for the national exams. By having them submit proof of having met these requirements to State Personnel Board (SPB)/CalHR (or other designated entity), and making this list available on the SPB (or other designated entity) website, then the selection of the provisionally certified interpreter will be that of an individual who has satisfied basic requirements and is serious about becoming a certified interpreter. These individuals may remain on the provisionally certified list for up to 2 years, while pursuing the training and education necessary to pass a certification examination as administered by one of the certifying entities listed in CCR 9795.5(b). If within this two-year period they are unable to pass the exam, then they are removed from the list.

As for those interpreters for whom there is no pathway for certification as of yet, we recommend adding to the regulations/labor code the requirement for the DIR to establish a registry (similar to the one we are proposing for Provisionally Certified Interpreters) for Languages of Lesser Diffusion (LLD), on which those on the list have passed CCHI's CHI Core (which essentially knowledge contained in the 40-60 hour course in interpreting) plus have scored at the Advanced-Mid level on a Language Proficiency exam like the ACTFL. The fees for these LLD's must be market rate, just like the fees for OTS for which certification does exist.

This would ensure a minimum level of competency in order to assure the protection of the injured worker's civil rights. It would also protect California from a second version of *Lau v. Nichols*, this time in the medical interpreting field. This was the landmark case brought against the state of California ushering in the language access component of Title VI of the Civil Rights Act. ([see http://www.languagepolicy.net/archives/lau.htm](http://www.languagepolicy.net/archives/lau.htm))

1. While, we believe that the market rate should prevail in our country, based on the principles of capitalism, we understand that the DIR is bent on setting a fee for interpreter services, much like it has done so for all other providers of Workers' Compensation services. The fees that are proposed in the draft are not only well below current rates, but also do not take into consideration the skills and education inherent in the interpreting profession. The proposed fees also do not take into consideration inflation, and are in fact reflective of a pittance of an increase of those fees established in 1992. They do not take in the consideration of the scarcity of interpreters vis-a-vis other providers to the system. The fees appear to make no provision for Language Service Providers, a catastrophic mistake that could lead to the collapse of the entire provision of interpreter services to injured Limited English Proficient (LEP). It is important to take into consideration the role LSP's have been playing in, not only the WC industry, but also the California economy. They are a primary source of interpreter jobs for freelancers who do not wish to bill carriers directly or go thru the litigious lien process in order to be reimbursed for services. The WalMartization of interpreter services by awarding all provision thereof to out-of-state agencies that provide bundled services threatens the very fabric of the Californian jobs creation movement.

While we understand that the existing trend, since SB 899, has been to hand over complete control of all workers' compensation claims to the large insurance companies, we believe that permitting the claims administrators to determine who gets an interpreter (as well as the qualifications thereof) and when, is a colossal mistake. Our state is currently fraught with discriminatory undertones that marginalize LEPs from all kinds of government services. To permit the claims administrator control over the selection of the interpreter for all events, will inevitably lead to a violation of the injured workers' rights under Title VI of the Civil Rights Act of 1964 and the Standards on Culturally and Linguistically Appropriate Services (CLAS), which mandate that language access services be effective, understandable, and comparable to services received by non-LEP persons.

1. MPN's: The proposal allows for interpreters to form a part of a carrier's MPN under Ancillary Services. However, we believe this provision is premature, as there is no

mechanism in place for interpreters or LSP's to even apply for inclusion. The interpreting community has increasingly experienced the encroachment of large out-of-state conglomerates designated as "preferred vendors" who routinely use unqualified "interpreters" to provide services while certified interpreters are sent home. Or, interpreter services are objected to under the grounds that the interpreter isn't a part of their "preferred network" or "MPN" and yet the carrier doesn't send anyone to interpret for the injured worker, leaving the task to the local LSPs, who then receive the objection and enter into a vicious cycle of non-reimbursement for services rendered which culminate in the litigious lien process.

The injured worker must be the one to choose the interpreter, as per LC 4600 (g), which was ushered in by SB 863.

1. Fees for services: The fees proposed in the draft, as stated previously, are unsustainable. CWCIA presented the Fee Schedule Proposal in Feb 2014, and while we would prefer the free hand of the market regulate the fees paid for services in all languages, we stand by said recommendations. Most importantly, we believe that setting the fee for provisionally certified interpreters at 50% less than certified interpreters, together with granting the power to provisionally certify, calling only 3 certified interpreters prior to calling a provisional one, and allowing the claims administrators the sole power to schedule the interpreter, will result in more provisionally certified interpreters replacing certified ones. This is regressive and would forfeit the gains secured over the last 15-20 years towards providing a professional, skilled, work force, whose aim is to help the LEP injured worker gain equal access to those services in workers compensation that monolingual English speakers enjoy.

We would like to remind the DIR that during our January 24, 2014 meeting, we all acknowledged that the supply of certified and otherwise qualified interpreters is very limited. The supply is particularly acute for all languages other than Spanish, and for this reason, we understand your primary focus was to establish a dollar value fee schedule for Spanish language interpreters while maintaining the market rate fee schedule that has worked so well for the past 20 years for all other languages. To peg a fee other than what the market bears to languages other than Spanish (OTS), is unacceptable. The result of this will be that interpreters of languages other than Spanish will go elsewhere for work, leaving the WC injured worker without access to services, in violation of their civil rights under Title VI. We recommend that the fee for OTS remain at the market rate.

1. Travel time and mileage allowance: The proposal doesn't allow for interpreters to charge for mileage and travel time. Given the distances required to get from one appointment to another, in this state where the automobile is essential, to not provide for mileage and travel time, together with the low fees proposed, will significantly reduce the number of certified and otherwise qualified interpreters to want to accept assignments in many geographical areas of the State. Often times, injured workers live in rural areas, where interpreters living in urban areas must travel to, often involving distances of well over 30 miles one way. California is a big state and since injured workers, medical providers and lawyers do not come to the interpreters' offices, the interpreters must be allowed compensation for travel time. Attorneys are certainly allowed to charge their clients (insurance companies) for their travel time, so why should it be any different for interpreters?

1. The DIR, if bent of keeping fees as proposed, granting the carriers the control over interpreter services, and thus sending LSP's the way of the dinosaurs, should at the very least do away with classifying interpreters as lien claimants, requiring payment for all services regardless of the merits of the case, MPN status of the medical provider or interpreter, etc. Otherwise, the DIR will find itself with an exodus of interpreters, seeking greener pastures to make a living, leaving the LEP injured workers at the mercy of the biased, cost-conscious carriers whose sole aim is to spend as little as possible in curing or relieving the injured worker of his injury. This will contribute to the demise of an entire profession that aims to afford all workers entering the Workers' Compensation system equal access to benefits.

Abel Calderon

May 7, 2015

Interpreter fee schedule - apportion among various applicants serviced on the same day

My recommendation is that the fee schedule account and require a sliding scale for fees when one interpreter services various applicants on the same day at the same location. There should also be a duty to disclose the amount of applicants serviced on the same day at the same location.

Anonymous

May 7, 2015

RE: Proposed Amendments / Fees and requirements for Interpreting Services
Chapter 4.5. Division of Workers' Compensation

Subchapter 1. Administrative Director Administrative Rule

Once again the pursuit by the powers that be are trying to reinvent the wheel in regards to the language service providers in the Work Comp sector. Every so many years it seems that a new ruling and or a new way to cut into the lively hood of WC certified interpreters is unnecessarily attempted to be re-written. This time the proposal is filled with regression, contradiction and misgivings. If this latest attempt is being contemplated as a correction or an upgrade, seems to be more like a condemnation. There are so many rules and regulations already in place concerning language providers, is there really a need to override the codes & regs already in place regarding interpreters. This fee schedule unjustly fights the right to a market rate and undermines the progress certified interpreters have achieved. Some of the requirements stated in this proposal are a direct and biased hit against certified interpreters in general but specifically against Spanish-English certified interpreters (§9937(A)

There are more Latino applicants because Latinos are the back bone of this state. Yes but there are also a lot of Certified Spanish Speaking Interpreters (admin, court, federal etc) working in Comp. Therefore the daily financial status of an independent contractor is unpredictable and the greater majority of WC interpreters do not have 5-15 cases a day as some adjusters and defense attorneys will falsely have the DIR believe. That is very far from the truth and much less where the comp industry is today. The work fluctuates daily and for many years previous DWC directors understood the unique section that allows for a "market rate" Many insurance adjusters and their lawyers would have the DIR believe that most independent certified interpreters make way more than an average middle class professional, we don't.

A fee schedule" is a blunt disregard to eradicate the right to work as an independent contractor and have a market rate which is an economic system set by private individuals rather than by the state. The fees being proposed are unrealistic for the area and most independent interpreters will not work directly for an insurance company or a TPA. Why? Many insurance companies (claims examiners) simply don't pay and often delay payment including services where an appeals board judge has issued a stip/order.

The same unsupervised carrier controlled system that delays payment, quotes the wrong objections as an excuse to not pay, or fight an invoice from a certified interpreter requested by the same carrier that at the end does not want to pay. The rates being proposed if passed are going to benefit only the insurance companies and as such most don't have their corporate headquarters in this state.

According to § 9931 C That the hearing officer finds the interpreter who is present has sufficient skill to be provisionally qualified in the required language. " Sufficient skill" but §9931 does not specifies the method to do a language proficiency determination and the word sufficient sounds less than adequate service. Who will determine the language skills of the "hearing officer" ? Who is going to qualify the qualifier? Does a course in Rosetta Stone or Ingles sin Barreras hit the mark? Does the "provisionally certified" situation comes with an expiration date? If someone gets provisionally certified one day is that a done deal?

§9931 (D) is very ambiguous like some of the other requirements throughout this proposal. The provisionally certifying practice will give cart-Blanche for claims adjusters to use it systematically. Soon a letter or a form created by the non-certs, as they are described in the business, will be utilized to solicit work away from the certified professional. Why are the professional interpreters investing so much money taking courses to maintain state imposed requirements, paying yearly fees to have a current badge? Injured workers deserve and should be provided more than a laissez faire set of sufficient skills in a med-legal setting.

The provisionally "certified" interpreter, will mostly be a bi-lingual individual lacking in technique (specially simultaneous) nuances, language labs for diverse vocabulary and speed, specialized courses, paid seminars, association meetings etc. A bi-lingual speaker will go around peddling their services and hovering at the appeals boards in search of work which it is not rightfully theirs. The market will be flooded with provisionally-certified individuals who have

no purpose in passing state tests nor paying for a state certification yearly fees. Off course the non-certs fees are cheaper and so will be the quality level, protocol and the professional- ethical aspect that is expected of a neutral party. Certified Interpreters like court reporters are often called officers of the court.

Once the can of worms of provisionally interlopers gets opened the quality of service provided will become murky, abused, corrupt, and state revenue will also be lost. The provisionally certified interpreter's biggest lack of sufficient skill may very well be in the English language. Using a less than a legit "certified" interpreter/translator during a AME/QME appointment or a proceedings such as a trial or deposition taking testimony under oath surely requires the best form of interpretation to preserve the neutrality and validity of the best verbal translation. A med- legal document created using a provisionally qualified individual will become the best evidence to delay, recon and or dismiss a report or testimony. Questioning the language proficiency of the hearing officer and methods used to determine "sufficient skill" might be grounds to determine that it is all very insufficient and totally unacceptable.

Why are we going backwards when so much hard work has been done to weed out the scammers, the impersonators? Many of the requirements in this proposal will erode fertile certification ground that has been gained. We, Certified Interpreters, are professionals. As such we have the right to be recognize for our services and part of that recognition is to be properly compensated for the irreplaceable services we provide the non-English-speaking injured workers of the State of California.

Luis A. Ortiz

May 7, 2015

Thank you for publishing the Interpreter Fee Schedule. My name is Luis A Ortiz. I was certified as a Medical Interpreter by the State of California on 10/17/05. My Medical Certification number as it appears on <http://jobs.spb.ca.gov/Interpreterlisting/> is #500379. Per that website, after paying my renewal fee to the state of California, my certification as a Medical Interpreter is valid until June 30, 2016.

After reviewing the ARTICLE 11 (Fees and Requirements for Interpreter Services) I noticed some things that are somewhat baffling. These are especially worrisome since despite me having received the necessary training, passing the state board test for medical interpreters in 2005, being certified by the state of California, and then gaining experience serving as a Certified Medical Interpreter for the last 10 years, the language of the document you are proposing, leaves any Certified Medical Interpreters including myself who were certified by the State of California completely off the list of approved Certified Medical Interpreters for medical appointments. The following are some examples.

§9930. Definitions.

(b) "Certified interpreter for medical treatment appointments and medical-legal exams",

means an individual who:

This section only approves for medical appointments those interpreters certified through CCHI, The National Board and interpreters certified for hearings and depositions. No mention is made in this section about we that have been certified by the State of California as Certified Medical Interpreters, even though if you do a search of <http://jobs.spb.ca.gov/Interpreterlisting/> our names, certification numbers and other pertinent information as medical interpreters all appear.

§9944. Interpreter Directories.

(b) Certified interpreters for the purposes of medical treatment appointments and medical legal exams who meet the qualifications of section 9930(b) 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>.

In this section again we Medical Interpreters whose names are listed on <http://jobs.spb.ca.gov/Interpreterlisting/> have been left out. Since no reference is made to us Medical Interpreters listed on <http://jobs.spb.ca.gov/Interpreterlisting/> insurance companies can argue that we cannot be used as interpreters for medical appointments.

I realize this might just be small oversight. However, the language of this bill as it stands will certainly create a great deal of problems for those of us who have been certified by the State of California for years and whose names have appeared as Medical Certified Interpreters on <http://jobs.spb.ca.gov/Interpreterlisting/>.

Part of the problem probably stems from the fact that on that website Medical Certified Interpreters appear on the same list as those certified for hearings and depositions. I fear that unless reference is made in this bill to Medical Certified Interpreters whose names appear on <http://jobs.spb.ca.gov/Interpreterlisting/> at least in these two sections that I just mentioned, we will be completely excluded by the insurance companies as approved for medical appointments even though we have been certified the longest and had to pass very difficult extensive testing in order to get certified. From what i understand at least one interpreters agency has said that because we have been excluded from this bill they cannot use us as interpreters for medical or med-legal appointments. If this happens with other agencies as well, it would certainly create an unfair, undue hardship.

I therefore beg please that you correct matter this before it becomes a severe problem for us who have labored hard for years in the field we so dearly love. Thank you very for your attention. Below is my information as it appears on <http://jobs.spb.ca.gov/Interpreterlisting/>.

Tania Crawford

May 7, 2015

I am writing to voice my opinion on the recommended fee schedule for Interpreters.

My first concern is the establishment of lower rates for Spanish interpreters, Spanish interpreters just like interpreters of any other language have gone through a great amount of training not to mention the amount of money we spent and continue to spend in our education.

Next concern, the elimination of the two hour minimum for medical appointments, nobody will be willing to commute 10, 30 or sometimes more miles than that to get paid for only an hour.

Lastly, the fact that anyone other than the certifying bodies will be able to temporarily certify an interpreter will have a negative impact on the quality of services that the injured workers will receive furthermore non certified interpreters will lose motivation to get certified, why pay for training, certification and continuing education if they will be working the same as or if this passes, more than a certified interpreter

James McMurray

May 7, 2015

Do not accept any assignment that is harmful to our profession.

Alicia E. Rola

May 7, 2015

I would like to express my thought on some of the changes that are being considered by the DIR and ask that you would not make those changes.

Instead I ask that:

1. You continue with the preservation of the 2-hour minimum for all Medical and Med-Legal appointments.
2. Give the right for the party producing the witness to choose their interpreting service in order to keep the legal process neutral, the quality high, and the hundreds of small, local Language Service Providers (LSPs) who comply with the certification regulations in business in California
3. That you continue with the insistence on certified interpreters for Legal and Med-legal settings, and we are sternly opposed to the allowance of claims adjusters and other laypersons to be able to 'provisionally certify' anyone unilaterally. Because of these type of practices by the adjusters and laypersons, I have heard many horrible stories of patients not receiving correct and important information by these uncertified interpreters.
4. A professional fee for interpreter services commensurate with the level of education and skill required of Interpreters. We are professionals and should be pay as such. This practice would encourage interpreters to continue educating themselves and sharpening their skills.

Please do not allow us to go back to the stone ages where parents would use young children to interpret for them, or when hospitals used janitors or people with limited education to interpret for the Doctors and nurses.

Claudio

May 7, 2015

If there is a democrat out there who is in favor of this because good regulation is good government then I ask that you reconsider. Good government is good regulation of big business, not of individuals, small businesses and middle class entrepreneurs. For any republicans in favor of this, how about defending the freedom to commerce without undue government interference? I hope that doesn't only apply to large company's especially when those large company's are not being pitted against government but against independent contractors who get the least from government programs.

Patricia Bracho
Certified Court Medical Interpreter

May 7, 2015

I am a Certified Court/Medical Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.

- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about this profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Lilia Ortiz Candela

May 7, 2015

I appreciate the forum for comments, I feel compelled to state that these are RADICAL changes being purposed.

The workers compensation system as well as the California interpreter certification program, were created to PROTECT the rights of the INJURED PARTIES.

These regulations RENDER interpreter CERTIFICATION UNNECESSARY, by the use of non-certified, provisionally certified and qualified interpreters instead of certified interpreters. With no one to police the carriers or doctors authorizing interpreters -- work will go to the cheapest interpreters or to presumed "bilinguals."

Proposed regulations say that If no certified interpreter is available, then call a non-certified interpreter. However, I went to a medical appointment last week and there was another non-certified interpreter there with 3 jobs----I had 1 job.

I was available, why was I not called? Bakersfield is a comparably small town & there are only a handful of interpreters.

LETS NOT BE IDEALISTS -----IT WILL NEVER WORK.

These regulations set fees but contain a destruction clause.

Interpreters can mutually agree with the insurance carriers to a higher or LOWER FEE. To negotiate you have to have leverage--- The only parties here with leverage are the mega corporations with profit goals.

---- NO MATTER WHAT THE COST.

And as if this was not enough CONTROL, the purposed new regulations strip the courts of their jurisdiction over interpreter FEE DISPUTES matters. Insurance companies will decide fee disputes internally----of course they will be fair. What a sweet deal! I got a denial letter from an insurance carrier because they did not request my services at the Board nor did I have authorization, even though, I read the compromise and release document. Under the purposed regulations, they would have the last word. What?

If the proposed regulations were to set fair fees, update fees, or clarify ambiguities with regard to interpreters fees across California --- it was a noble attempt but tragically fail to do so.

The proposed regulations are UNJUST to all the implicated except the insurance carriers----we SAY NO, THANK YOU.

Lindy Gomez
Certified Court Interpreter

May 7, 2015

My name is b Lindy Gomez and I've been a certified court interpreter for 3 years. I am in disagreement with the proposed changes to our fees. We are professionals that have worked very hard to accomplish the level of Spanish needed to carry out any interpretation in legal proceedings within our state. I think that lowering our fees, will not only affect the professional certified interpreters but it will also affect the none English speaker who has the right to have their voices heard in our legal system.

Decreasing our fees not only belittles our profession, but it will also cause certified interpreters to look for jobs elsewhere. Therefore, the legal system will be forced to use Spanish speakers who are not competent to carry out and provide the level of interpretation needed in our courts.

Please respect and acknowledge that we are an important asset to our legal system. Do not decrease our fees.

Leticia Aceret

May 7, 2015

I am a Certified Court Interpreter and due to the recently published recommended fee schedule for Interpreters, I am writing to express my concerns and strong opposition to the following:

- Interpreters of any language go through strenuous schooling and training to obtain their certifications. Establishing lower rates for Spanish interpreters, and singling them out to pay the aforementioned less than other than-Spanish interpreters, is nothing short of discrimination. Furthermore, The current proposal and rules create unnecessary hardship and make it extremely difficult if not impossible for a group of professionals to make a living.
- Morning proceedings begin at 10am. Afternoon proceedings begin at 2pm. The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. Also, set imposition ONLY works when an interpreter is working at the WCAB.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession and Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession and works hard at improving her skill as such, I ask you to take me and my comments in

consideration. Revise the proposed fee schedule. I am a Spanish interpreter who loves her profession. I am a highly trained and skilled interpreter. I comply with the required continuing education course and more, I pay my certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Alina Castaneda

May 7, 2015

It is not acceptable that the insurance companies approve the use of "non-certified interpreters". Those "interpreters" cannot prove their proficiency in any language, and the amount of mistakes they make is unbelievable. That's why the certification exists, to ensure a good interpretation and translation.

Our fee has been the same for 20 years, also unacceptable, specially in California, considering the gigantic increase in the cost of living.

Who will regulate that the agencies call three certified interpreters before calling the non-certified?

The mileage needs to be paid, since we all travel to different locations every day and the cost of gasoline keeps increasing.

The monopoly of One Call has hurt our profession but also hurts the injured workers. One Call treats the interpreters with complete lack of respect, they are arbitrary, and they use a lot of non-certified interpreters in order to save money to the insurance companies. This results in a very poor service to the injured workers who constantly complain about this issue.

Francisco J. Castro

May 7, 2015

Certified Medical Interpreter

I am a Certified Medical Interpreter and I own and operate an interpreting agency covering Southern California. I am writing to you to express my concerns about the proposed Interpreter Regulations and Fee Schedule. When I first heard about making revisions to our outdated interpreter program and fee schedule, I was excited that finally after decades, improvements were coming to our profession. Unfortunately, it does not take a genius to see that the proposed changes not only are offensive to certified interpreters but will greatly negatively impact the way we make a living. You see, we are professionals just like you are, some of us hold college degrees, others have had extensive training and/or studies and ALL of us have taken and passed the rigorous exam that is required to become a Medical, Administrative Hearing or Court Certified Interpreter. As such professionals, you and all of us expect to have compensations that directly align to our line of work and to the current cost of living in our area. It is too obvious

not to realize that, once again, insurance companies are trying to push these absurd regulations for the sole benefit of their entities.

I realize that mentioning all of my recommendations in detail would be extensive; therefore, I will only mention a few key points and please know these are not necessarily in any specific order:

1. Proposal omits the inclusion of Medical Certified Interpreters through the old Cooperative Personnel Service Interpreter Program now administered by Cal HR as part of the “Certified Interpreter Definition”.
2. In order to bring rates up to current market conditions,
 - a. Medical Certified Interpreter rates should be:
\$90 per hour, with a two hour minimum (same rate for late cancellations or no-shows)
or provider’s Current Market Rate, whichever is greater.
 - b. Administrative Hearing and Court Certified Interpreter rates should be:
\$360 for half day, \$720 for full day (same rate for late cancellations or no-shows)
or provider’s Current Market Rate, whichever is greater.
3. Physicians are always too busy, claims examiners are bombarded with files, it is our job as interpreting agencies to find a certified interpreter in the open market to assist the injured worker. Giving this responsibility to physicians, claims examiners or anyone else will NOT work. Furthermore, the use of “MPN” providers is currently benefitting the insurance carriers only. They contract with only one company who in turn pays peanuts to “any” interpreter they can find. As an agency, it has been my experience that the doors are closed with many carriers when we try to become “an approved vendor” – this is a unilateral situation, not good at all!
4. There should be no distinction between languages and pay rates. Bottom line is this, if injured worker does not proficiently speak, read/write or understands the English language, then an interpreter is required. The issue at hand is that of a language barrier and the common denominator that we focus on and that we understand is the English language, any other language classification is irrelevant.

In closing, I urge you to make a conscientious pause, look at all of my colleagues’ comments, concerns and recommendations. This reform should improve our profession, not destroy it! I say this with the utmost respect to those of you who have control over these new changes - weather you decide to better or worsen our position as certified interpreters, keep in mind that everything we do, for the good or for the bad, ALWAYS comes back to us. Today, it may be a difficult time for our profession, tomorrow you may be in our shoes. Be wise!

Sonia Brambila

May 7, 2015

The cost to having a non-certified interpreter can affect a persons life greater than you can think of... first of all a mistake in interpretation means a whole lot when it comes to their cases. Its hard to see that just because you are paying less for an interpreter they are willing to have a case that instead of benefiting the client is damaging his case. The time that is required to pass the interpreting test is extensive and not easy. Please take in consideration the difficulties that are taken to pass the test and hours of study that we have to go through to do a professional and good job for individuals that need to understand their cases...

John M. Estill

May 7, 2015

I write on behalf of NAJIT, the National Association of Judiciary Interpreters & Translators, and in my capacity as Chair of NAJIT's Advocacy Committee; I have been particularly requested by our Board to comment on the fee schedule for interpreter services proposed by California DWC.

NAJIT has as its main purpose the fostering of professionalism among interpreters, especially those working in judicial and quasi-judicial settings. We are not a trade union, and do not concern ourselves as an organization with monetary compensation.

We strongly support certification of interpreters as a means of assuring their competence and their adherence to ethical and other professional standards. We believe that, for certification to do its job, those who hire interpreters must require that their interpreters be certified. In this way, interpreters who want to work are encouraged to obtain certification, and those who hire interpreters are assured of quality interpretation.

In the alternative, people who speak two languages are deceived into believing, and deceive others into believing, that they are competent to interpret.

As I read this fee schedule, a Claims Administrator – apparently a creature of the insurance industry – is permitted to dispense with the certification requirement after expending minimal effort to find one (9931(c)), or on his own initiative (9932(a)(3)). Here is the proverbial slippery slope, well-greased and prepared for the descent into injustice.

Our organization can provide a wealth of material concerning the benefits of insisting on certified interpreters and detailing the tragedies that have resulted from depending on unqualified personnel.

John H. Martin

May 7, 2015

I strongly oppose to extending the half day and full day time period to 3.5 hours and 8 hours. I am sure that the quality of our work as well as our well being will be deeply affected by asking

an Interpreter to work up to 8 hours in a day due to the nature of our business and level of concentration that we must maintain to provide accurate interpreting to our clients.

Laura Onofre

May 7, 2015

I am writing to you to let you know that I oppose your proposed changes on the fee schedule for Interpreter use during workers compensation cases. As a freelancer it is very difficult to make a living with the current fee schedule, if you were to reduce it, it would create a hardship of a whole lot of small business and entrepreneurs in this field and their families.

If you are looking to reduce costs in the Workers Comp cases then reduce the fees of attorneys, expedite cases in the court system. Obligate all entities to settle and not prolong cases further than they have to. Specially Federal and County cases who always find a loop hole to get out of doing right by their employees. All of this would cut on management expenses and time and effort.

Why are you targeting the only sector that works hard day to day with monolingual, injured workers. It seem as if being an injured worker, living with pain, suffering a loss of wages, living under stress is not enough. Now you want to take away their right to a high level of quality interpretation because you want to save a few dollars. Again punishing the worker for being injured and being monolingual. Is this the message you want to be known for??

I ask that you reconsider and look for other means to still meet your budget goals, but not at the cost of hard working families who depend on the current fee schedule to survive in todays harsh economy.

For your time and reconsideration I thank you,

Clarissa Houssein
Interpreter

May 7, 2015

Attached you will find my response to the Proposed Fee Schedule contained in Article II of Chapter 4.5 Division of Worker's Compensation Subchapter 1.

- **The Exclusion of a “Service Fee” for Language Service Provider Agencies.**

As an entity that provides a service, a “service fee” must be added to the proposed fees. I am highly trained and skilled interpreter, I comply with all my required continuing education courses, state certification renewal fess, and constantly strive to better myself as a professional in my field.

I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for injured worker in an educated, professional and ethical manner.

As a professional certified interpreter, and one who takes pride and very much cares about this profession, I urge you to revise the proposed fee schedule; we all need to make a decent living,

Sonia Brambila

May 7, 2015

The cost to having a non-certified interpreter can affect a persons life greater than you can think of... first of all a mistake in interpretation means a whole lot when it comes to their cases. Its hard to see that just because you are paying less for an interpreter they are willing to have a case that instead of benefiting the client is damaging his case. The time that is required to pass the interpreting test is extensive and not easy. Please take in consideration the difficulties that are taken to pass the test and hours of study that we have to go through to do a professional and good job for individuals that need to understand their cases...

John Estill

May 7, 2015

Chair, Advocacy Committee

National Association of Judiciary Interpreters & Translators

Attached are the comments of the National Association of Judiciary Interpreters and Translators.

I write on behalf of NAJIT, the National Association of Judiciary Interpreters & Translators, and in my capacity as Chair of NAJIT's Advocacy Committee; I have been particularly requested by our Board to comment on the fee schedule for interpreter services proposed by California DWC.

NAJIT has as its main purpose the fostering of professionalism among interpreters, especially those working in judicial and quasi-judicial settings. We are not a trade union, and do not concern ourselves as an organization with monetary compensation.

We strongly support certification of interpreters as a means of assuring their competence and their adherence to ethical and other professional standards. We believe that, for certification to do its job, those who hire interpreters must require that their interpreters be certified. In this way, interpreters who want to work are encouraged to obtain certification, and those who hire interpreters are assured of quality interpretation.

In the alternative, people who speak two languages are deceived into believing, and deceive others into believing, that they are competent to interpret.

As I read this fee schedule, a Claims Administrator – apparently a creature of the insurance industry – is permitted to dispense with the certification requirement after expending minimal effort to find one (9931(c)), or on his own initiative (9932(a)(3)). Here is the proverbial slippery slope, well-greased and prepared for the descent into injustice.

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If you are looking to reduce costs in the Workers Comp cases then reduce the fees of attorneys, expedite cases in the court system. Obligate all entities to settle and not prolong cases further than they have to. Specially Federal and County cases who always find a loop hole to get out of doing right by their employees. All of this would cut on management expenses and time and effort.

Why are you targeting the only sector that works hard day to day with monolingual, injured workers. It seem as if being an injured worker, living with pain, suffering a loss of wages, living under stress is not enough. Now you want to take away their right to a high level of quality interpretation because you want to save a few dollars. Again punishing the worker for being injured and being monolingual. Is this the message you want to be known for??

I ask that you reconsider and look for other means to still meet your budget goals, but not at the cost of hard working families who depend on the current fee schedule to survive in todays harsh economy.

For your time and reconsideration I thank you,

Robert Finnegan

May 7, 2015

As a professional interpreter, I support IGA as a voice for our profession, and wish to express my opposition to the proposed fee schedule revisions for individuals providing live language interpretation during Workers Compensation proceedings. First and foremost, these provisions seek to cut costs at the expense of quality communication. The cost of poor communication, although less immediately apparent, is actually greater than the cost of paying interpreters their fair wage. Please see the EU study, "Quantifying quality costs and the cost of poor quality in translation" (http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=HC3112463). This has been verified over and over, sometimes with catastrophic effects. The amount of investment in time and study to produce a quality interpreter must be adequately compensated. By reducing rates, the result will naturally be that more skilled professionals will leave this area of the legal interpreting

profession and seek work in other sectors of the interpreting market (see Gresham's Law: <https://www.britannica.com/EBchecked/topic/245850/Greshams-law>). Moreover, this fee schedule ignores market prices and enforces an arbitrary amount, far below market rates – completely contrary to a free market economy. Translation and interpretation are NOT commodities, where the same product with similar characteristics (language, time, subject) are fairly consistent in quality. Interpreters are skilled laborers/artisans and quality varies greatly. One can usually predict quality as a function of price, and if your goal is simply to reduce prices, it is assured that quality will be reduced correspondingly. Possible extension of proceedings due to translation/interpreting mistakes may actually increase costs in the long run. There must be a middle ground, where the professionals affected have a voice, and not only money-managers with no understanding of the complexities of the profession. I therefore submit that CWA's Interpreters' Guild of America (IGA) be given the opportunity to represent professionals negatively affected by these changes.

Katherine Langan

May 7, 2015

Without clearly delineating the criteria which those granting provisional certification must meet, this change will open the door to unqualified people providing language access. The requirements in 9931 are not sufficient to ensure linguistic or interpreting quality. They are vague and based on subjective criteria and expedience rather than on demonstrable qualifications. A hearing officer is not qualified to determine language proficiency much less interpreting skill or ability. Previous functioning as a provisional interpreter does not mean that the performance was professional. This provision, if passed, will place LEP persons and the California Division of Workers' Compensation at risk for the problems associated with inadequate communication.

Thank you for your attention.

Esther Hermida
Certified Court Interpreter

May 7, 2015

My name is Esther M. Hermida. I am a court interpreter certified by the state of California and the U.S. District Court with 20 years experience and I believe the new proposed rates will be a great disservice to the injured worker by not giving her or him the right to a true certified interpreter - be it at the doctor's office, a hearing, or in court.

By creating provisions that state that a non-certified interpreter can be used in lieu of a certified one after three attempts (who will keep track?) is akin to having a paralegal appearing at hearings on behalf of an injured worker or having a doctor's assistant see the patient because she knows as much as a doctor, as they both do similar work and are more cost effective. The idea sounds preposterous, of course, this won't happen because the injured worker gets to choose his attorney and his doctor yet your proposed regulations don't allow for the injured worker to have a choice

when it comes to interpreting. You are creating several tiers that will, in effect, exclude professional interpreters and the injured worker does not have a say so in the matter. Ultimately, you'll end up with pseudo-interpreters who will be contracted via a language service provider in order for them to make a profit instead of contracting a certified interpreter while you still spend the same amount of money for inferior service. By proposing these changes you'll be creating an environment where no one takes personal responsibility and the work ethics adhered to by certified interpreters in all sectors will be a thing of the past.

When an injured worker files a claim, that worker is entitled to have a professional interpreter by his side at all times when he goes to the doctor, a deposition, or a hearing in order to assure accuracy in communication. Placing the decision of contracting interpreter services in the hands of doctors, attorneys, or anyone else not qualified to decide who is certified or even sufficiently bilingual to perform such important services is a disservice to the injured worker and a very costly liability.

I urge you to reconsider the following

- The proposed rates are unilaterally in favor of the insurance companies that are lobbying for these changes without taking into account the needs of professional interpreters. Therefore, allow interpreters to have a voice when it comes to their own professional services.
- It is also discriminatory against Spanish interpreters who are as skilled as any other language interpreter. Therefore, fees for Spanish should not be lower than any other language.
- Most, if not all, professional certified interpreters are independent contractors. By setting fixed rates you are, in effect, impeding the "free trade" afforded us by Congress when it passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." Therefore, allow for interpreters to charge the going rate.
- The elimination of a 2-hour minimum for medical interpreters will cause a direct impact on our ability to perform professional services and make a living wage. A self-employed individual travelling from one location to another must have an incentive knowing that she can make a living and provide for her family. Our expertise is such that we required guaranteed work with a 24-hour cancellation policy, as we reserve the time and forgo other work. Therefore, create a minimum of, at least, two hours to maintain what has traditionally been an accepted practice.
- Nothing in the proposal indicates a service fee or a markup for Language Service Providers (LSP, agencies) whose sole purpose is to provide qualified, certified interpreters in an efficient manner without having to cut into interpreters' fees and expediting all proceedings. Therefore, include a provision for LSP to add an additional fee for services rendered.

Again, please reconsider and take the time to assess what certified interpreters actually bring to the table. Our interpreter associations are closely monitoring the proposed changes. We are not just individuals, we are a group of professionals who are keenly aware of what is happening to our profession and we are willing to protect it in order to serve the beneficiaries of our professional services - our community.

The Fee Schedule for Interpreters as proposed by the DIR will remain flawed on many fronts as long as its authors are as out of touch with the profession for which it is intended.

"Provisionally Qualified" is an Oxymoron

Certified interpreters are not merely bilingual laypersons. Certified interpreters are *trained linguists*. In order to become a State Certified Interpreter, the individual underwent rigorous training and then passed an exam administered by the state. The exam looks not only for fluency, but also accuracy, skill, normalization, lexicon, syntax, register, specialized terminology, and myriad elements inherent to the science of interpretation in a specialized context. Yes, there is a science behind interpreting that is wholly inaccessible to the untrained “bilingual” individual. It is not enough to speak two languages in order to interpret accurately-- a fact many monolingual and even bilingual laypersons have a very difficult time understanding.

I urge the authors of the proposal to consult with interpreting experts (Nestor Wagner, Agustin de la Mora, Holly Mikkelson--contact info below) so that they may have an **informed** notion of all that interpreter training encompasses. Perhaps then the authors can better understand and appreciate that a bilingual layperson cannot be deemed a “provisionally qualified” certified interpreter under any circumstances, in the same regard that a nurse cannot be deemed "provisionally qualified" to carry out an operation. The latter example is obviously easier to appreciate, but the former is just as absurd. Only in the case of the proposal, the nurse is to be deemed provisionally qualified by an architect. I hope the DIR with this final example can even better appreciate the folly in its verbiage.

Once the authors of the proposal are better educated in the science of interpretation, they will then (hopefully) see that certified interpreters are in fact *irreplaceable*; and that the accuracy and skill-set acquired by these trained linguists are in fact an *asset* to the WC system; as without it, the pitfalls of laypersons carrying out specialized work is the same in this field as it is in any other. Or shall we also provisionally qualify attorneys and court reporters?

The first necessary step in drafting any kind of proposal (regardless of the profession) is to truly understand the profession. And you, DIR, simply do not.

Below are the web sites with the contact information of the three experts I previously mentoned; please do consult on or all:

Nestor Wagner: <http://www.interpreting.com/>

Agustin de La Mora: <http://dlm.interpreter-training.com/>

Holly Mikkelson: <http://www.miis.edu/academics/faculty/hmikkelson>

The DIR published a draft of proposed interpreter regulations. After reading it thoroughly I have concluded that this will probably end the career of certified and professional interpreters and hurt the non-English speaking clients as they will be provided with unprepared and unqualified cheap interpreters.

Here's why:

1) the Proposed Regulations have completely stripped Applicant Attorneys of the ability to choose their interpreting service for depositions, med-legal appointments and treatment (Section 9935 (a). The language is unclear as to whether you can choose your interpreter for WCAB hearings but it leans towards defense having control over it too.

2) It gives claims examiners (who we all know aren't well-meaning geniuses) a blanket license to use non-certified interpreters through 2 loopholes:

* Section 9931 (c) - They only have to contact THREE certified interpreters before they can claim no one certified is available and send a non-certified interpreter, THREE ONLY. Big change from the previous Regulations that required that they exhaust ALL certified interpreters before using a cheap non-certified 'interpreter'

* Section 9932 (a)(3) - Again, the claims administrator can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the latest regulations will give carte-blanche for adjusters to do it systematically.

3) This is a double standard: although there is emphasis on certification of interpreters all over the Regulations, the requirement only applies to independent language service providers but NOT to the insurance companies and the interpreting agencies that THEY use certified interpreters.

3) The rate proposed for certified interpreters is a 50% reduction of our current market rate. The Med-legal rate proposed is a meager \$7 more than the suggested minimum published in LC 9795.3 some 20 Years ago! The billable legal rate is less than what certified interpreters charge currently. The numbers are completely out of touch with inflation and geographical differences of cost of living. Cheap pay will only lead to cheap quality.

Why does this all matter to you and your clients?

- a) Because a bad interpreter at a PQME will affect the report and ultimately the value of the case.
- b) The vendors used by claims examiners also fail to send anyone and estimated 10- 20% of the

appointments, causing very inconvenient delays in the case.

c) A bad interpreter at a Deposition affects the testimony of your clients. As you attorneys best know, it affects the case adversely. Same goes for your WCAB hearings.

The regulations as written in the draft (file enclosed here) are a blatant giveaway to insurance companies and a couple of out-of-state vendors at the expense of the injured worker. The quality of communication between your non-English speaking injured workers with their medical treaters, their evaluators and their access to the legal process in general is being jeopardized.

PLEASE LOOK AT THE ABOVE STATEMENTS AND MAKE THE APPROPRIATE CHANGES TO THE REGULATIONS SO THAT MONOLINGUAL CLIENTS HAVE PROFESSIONAL INTERPRETERS ASSISTING THEM AND SO THAT CERTIFIED PROFESSIONAL INTERPRETERS CONTINUE IN THIS FIELD

Rosa Steventon

May 6, 2015

As a defense ONLY interpreting agency, please find our comments on the 2015 Interpreters Regulation and Fee Schedule.

We thank you for your time. In order to move forward and reach the best solution for all, feel free to contact me if clarification or information is needed.

We are a multilingual defense-interpreting agency bases in Southern California since 1984. We are expressing our concerns about the recently published recommended fee schedule for Interpreters; which we strongly oppose.

We foresee the new proposal will cause a massive displacement of certified professional interpreter being replaced by inexpensive 'interpreters' or bi-lingual individuals.

- State Certified MEDICAL interpreters

Is not acknowledged or mentioned

- Elimination of a two-hour minimum for medical appointments
For obvious reason, is imperative to preserve the 2-hours minimum for all Medical and Med-Legal
- 3.5hours Half-Day / Deposition or Arbitration settings
Effective ONLY at the WCAB, proceeding starts at 8:30am and 1:30pm
Deposition /Arbitrations proceedings starts 10:00am Or 2:00pm
- Lower rates for Spanish language
Strenous schooling and training for all certified language
Spanish interpreter are paid less than other languages. This is discrimination.
“Three unsuccessful attempts” – Who will monitor and regulate this?

Previous regulation required that ALL certified interpreters must be exhausted. “how will it be determine if the “interpreter/bi-lingual” present has sufficient skills tp be provisionally qualified?

- \$210 and \$388 – As of January 2015 Federal Court rate are: \$223 and \$412
ANY LANGUAGE gets the same rate – NO distinction or discrimination between Spanish and other languages interpreters.
- Exclusion of “service fee” for Language Service Provider agencies – As an entity that provides a service, a “service fee” must be added to the proposed fees.
- Rate proposed for certified interpreters 50% reduction
The proposed fees are completely out of touch with inflation and cost of living as well as geographical differences in the 58 Countries in California.
- Exclusion of “ market rate” –

Wikipedia – A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government , price-setting monopoly, or other authority.”

The right for the party producing the witness to choose their interpreting service in order to keep the legal process neutral, the quality high, and the hundreds of small, local Language Service Providers (LSPs) who comply with the certification regulations doing business in California, which out of state agencies do not know or comply with. A professional fee for interpreter services commensurate with the level of education and skill required of Interpreters.

Markhabo El Nasser
Language Service Manager
Access OnTime

May 6, 2015

As a fifteen year Language Service Provider (LSP) in the California marketplace, we see all sides of this equation: attending to the needs of the employer, claimant and the interpreter who services them.

Title 8 has been in the California regulations since the early ‘70’s, and the marketplace has co-existed with the code for many years. Why? Because market pricing has allowed for a path to increased availability of qualified professionals as those who gain more skill are able to charge a commensurate price for those skills, and therefore, more people enter the marketplace. In true free enterprise fashion, increased availability creates supply which evens out the pricing. And so, if you look back over the past 20 or so years, prior to the August 2013 enhancements requiring the use of certified interpreters, you will probably see that pricing stayed relatively non-inflationary for interpreter services in workers compensation.

The recent changes in the code to require certified interpreters at the majority of appointments, however, has narrowed significantly the pool of interpreters qualified to interpret, and so what began as a well-intentioned effort to block those who would utilize non-certified professionals as interpreters and enhance the quality and professionalism of interpretation services, is now turning into an administrative nightmare, and threatening to eliminate the very group of interpreters (those certified) which the revisions were implemented to promote.

The use of certified interpreters is a positive goal; but the reality of today is that the demand in workers comp, legal, investigative, liability, medical and corporate arenas far exceeds the supply. In order to get to the point where there are enough available certified interpreters to meet the demand of all legal and medical appointments, there needs to be a phase-in process. We believe that was the intent of the “provisional” and “non-certified” categories: to solve this problem. However, if you slash the workers comp reimbursement of those with certifications to 50% of their current market rate, as many have already stated, you will cease to have a pool to select from, and if you drive the “provisional” and “non-certified” pricing down to a non-comparable level of reimbursement they can receive in other arenas, then you can expect to face a severe shortage of any skilled interpreters to service workers’ compensation claimants.

If reform is needed, then allow for a clearer and broader path to obtain certification, and as more interpreters are certified, market rates will stabilize. If you force a set pricing that does not adequately account for the corporate and legal sectors competing for interpreter time, you will only drive qualified interpreters out of the marketplace, and you will eliminate the valuable services provided by most LSPs and employers and claimants will be forced to scramble to either (a) contract for market rate with the qualified pool, or (b) rely on only those who are willing to work for “pennies” with no regard for the quality of the services rendered.

We have reviewed the specific additions/changes proposed to the code and believe that the following areas present risk to both the quality and availability of interpreters in the state of California for Workers Compensation should they be adopted in their entirety:

**INTERPRETER
SELECTION -
Physician Choice**

9932(a)(2) and 9935(c)(2) – Should be stricken. As stated by others, there is a valid concern as to how can a physician determine whether the qualifications of the interpreter are sufficient in the language needed if they are not fluent in that language? Any more than the interpreter could evaluate the skills of the physician to treat? This could result in relationships that would jeopardize the “literal” interpretation and may have the propensity of a relationship beyond the interpretation with the physician. We already experience the practice where various physicians’ offices do not accept fully certified interpreters due to established relationships with the front office or with the physician. We also see that some physician offices do not accept CHI or the CMI medical certifications due to lack of knowledge of DIR accepted credentials.

Claimant Choice

9935(c)(2) & (3) – Should be stricken. Since the “qualifications of this section” allow for the use of a “non-certified” and/or again, how is the claimant qualified to vet the interpreter’s ability to provide, 3rd party objective interpretation in both their native language and English? It would also have the propensity of creating a non-beneficial relationship result in a biased interpretation and could have questionable value should litigation occur.

If the goal is to ensure the quality of the interpretation, then require that the services are rendered by either a certified interpreter who has passed state or national exams or an interpreter secured through an LSP (and not engaged as an independent). This would have the same effect as the certifying bodies as all interpreters, both certified and non-certified, are vetted by LSP and undergo testing by staff who have knowledge in this field and sign a code of conduct to ensure they are capable of handling assignments prior to being accepted into the network. If the interpretation is not handled properly, the LSP services are guaranteed and they should carry Professional Liability/Errors & Omissions coverage to protect all parties involved.*

*Theses are added-value services which are available through the use of an LSP in a market driven vs. fee schedule system.

INTERPRETER RATES

9937(a) As many others, we are opposed to the current elimination of Market Rate and the addition of set fees as “maximum fees” payable as well as the reductions in minimum service times, because the current proposed rates were patterned upon Federal Court interpreters and do not take into account the following factors which drive current market rates:

1. Timing of appointments in offices that begin at 10 or 11 as a half day, thus precluding the interpreter from scheduling in blocks of half day appointments to fill their day. Lack of adequate compensation usually results in interpreter not accepting the appointment unless full day pay is guaranteed or rejecting the work altogether leaving the client short of coverage options.
2. Estimated vs. Actual. Court interpreters are guaranteed the half day/full day rates even if the appointment lasts 30 minutes. Workers comp interpreters are asked to allocate enough time for the estimated length of the appointment without guarantee of payment beyond their minimum or cancelation fee. This may lead to losses where you are only paid for a 1 or 2 hour cancelation when the parties do not show, or paid for 2 hours of actual time when requested to initially block 6 hours.
3. Travel time and expense between appointments vs. sitting in the same court all day
4. Limited availability of interpreters in certain languages or geographic areas which require increased travel time and mileage in order to secure the properly credentialed interpreter services.

5. Other value-added services provided in addition to the interpretation by LSP's (alluded to by some of the interpreter comments) such as confirmation calls, interpreter credentialing, service level guarantees, professional liability/errors and omissions insurance, and risk management coverage, which factor into the pricing.

If the Code continues to allow for pricing greater than the fees set forth in the schedule through "mutual agreement" 9937(c) and 9937(d), then it should also continue to allow the interpreter to prove his/her market rate by supplying proof of payment on recent similar services (as previously stated in the code) when the insured or insured parties engage the services of the interpreter or agency by pre-authorizing services to be provided. At the point of pre-authorization, the parties engaging the interpreter have the right to request a quote.

Reimbursement set at 50% of the current market rate will drive the better professional interpreters out of the CA Workers Comp marketplace, and potentially create a serious shortage of qualified, professional interpreters available for hire. Such could result in ineffective interpretation, litigation, appointment postponements and thereby, extension of costs associated with the workers' compensation injury.

9939(d) and 9940(b) should also be stricken as they unfairly penalize those who interpret in a less common language, i.e. 9930(i) Non-certified or non-provisionally certified. There are many requested languages, such as Hmong or Farsi, not on the list of California Certified Languages. However, they are providing the same service as those whose language has a certification path. Therefore, while their market professional rate might be slightly less than their certified counterparts, they should be entitled to the same minimums and cancellation fees.

Thank you for the opportunity to submit feedback for consideration.

Elizabeth Abello

May 6, 2015

I write in opposition to the proposed rules for interpreter fees, selection, and terms of work.

I have reviewed letters that my colleagues submitted previously. Many of their points are well-taken. In no particular order, they correctly oppose those aspects of the proposed rule that:

- Provide inadequate compensation generally
- Provided inadequate compensation for cancelled appointments
- Fail to account for agency overhead and profit in setting fees for interpreters
- Eliminate the two hour minimum in some cases
- Failure to pay for travel costs and time

My colleagues call out these and many other problems; most of the comments have merit.

I would like to focus on the two problems that appear to me to be the most damaging: the right of the entity calling a deposition or appointment to choose the interpreter, and the right of that entity to use a “provisional interpreter.”

Together, these provisions amount to deprivation of due process and/or professional medical care, depending on the case. The client or patient should be able to select an interpreter of his or her choice. Selection of the interpreter by the party with vested economic interest contrary to that of the client or patient is an inherent conflict of interest. The proposed rule would codify that conflict. Worse, the incentivization of an entity with a conflicting economic interest to choose an unqualified “provisional” interpreter would further empower that entity to deprive a client or patient of professional legal or medical service.

The proposed rule treats interpreters as an additional expense to be avoided, rather than as a means to achieve the basic constitutional rights of equal treatment under the law and access to competent medical care. The deprivation of right is also legally improper in medical situations, which require informed consent as a basis of treatment.

There are reasons that interpreters are professionally certified: they perform services that profoundly affect people’s lives and in some cases that involve life or death decisions. There is nothing extra about the services that interpreters provide: the attorney or doctor is only as good as his or her ability to communicate with his client or patient. The proposal to create a category of second class interpreters relegates those they would serve to second class status as well. In any language, the word for that is “discrimination.”

Thank you for considering my views.

Maria Edrington

May 6, 2015

I am in full agreement with all the comments posted by the CWCIA.
I particularly object violently to the following:

1) the new rate set for Certified Medical Interpreters of Spanish. It does not adequately reflect A fair market rate for our services, and should be significantly higher. At the minimum, the language should completely eliminate the word "maximum" as to what our rate should be, and should be replaced with the word "minimum".

2) the very idea that we should not be reimbursed for mileage is offensive and ludicrous. Many of the jobs that we accept are definitely out of the 25 mile radius, and if we cannot be reimbursed for this, we will not be traveling to these locations, and it will significantly decrease our income. To add insult to injury, the proposed rate also decreases our income.

> 3) the ability of the medical professional to be the "certifying" body. This is unacceptable, as many of them do NOT speak the language that the interpreter and the injured worker speaks .

How do they know we are speaking correctly? This is the purpose of the National Board and the CCHI. What is the point of becoming a CMI if just anyone who purports to be bilingual is "provisionally certified", and by someone who is not proficient in the other language? The exams are rigorous and exacting, and many of us took time away from work to prepare for these, thus reducing our income yet again. What is the point of becoming a Certified Medical Interpreter if there is no compensation for recommended/required courses for test prep, tests and exams, continuing education, and other fees that we have incurred in honor and commitment to our profession ? We that have become certified did so in order to sustain the level of professionalism and education required to deliver a quality service in representing both the medical professional as well as the injured worker. There is no point in going through this process if anyone who has NOT made this effort can take these jobs?

4) The removal/restriction of our Late cancellation and no show fee. This is unacceptable because we have turned away work in order to provide services for someone . It is not our fault if the injured worker fails to show: WE CAME. We cannot accept other work, and if we lose this, we are not only out, it is also costing us.

There are many other points of objection but these are the most egregious.
Please reconsider, and honor the efforts made in the furtherance of the quality of service provided: **NO DUMBING DOWN, NO CIRCUMVENTION OF MONETARY COMPENSATION FOR PEOPLE WHO SIMPLY WANT TO KEEP THE PROFESSIONALISM IN THE PROFESSION!**

Monica I. Hernandez

May 6, 2015

I have carefully read the proposed draft for the Interpreters fee schedule.

I'm dumbfounded by the corruption and collusion that seems to drive this proposal.

I wonder, as many of my colleagues are at this point, whose interests are being protected by this unethical draft.

Clearly, the proposed regulations emphasis is not on safeguarding the due process for injured workers in the Workers Compensation system. Regretfully, it's not showing neither respect nor appreciation for the professional services of any state certified interpreters.

My perception is that this is merely an authoritarian maneuver among the main protagonists of this farce: the insurance companies and the State of California, both being sadly inspired by greed, ignorance and a complete lack of civil awareness.

I respectfully propose that you do not devalue Interpreters fees or our background by replacing us with non-certified bilingual individuals.

Please just do your duty: protect our constitutional rights with honesty and integrity so we can carry on doing our job as we proudly have so far.

Keith More

May 6, 2015

I have been practicing law for 26 years and have seen quite a bit of change in the wc industry. I have now seen the proposed changes involving interpreters and can tell you this is a very bad idea. I am an applicant attorney and am disturbed to learn that non-certified interpreters may be used and that I will have no right to choose the interpreting agency.

My number one issue is the potential for abuse. If the interpreter is chosen by the insurance co. the may be a breach of the attorney-client privilege. My basis for this statement is that if the interpreter is picked by the insurance co. what is to stop the adjuster from asking what i talked about with my client. This is a huge potential violation of ethical conduct. I am not comfortable with just any interpreter.

Please put an end to this potential abuse. I will not allow the insurance co to dictate who sits in with me and my client

Thank you for your help

Liliana Loofbourow

May 6, 2015

Administrative Hearing Certified Interpreter

Certification # 100829

Interpreters are highly trained professionals who have studied languages for years—they have mastered complex legal and medical terminology, and they have passed an extremely rigorous certification process. That process exists to protect the non-English speaking injured worker. It exists—and professional interpreters exist—to guarantee that an injured worker who happens not to speak English will not receive differential treatment under a labyrinthine worker’s compensation system which (though it all too frequently fails) aspires to be accurate, thorough, and just. This legislation is a disaster—not just for professional interpreters, who deserve better than to be subject to what amounts to a form of discrimination—but for the injured workers, who stand to have their lives adversely and irrevocably affected by the changes proposed.

Professional interpreters exist to ensure that non-English speakers will be ably and accurately represented. The role professional interpreters play is crucial, and I emphasize “professional” because there is simply no way to overstate the extent to which the legal and medical terminology that goes into a worker’s compensation case is available to the average person, even if they’re fully bilingual. These are specialized fields, with specialized vocabularies, and those vocabularies matter: cases are decided on that basis.

It is essential that injured workers be empowered to both receive and transmit information that is thorough and correct.

The proposed legislation would enable parties who have no qualifications to evaluate an interpreter’s skills to “designate” a random party and provisionally certify them. Perhaps it’s a

son, or an administrative assistant, or someone who happens to be in the waiting room who speaks the language in question. An adjuster—or doctor, or judge—could, according to these changes, point to that person and say “you are now a certified interpreter.”

To demonstrate how deeply inappropriate and irresponsible this is, it might be instructive to ask the average person on the street to translate a deposition, or to explain a complex surgical procedure to a passerby.

This is an effort to completely undermine the rights of injured workers. It is an insult to professional interpreters, who take their responsibilities toward the population they serve extremely seriously and train for years in order to be able to do it well. It absurdly overestimates the discriminatory powers doctors and judges—who are neither magical nor omniscient, and who are no more qualified to “certify” interpreters than they are to “certify” someone a banker for a day, or a lawyer, or a nurse. This is not a game. People’s lives are in the balance.

If this goes through, the following can be expected to take place:

- 1) The health and recovery of non-English-speaking Injured Workers will be jeopardized by the State of California—to the benefit of the insurance companies, who are quite literally the only beneficiaries of these changes.
- 2) Injured workers will de facto lose their right to due process.
- 3) Doctors will be at far greater risk for malpractice or poor treatment: if effectively forced by the State of California to treat patients with the misunderstandings poor translations frequently produce, they will be writing opinions and reports based on inadequate or erroneous information.
- 4) Doctors, in addition to the responsibilities they already face, will now have to serve as timekeepers, recording the amount of time the interpreter spent with the injured worker. Here, too, doctors are credited with an omniscience they simply do not have: anyone who has ever attended a medical appointment knows that the time spent with the doctor is a small fraction of the time spent in his office. An injured worker does not have the right to an interpreter during her time with the doctor; she has a right to an interpreter whenever she is asked to provide or receive medical information. She has a legal right to an interpreter when she has to fill out forms she cannot understand, follow instructions, schedule her next appointment, collect her prescriptions. There are three choices, then.
 - a. If the proposed legislation sincerely proposes that the doctor personally supervise and document all these transactions, the system will be broken in weeks, not months.
 - b. If the proposed legislation proposes to deny the patient the right to an interpreter while filling out all the forms the doctor will ultimately use when writing her report, that’s a flagrant violation of the law and demonstrates the extent to which injured workers have become ancillary to the system intended to serve them.
 - c. If the proposed legislation proposes that interpreters simply attend the doctor’s appointment with the injured worker for however long it takes (frequently upwards of an hour) but only get paid for the few minutes spent with the doctor, then interpreters, who must make a living too, will have no choice but to schedule many more appointments per day. If a doctor happens to run late (and I suggest you take a survey of how many medical offices actually run on time)—the

interpreter will have to abandon the injured, because another appointment is scheduled elsewhere.

No part of these revisions serve the injured worker. None. These changes do serve the insurance companies, who would certainly prefer to pay interpreters as little as possible—for one hour instead of two, and at hourly rates that were fixed in the 90s. But it's not the State of California's job to care for the pocketbooks of the insurance companies; the State of California is answerable to the injured workers, the huge population of non-English speakers who make this great state run, and justice—which cannot be served if an adversarial system is replaced by one in which the insurance companies hold all the cards.

Under the new legislation, claims examiners—insurance companies again—will have the authority to pay lower rates to Spanish-English interpreters than they would to other languages. This is discriminatory. Is the injured Spanish speaker less deserving?

Under the new legislation, the insurance carrier will have full control over every step of the process—up to and including the appointment of an interpreter. This is unacceptable for a number of reasons, the most significant of which are these:

1. Insurance companies are able to have fully private conferences with their attorneys. Injured workers are forced to communicate with their lawyers through an interpreter appointed by their legal adversary.

The omission of “market rate” from the labor code means that interpreters are entirely at the mercy of the claims adjuster, who may or may not deign to pay them some amount over the stipulated interpreter pay rate (which, again, was fixed in the 90s). This means insurance companies have leverage over interpreters and interpreters have none. It's a situation that incentivizes corruption and collusion between unscrupulous interpreters and equally unscrupulous adjusters (who can offer to pay more if a certain outcome is achieved, for example) and penalizes honesty. One hopes that everyone in every system is 100% honest, but it's inadvisable to actively build a system that actually rewards crookedness

Pamela Fitz Rodriguez

May 6, 2015

I am very concerned about the proposed changes for Certified Interpreters. We must continue to have the 2- hour minimum for all Medical and Med-Legal appointments.

It is very important that the party providing the witness choose the interpreting agency, thus keeping the legal process of high quality as well as neutral. Local Language Service Providers provide countless jobs to certified Interpreters in our state.

We need to continue to insist on Certified Interpreters for settings of Medical and Med-Legal nature, seriously opposing claims adjusters and other laypersons to be allowed to 'provisionally

certify' someone unilaterally.

Our fee should be proportional to both the educational and skill levels required of interpreters.

I ask that by voicing my thoughts and other's the regulations be draft in a more fair and sensible language.

Norha Grosso

May 6, 2015

As a Spanish Medical Interpreter in the Sacramento area I'm totally agreed with my fellow colleagues; We provide the same services other language interpreters are, same thing. I feel "We" Spanish interpreters are being discriminated against because of your demand for our services neither our abilities nor our services.

Are those fees considering the cost of living, travelling, car expenses, insurance cost, etc I don't think so.

The increase for other languages may be acceptable but once again, the increase in Spanish Interpreting is not acceptable.

Selin Cacao

May 6, 2015

First I would like to start of by saying that giving us (interpreters and agencies) 22 days to send our comments is unreasonable. We need time to review and discuss as a community and that takes time, at the very least 60 days would be somewhat fair. But then again this does not seem to be completely in the interest of the injured workers or the interpreters who help them.

This matter is a very complicated issue which after reviewing the draft I have seen some things I like but also a-lot that concern me. Lets start off with the ones I like, such as that finally the MD can decide whether an interpreter is qualified for the visit and that employers and adjusters can negotiate their own rates with preferred interpreters.

I also like the requiring of an agency to contact at least 3 certified interpreters prior to saying they cannot find an interpreter. But who will keep track of the three interpreters called upon, the agency? Then at what rate will the agency be allowed to bill? The qualified or the certified? If its the qualified that will certainly put agencies out of business and allow companies like One Call to continue their monopoly because they already have systems in place that allow for them to invoice higher rates. Which these laws do not apply to them and allow for their complete control of our industry.

Now for what I don't like the reduction of fees for a " qualified " interpreter and also

reducing the hours to a 1 hour minimum and if they go over, need a letter providing proof. There is also the issue of cost of living expenses as a colleague pointed out. The original rate was implemented back in 1995 that's 20 years ago, a lot has changed especially the cost of living. We need proper compensation at 2015 levels which would put us around \$70.00 per hour for a Certified Medical Interpreter (see www.aier.org/cost-living-calculator).

All in all it is a very complex issue which needs to be reviewed in an unbiased manner with still taking into account all the major key issues.

1. Offering injured workers access to proper and reliable communication for his/her needs.
2. A fair pay schedule for interpreters, this pay should not be the max for agencies.
3. Insurance carriers, TPAs and Employers to consider the language agencies vital role as the responsible entity for hiring interpreters, their pay and their conduct.

As an interpreter this fee schedule would make sense to me in the short run but in the long run it will run smaller and mid size language agencies out of business therefore allowing a few mega agencies to dictate what the pay will be unless the interpreter deals directly with the insurance carrier. I don't see this as a fair playing field and there needs more clarification. I look forward to the next draft / discussion hopefully as an agency we will still be around to provide quality service to our clients and fair pay to our interpreters.

Elia Simon-Martin

May 6, 2015

I strongly oppose the proposed fee schedule for interpreters announced by the Department of Industrial Relations.

.First of all, the suggested fees don't take into consideration the role of the agencies as intermediaries in the hiring process. Attorneys and insurance companies tend to hire interpreters for litigation through agencies, so if the suggested fees are implemented, it will result in much lower fees for interpreters than the ones that are being proposed by DIR

.I am frankly surprised that The Berkeley Research Group has not been able to accurately research basic information such as the current Federal Court Interpreter rates. The current Federal Court Interpreter rates are \$223 and \$412, not \$210/\$388.

.In section 9931(c) a loophole for insurance carriers is being created by allowing them to use non-certified interpreters after only trying 3 certified interpreters. Who will monitor and enforce this? An adjuster could easily call 3 certified interpreters on the State of California Court list over and over who would never be available because these 3 interpreters only work in criminal courts.

- By defining “half day” as 3.5 hours in depositions and arbitrations, an interpreter will only be able to arrive to another afternoon deposition (usually scheduled around 1:30pm) after a morning deposition (usually scheduled around 10:00am), not to mention having lunch.

- Many certified Interpreters have college degrees go through strenuous schooling and training to obtain their certifications.

- How will a hearing office and adjustor or a physician certify an interpreter? This is probably one of the most insulting sections since it denotes a complete lack of understanding of an interpreter's job. Certified Interpreters are highly skill professionals who render a complete and accurate interpretation or sight translation that preserves the level of language used without altering, omitting, or adding anything to what is stated or written.

- Certified interpreters usually charge \$100, plus mileage and travel time in the Bay Area. I cannot imagine a certified interpreter willing to work for the proposed fee in the Bay Area. Instead, WC will be flooded with unqualified, inexpensive interpreters. the use of unqualified interpreters will most likely lead to proceedings being later deemed incompetent and documents signed or uleings mede invalid and void. Most judges do not like their decisions to be appealed. I worked in civil courts for 10 years and appeals, although rarely, happened even when certified interpreters were used.

- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.

The proposed fee schedule severely undermines the interpreting profession.

Carmen Strickland
Certified Court Interpreter

May 6, 2015

As a concerned Certified Court Interpreter, I feel it is my duty to express my strong opposition to the proposed fee schedule for interpreters for Workers' Compensation proceedings, recently announced by the Department of Industrial Relations.

First of all, the rates being proposed by the DIR for professional certified interpreters are so low as to deplete the market of such professionals. The DIR has to realize that interpreters are hired through agencies that take a healthy cut. It is particularly outrageous that a plaintiff's attorney is getting paid \$ 350.00 for mostly just sitting at a hearing and even being compensated for driving time! Additionally, the DIR must consider the fact that injured workers need to have a voice as much as they need to be represented; therefore, we interpreters, who are the voice of the injured worker, demand to be treated as the professionals that we are. Furthermore, the DIR continues to define the duration of a half day deposition up to 3.5 hours, in Southern California, it would make impossible to allow for enough time to drive between two assignments.

The interpreting community understands that the insurance lobby is behind this push, one of the richest industries in the world going after the least expensive professionals, by far, in the room during a deposition. We are not public employees; as independent contractors we will set our own rates with the most likely consequence being claimant's right to an interpreter will go unfulfilled.

I hope that the DIR will reconsider its position and will give certified interpreters the respect they deserve.

Jose Garcia
Court Interpreter

May 6, 2015

I want to express as a former lawyer in my country of origin and current court interpreter my deep concern about this draft offering the following suggestions:

This new regulation does not take into account the fact that most interpreters get their assignments through agencies. The agency makes a profit and pays its employees based on what is left after paying interpreters and taxes, federal and state. If these fees proposed ever became effective, agencies and interpreters would see at least a 40 % decrease in their income. The bottom line is it will eliminate a plethora of agencies from the market, specially the small ones, causing many to lose their jobs. Many of them, secretaries whom we as interpreters would only like to have the same high respect they show for us day after day. Likewise, I foresee extremely skillful certified interpreters moving to different arenas where their job is still appreciated and their income is at least predictable. My proposal includes keeping market rate for agencies or at least a % 35 margin of profit for them above the interpreter fee proposed.

Opening the door and welcoming non-certified interpreters to great fanfare is not the solution for a system that only hopes to give some relief to the injured worker who has been working in most cases with a minimum wage for years. We can do better in California. The standard to resorting to a non-certified interpreter should also be a high standard, the same one we, certified interpreters, had to overcome to pass the exam that prove our skills. Anything lower than that is an insult to the California Judicial System and our profession. I would propose that the use of non-certified interpreters for Spanish take place in emergencies where at least 60 certified interpreters had been offered the same job in their area of coverage without getting a positive response and only if parties involved in the lawsuit sign an agreement in writing. That amount should be lowered in the case of the so-called "exotic" languages to 25 or even less in some areas due to the lower amount of certified or registered interpreters in other languages.

The concept of a half a day as the one who lasts 3 hours and a half might be very well applied for attorneys. Ladies and Gentlemen of the Department of Industrial Relations, there is a big difference that you know of, between attorneys and us, WE AS INTERPRETERS as well as Court Reporters, CAN NOT BE LATE. If we really want to try to work a full day, 3 hours and a

half for a deposition that starts at 10 (most of them start at 10) , makes it extremely difficult to get to an afternoon job (let alone to have time to eat) that may start at 1:30 or 2 (I am not even mentioning the 1 o'clocks only reserved for the bold and brave). My suggestion would be a dual concept: Half a day in the morning should be regarded 3 hours, Half a day in the afternoon, 3 hours and a half.

It is my main concern that our voices be heard , our arguments understood as a basic part of the system and respect be shown in this regard, the same we need to show all parties involved.

Victoria Torres

May 6, 2015

Regarding the interpreter's fee schedule at Medical Treatment appointments CCR 9938

Where is the proposal taking into consideration the cost of living increase?

As per US Department of Labor, Bureau of Labor Statistics, \$1.00 in 1997 has the same buying power as \$1.46 today in 2015. (Please check the link below)

As per CCR Section 9795.3(B)(2) Effective 04 01 1997 (Last time there was a fee schedule for interpreters) Interpreters fees were as follows:

\$90.00 (2HOURS MINIMUM)

\$11.25 each additional 15 minutes.

As per the inflation rate between 1997 and 2015, \$90.00 will have the equivalent buying power of approximately \$135.00 in 2015. The interpreter's fee proposal do not address in any way the inflation rate not to mention the 2 hour minimum rate that the previous regulation considered fair and reasonable for interpreters as well as injured workers.

http://www.bls.gov/data/inflation_calculator.htm

Karla Navarro

May 6, 2015

Certified Medical Interpreter

My name is Karla Navarro and I am currently a certified medical interpreter.

Based on the published draft for Interpreter Regulations and Fee schedule, I know these proposed changes will have a significant negative impact, if implemented, on the quality and accuracy of interpretation and the job market for certified professionals.

I would urge the committee to reconsider these changes because saving money to hire a non certified interpreter could lead to more expensive and detrimental problems in the long run.

Depending on the context of an appointment, a non certified interpreter may misquote or misinterpret information in a medical setting that can make a life and death difference.

Also not reimbursing medical interpreters of traveling costs is completely unfair as gas prices fluctuate throughout the year and traveling time during traffic hours accumulates quickly, particularly in bigger cities of norther and southern California. Interpreting can become very costly if rates are lowered and expenses not compensated. Personally, this would lead me to not interpret if I will make in a day what I can make in a job paying a few dollars more with a bachelor's degree but no worries of traveling around, filing as in independent contractor, and waiting for invoices to be paid.

Also if there is no minimum time for chargeable services it will be extremely difficult to make a living with lowered rates, no expenses paid, and the fact that adjustors will only need to call 3 interpreters before resorting to a non certified.

According to the US Census, by 2050 the Hispanic population will be double what it is today. Many of these Spanish speaking people will take labor based jobs in which they will most likely be hurt and file a worker's comp claim. This will lead to needing interpretation for medical appointments and with the proposed changes for regulations and fees, there is very little chance that the work force will be able to meet these needs.

There is much more that is required to be a good and efficient interpreter and this is part of what being certified tests you on. The interpreter must meet a standard to be able to ensure clear and accurate renditions of what is being said for the benefit of the practitioner and the patient. Additionally, if attorneys have no jurisdiction over who they want to interpret this can also lead to a slew of problems in legal matters that will further delay treatment for patients and the process of the worker's comp system in general.

I strongly urge you to reconsider your position on this matter and look beyond the benefit for the insurance companies. This is a career for some individuals and making such propositions can hurt their finances and cause burdens for the sake of powerful insurance companies that are already making millions. I hope you will take these comments into consideration and realize that everyone will suffer from these proposal if implemented.

Rosalie Foigelman
Certified Interpreter

May 6, 2015

I have been a certified interpreter for 34 years and I have been very proud of my profession until now. Recently it seems you are trying to take away our profession through passing unfair fee schedules like this proposed one which allows qualified interpreters(but NOT CERTIFIED) to perform professional services for which the law previously required higher trained and better qualified certified interpreters.

May I suggest that if any of you needed an interpreter for these services for yourself or a loved one, you would find a way for your interpreter to be Certified! Don't our citizens deserve the same?

I put forth that the proposed rate schedule and minimum fees will simply force the best and most qualified interpreters to leave the profession. Our industry will fall to a lower standard of service because of this. A fee schedule will be helpful in getting insurance companies to provide more prompt payment for our services with less wait time and should stop much of the waste of time on the part of the WCAB. The fact will remain that the suggested minimum fees will simply dry up the amount of Certified Interpreters available. The current supply is already stretched thin.

Lets look at the current schedule. Thirty (30) years ago the fee schedule was set at \$45.00/HR with a 2 hour minimum. Today it has risen to \$52.50 which amounts to an increase of 16.66% total over that time. That is ridiculous compared to the general cost of living. Appointments for depositions that once were \$280.00 for a half day have gone down to \$210.00 for half a day. The interpreters who translate "Other than Spanish" will almost certainly leave the profession at the proposed rate of \$82.50 an hour for medicals since they do not get that much work anyway. This is why the few who are certified have a higher rate.

I propose a realistic and fair medical rate of 120.00 (60.00 per hour with a 2 hour minimum) Legals should be 240-280 for depositions. Leave the rest at 210. I feel these numbers represent a fair and workable compromise rather than the unfair and seemingly punitive current numbers on the table.

Having codes will facilitate billing . That should be very helpful.

You propose giving the insurance companies the power to use NON-Certified interpreters after only calling 3 Certified interpreters from the current list of about 1000 interpreters. Speaking frankly, this is tantamount to giving the fox the keys to the henhouse. Reality and common business sense says there will rarely ever be a qualified Certified Interpreter available if the insurance company only has to call the equivalent of 3/10's of 1% of those on the list. This takes away from the profession as well and the quality of interpreters will go down. The injured workers and the courts as well as doctors will no longer have a professional interpreter. They will have someone who claims to be without any educational background or certification to prove their qualifications.

Please reconsider this fee schedule as a much more reasonable one considering the cost of living has increased in the past 30 years far far more then you have allowed. The current proposals will lower the quality of our industry and in my opinion will lower the quality of justice in our courts.

Cristina Mayorga aka Proffitt

May 6, 2015

Certified Court Interpreter

I am a Certified Court Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.

Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.

Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills.

Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?

The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.

The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia

The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?

The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.

The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.

The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Veronika Dubkin
Independent Contractor

May 6, 2015

I would like to express my concern about the proposed fee schedule. As an independent contractor, I see a direct menace to the future of professional certified interpreters if this schedule is ratified.

The fee schedule does not include the intermediary - an interpreting agency - the source of a 100% of most interpreters' jobs in the private sector. With the proposed fees, it means the agency will try to hire an interpreter at a much cheaper rate. That will for sure cause professional interpreters abandon their career and look for other ways to earn a living. At the same time, an influx of non-professionals will put at risk the quality of the services for the injured workers. An injured worker who is already suffering cannot afford interpretation mistakes in a medical or legal setting!

With the proposed fee schedule, you pretty much exterminating the professional interpreters' career who chose to be independent contractors. That will most definitely have major repercussions on the Worker's Compensation industry overall.

To avoid all that, the following propositions must be reconsidered:

- 2-hour minimum for all Medical and Med-Legal appointments must be preserved
- Claim adjusters and other laypersons should not be allowed to "provisionally certify" interpreters especially for such language as Spanish that has so many certified professionals
- Only certified interpreters must be used for all legal and med-legal matters

- The fee you propose is what an interpreter should be paid directly for his or her services. If there's an interpreting agency involved (as it is in the 90% of the cases), the fee must be raised to keep both the agencies and the independent contractor in business
- The party producing the witness should be able to choose their interpreting service in order to keep the legal process neutral and the quality high.

I hope these will be reconsidered to prevent a major default both for the independent contractors, interpreting agencies and ultimately the services provided by the Workers' Comp industry.

Mariana Bension Larkin
Spanish Court Interpreter

May 6, 2015

I'm a Spanish court interpreter and I work in the private sector as an independent contractor. Most of the work that I do focuses on civil litigation. California law mandates the use of certified interpreters for court proceedings, including depositions for any case filed in superior court.

I also interpret for Workers Comp proceedings. These proceedings are of administrative nature and state regulations require that only interpreters who are listed on the California Courts webpage or the State Personnel Board webpage be used for these proceedings.

I feel that the Department of Industrial Relations is not aware of the disastrous consequences that the recently-announced proposed fee schedule will have on the Workers Comp system if it's implemented.

First of all, the suggested fees don't take into consideration the role of agencies as intermediaries in the hiring process. Attorneys and insurance companies tend to hire interpreters for litigation through agencies, so if the suggested fees are implemented, it will result in much lower fees for interpreters than the ones that are being proposed. These lower fees would be inevitable, since every agency needs to take a percentage in order to survive as a business.

For example, I currently charge an agency anywhere from \$200 to \$225 for a half day (up to 3 hours) and from \$400 to \$425 for a full day (up to 6 hours). If the fees suggested by the Department of Industrial Relations are implemented, it means that an agency would offer me an amount that is significantly lower than what I currently charge.

Even if we consider a scenario where interpreters contract directly with attorneys and insurance companies (and thus charge the full rates being proposed), this wouldn't be good enough either, mostly because the Department of Industrial Relations continues to define the duration of a half day deposition up to 3.5 hours, and a full day up to 8 hours. This is inconsistent with current billing practices of court interpreters who work in the private sector. In Southern California for example, a half day consists of no more than 3 hours and a full day of no more than 6 hours.

When taking all the above into consideration, even if I'm offered the full \$210 that the fee schedule suggests for 3.5 hours of work, that would be significantly less than what I'd regularly

charge for 3.5 hours of work (\$400-\$425). Similarly, if I'm offered the full suggested \$388 for 8 hours of work, that would also be significantly less than what I'd regularly charge for that same number of hours (\$400-\$425 for 6 hours plus \$85 per additional hour thereof, so \$570 total). I wouldn't take jobs that pay these amounts.

If the rates and terms that the Department of Industrial Relations is suggesting are eventually implemented, many interpreters (myself included) will stop taking Workers Comp assignments, leaving the Workers Comp system with a very limited pool of certified interpreters willing to work for lower rates. Those interpreters will not be enough to cover the large number of cases that require interpreters for Limited English Proficient individuals. It is also highly likely that a significant percentage of the interpreters willing to work for lower rates will not be the most skilled or the most qualified. The "You get what you pay for" principle would in fact rule, and only when things have hit rock bottom would all the Workers Comp stakeholders understand the impact of an adverse fee schedule.

Additionally, the lack of certified interpreters willing to work for substandard rates will in turn result in the need to hire non-certified individuals in order to meet litigation demands. Non-certified individuals simply lack the skills required to interpret in a legal setting, something which will compromise the right of due process to which all the parties are entitled to.

If a fee schedule will be implemented, it needs to be competitive and consistent with current billing practices in the private sector, and it needs to take into consideration the role of agencies as intermediaries in the hiring process, since once again, attorneys and insurance companies usually don't hire interpreters directly. The proposals submitted by the Berkeley Research Group to the Department of Industrial Relations are inadequate and detached from reality, and the only way to address those deficiencies is by meeting with certified interpreters and agencies to analyze, review and take into account all the factors that have been ignored in this initial proposal.

Aside from the fee schedule, the Department of Industrial Relations also needs to urgently revisit the provisions that allow a physician or a claims administrator to use the services of a provisionally certified interpreter for medical treatment appointments and medical-legal exams. It would be interesting to know where this idea that anybody can perform interpreter services stems from. Not only is this concept insulting to those of us who trained and passed exams to obtain our credentials, but it also poses unimaginable risks as to the quality and accuracy of the interpretation from the person appointed as "provisionally certified" by a physician or a claims administrator.

How would a licensed contractor react if a third party had the authority to provisionally qualify any individual for work that only a licensed contractor is qualified to do? How would a court reporter react in this same scenario? A lawyer, a dentist, a hair stylist? It is safe to assume that not very well.

What about the person or entity who is on the receiving end of the services? How would you feel about an unlicensed contractor performing work in your house? How would you feel about having an unlicensed court reporter create the record for a lawsuit you've filed or that has been filed against you? What about having an unlicensed lawyer represent you, or an unlicensed dentist perform your root canal, or an unlicensed hair stylist cut your hair? If all these scenarios are inconceivable for most people, why is the idea of a physician or a claims administrator provisionally certifying individuals with no credentials acceptable to the Department of Industrial Relations?

This and the mere suggestion of a fee schedule convey the idea that the interpreting profession has little or no value, and that basically anybody can perform interpreting services, an idea which is outrageous and disrespectful to all those of us who went to school and studied long and hard to get our credentials to do work that requires skills and significant training.

Please reconsider your position and give interpreters with the proper credentials the respect they deserve.

Enrique S. Rasmussen

May 6, 2015

Hello:

Following the email by AIJIC of yesterday on behalf of Independent Legal Interpreters, I would like to add the following:

Besides all the reasons given in the aforementioned email, we Independent Interpreters have the burden of paying, out of our modest fees, our own taxes, medical insurance, all expenses related to our work, no paid vacation or other fringe benefits that Court employees have.

The proposed fees are outright unfair and puts us in a position of being told how much we should make, without taking into account the professional work we do on behalf of non-English speaking persons in order for them to have a fair chance at justice.

The Interpreters Agencies through which we work take their commission out of the Interpreter's fees, leaving him or her with a very small share, unworthy of professionals.

Thank you.

Cesar Teran

May 6, 2015

My commentary is in response to the proposed limits on fees and changes affecting the interpreting industry. What has been taking place in the industry of late, is sad, comical and now serious .

Firstly, there's been a flood of nationally certified interpreters. Not to say that everyone of the folks is not qualified, I can name a few excellent interpreters in that group and I welcome new colleagues that enrich our pool of professionals.

However, it is sad when I learn of a poor interpretation that might affect those involved. Comical because of poor interpretations using both literal translations and false cognates. Currently, things have gotten serious. These proposed fee limits and changes in general not only affect truly qualified interpreters but ultimately the insurance companies themselves . Quality will exit the industry and mediocrity will be the norm.

Also, please amend proposed draft section 9930 (b) to include MEDICAL state certified interpreters in the definition of who is a certified interpreter. I'm hoping this was an oversight and not an arbitrary decision to exclude these interpreters.

Thank you in the attention of this matter.

Megan E. Compton. Esq.
GHITTERMAN, GHITTERMAN & FELD

May 6, 2015

I've read through the proposed fee schedule for interpreters and have some concerns. Mainly, they are the following:

- Certification double standard – if the insurance company is providing their own interpreter it doesn't seem that they have to be certified. This is incredibly unfair for the injured worker. As an applicant attorney who speaks Spanish, I can tell stories of hearing interpreters mis-interpret injured workers testimony first hand. Often doctors appointments are fast and overwhelming to injured workers. Not having someone who is accurately (and who is not a neutral party) interpret their condition to the doctor can have dire consequences to their claim and their ability to receive the benefits they have a right to.
- Section 9935 (a): only allowing insurance companies to pick the interpreters they use for hearings and med legal exams poses a hugely unfair and possible unethical advantage to the insurance company. This creates a situation where if an interpreter wants to continue employ with the insurance company, they may be encouraged to minimize injured workers' testimony.

Workers in California who don't speak English are often taken advantage of and misinformed of their rights. These proposed regulations seem to institutionalize this type of bias. As part of the legal and legislative community, its our responsibility to protect all workers. I hope that these proposed regulations can be looked at with fresh eyes and modified to reflect that goal.

Thank you for your time,

Anonymous

May 6, 2015

I am writing to express my concern and flat out disgust for the proposed fees and requirements set forth by the DIR.

In reading this document it is very clear that the State of CA in concert with Insurance Companies have little to no concern for the existing rights of the injured worker and even less regard for the injured worker whose native language is not English. Reading the proposed requirements leads to one conclusion; this is a hostile takeover of the Workers Compensation industry and by default the interpreting industry that services it.

These requirements swing control of the industry and all decision making into the hands of Insurance Companies backed by the power of the State. This control swing also removes the existing ability of the applicant attorney to choose an interpreter for WCAB hearings, depositions, medical legal appointments, treatment, etc. If these requirements become law, the system will be largely one sided and the injured worker will be left with no recourse. This is where rights are denied.

There is also no room for the free market in these requirements. The fees set forth for interpreters are arbitrary. Interpreters provide a service to the Work Comp industry, why is it in this setting nameless and faceless bureaucrats are given the power to arbitrarily dictate what interpreters should be compensated? Hard working interpreters have had little to no raise in the past 30 years, even though the cost of doing business has continued to rise.

These fees are insulting to the working interpreter and have no base in real world economics, let alone the free market where prices for goods and services are decided. There have been no concessions that take into account: inflation, the rising cost of living, transportation costs, fuel, continuing education and training for certifications that are required in order to become a professional interpreter, qualified to give the injured worker the best service available.

Another alarming fact is the clear omission of State of California Medically Certified Interpreters in the definition of certified interpreters. Are these interpreters to be stripped of their accomplishments and their ability to earn due to this omission?

In conclusion these requirements should be re-written. This time take into account the existing rights of the injured worker, the real world economics of being a quality interpreter and the fact that these fees and requirements as written, will have a devastating effect on both.

Max Acosta-Rubio

May 6, 2015

We have reviewed the contents of the interpreter proposal before you, and although we agree with much of what is being proposed, legislating such a dramatic rate increase will have a detrimental effect upon our industry.

As you can imagine, many companies such as ours already have rate agreements in place with our clients. The rate increase that is being proposed will create new and additional costs to the Insurance carriers which will in turn be passed on to the consumer. It could also potentially further encourage companies not to do business in California.

Rather than trying to mandate a rate increase, I suggest allowing the marketplace to dictate the fair value of the services provided by freelance interpreters.

Just to be clear, we oppose the proposal in its current Version.

Carmen Saldana

May 6, 2015

I agree, would like for adjusters to pay invoices for interpreting when the service was rendered even if the adjuster did not pre-authorized the service. Many times patients are at doctors offices without an interpreter.

Olimpia Black
State Certified Medical Interpreter

May 6, 2015

I am a state Certified interpreter for medical. I would like to express my dissatisfaction with the proposed rates, not just for medical but for all. As a freelance medical interpreter I have to pay for my health insurance, self employment taxes. AS a freelance interpreter, I do not have the luxury of sick leave nor do I have the benefit of a funded retirement program much less a 401K . If I want any of these benefits I MUST FUND THESE MY SELF. Nor only do we not have all the aforementioned benefits, but our job is not conducive to work 8 hours. Our job requires that we travel from one Dr's office to another and this requires traveling time. The amount of increase for medical appointments does not even reflect cost of living from the last time the rates were established. After all is said and done and we pay for our benefits and taxes we will be working for nearly a minimum wage. WE ARE PROFESSIONALS AND WE DESERVE BETTER.

Skahel F. Nunez

May 6, 2015

Fact: Current regulations deem interpreter services at legal settings as regulatory and to be paid within 60 days. Despite court orders for payment of such services, these constantly get ignored without any punishment.

- Problem:** The proposed fee schedule does not specify the time frames for payment to be issued, nor does it propose a regulation to implement penalties for lack of compliance. This results in DORs filed at the WCAB adding unnecessary cases to an already burdened court calendar.
- Solution:** Enforce the code and the time frames it indicates, and impose penalties and sanctions for lack of compliance with current statutes and court orders.
- Fact:** Current regulations define a certified interpreter pursuant to Government Code, and entities such as the Judicial Council are responsible for issuing certifications through a rigorous process.
- Problem:** Proposed regulation 9930 seeks to circumvent the Government Code by giving a non-qualified person such as a physician or an adjuster the power to qualify any bilingual individual as an actual interpreter. This will result in countless cases of inaccurate history, and inadmissible evidence during litigation at the WCAB due to lack of compliance with evidence code. It invites civil complaints against the DIR, DWC, and WCAB from applicants whose rights were infringed.
- Solution:** Remove regulation 9930 from the proposed fee schedule, and emulate the process that Superior Court implements when faced with this issue.
- Fact:** Current regulations call for the use of certified interpreters and registered interpreters of non-designated languages for all legal proceedings. They only allow the use of a bilingual person acting in the capacity of an interpreter when an actual interpreter is not available, and IF AND ONLY IF all attempts to retain one have been exhausted.
- Problem 1:** Proposed regulation 9931 will allow any untrained bilingual person to act as an actual interpreter provided that 3 calls are made and not one gets answered. This will open the door to conflict of interest violations, and an overflow of cases and recons at the WCAB litigated for decisions based on evidence being disqualified and challenged for lack of integrity since it was obtained without the use of a certified interpreter.
- Problem 2:** Proposed regulation(s) contain ambiguous language as to the terms “non-certified and non-provisionally certified” since testing for certain languages such as Tagalog, has not been available in California for years.
- Solution:** Clarify by stating that a “non-certified/non-provisionally certified interpreter” is a bilingual person who acts in the capacity of an interpreter for a language that is not certifiable, however, has been qualified to perform by a competent entity such as the Judicial Council. Doctors and adjusters lack the qualifications to ascertain an individual’s ability to act as interpreter.

- Fact:** Current regulations allow payment for interpreter services in different locations within California based on a market rate, provided that the rate of payment sought is proven reasonable. Despite acknowledgment letters issued by carriers and orders issued by judges, payment is often partial and objected to.
- Problem:** The proposed fee schedule has eliminated the “market rate” regulation in its entirety. This will result in a halt of interpreter services for all depositions and similar services. Interpreters will not reduce their rates to accommodate a lower fee set by new regulations. As a result, there will be a need to “qualify” bilingual individuals without proper training, education, codes of ethics, and understanding of confidentiality rules to act as actual interpreters. This is also an invitation for inadmissibility of evidence, and overflow of cases at the WCAB, recons, bar and civil complaints by applicants and respective counsel.
- Solution:** Leave the market rate clause unchanged and active in the fee schedule, and revisit such fee schedule annually to accommodate for cost of living increases.

Luis Palmerin
Certified Medical Interpreter

May 6, 2015

I am a medical certified interpreter, It's not fair for the certified interpreters to comply with all these requirements and rules while the insurances and clinics don't comply with these. Should the interpreters act as advocates/rule enforcers to make sure the clinics and insurances request an Interpreter? A huge problem is that many clinics don't use a certified interpreter, but instead use their staff or no interpreter at all. How to make sure all clinics use an interpreter? who will enforce the clinics to use an experienced interpreter. But the big question is how to force the clinics/providers/insurances to ask for an interpreter when they use their own staff; specially the defense clinics who use their limited and deficient Spanish speaking staff to interpret for the patients and that way save money to insurances when they should request a certified interpreter. Should the interpreters act as advocates/rule enforcers to make sure the clinics and insurances request an Interpreter? I think insurances/clinics must sign an affidavit stating they use a certified interpreter or an experienced interpreter for all Spanish speaking patients in all medical procedures; failing to do so the clinics/insurances should pay a fine/penalty per occurrence.

It's ridiculous how insurances want to add the interpreters to MPNs when we are not medical providers. If they want to have the interpreters in MPNs, then they should add ALL the certified interpreters automatically in the MPNs. As the the MPNs shouldn't be a burden for the certified interpreters to provide services.

and it's just ridiculous how the insurances want to eliminate the market rate when the cost of living is always going up but the insurances want to decrease the interpreters' pay? It doesn't make any sense.

Maria Bogue

May 6, 2015

I highly object to the proposed regulations in regards to the Interpreter Fee Schedule.

I believe there is a certification double standard: although there is emphasis on certification of interpreters in the proposed text, the requirement only applies to independent Language Service Providers, but NOT to the insurance companies and the interpreting agencies that THEY use. I believe this will cause a massive displacement of certified professionals by unqualified 'interpreters' used by the claims adjusters.

* Section 9932 (a)(3) - again, the claims administrators can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the proposed regulations will give carte blanche for adjusters to do it systematically.

The proposed regulations have completely stripped Applicant Attorneys of the ability to choose their interpreter for depositions, med-legal appointments and treatment.

Liability, liability, liability! If any kind of issue arises and the interpreter becomes part of a disagreement, how will it be handled if the "interpreter" is NOT certified?

Would a non-certified "qualified" interpreter carry an Errors and Omissions insurance policy??

In order to become certified, we have to carry the cost of certification. We also have to carry the cost of re-certification, which means we are paying for workshops, conferences etc. that we attend to earn our Continuing Education Units. Our professional fees are commensurate with our education and experience.

It is my belief that those of us who are Certified Interpreters working as Independent Contractors are typically freelancers. We set our own rates and come to agreements with the agencies that hire us. Our rates reflect the level of experience and education we have. We cannot allow an "outside party" like an insurance claims adjuster or administrator to step in and decide what our agreement should be when we are hired by a Language Service Provider. This is between us, the interpreters, and the entity hiring us.

The existing draft language needs to be modified into a more sensible and fair set of regulations, respecting the value for all parties of using a professional Certified Interpreter who also carries an Errors and Omissions insurance policy.

I believe that in order to maintain and live up to the Standard of Care for professional

Certified Interpreters, we must:

- Insist on Certified Interpreters for Legal and Med-Legal settings. We cannot allow claims adjusters and other laypersons (i.e. not part of the professional language service industry) to 'provisionally certify' anyone unilaterally, nor can we allow them to set our rates.
- Exhaust ALL resources in locating a Certified Interpreter before using someone who is not certified, not properly insured, or who does not have the proper experience for the assignment.
- Preserve the 2-hour minimum for all Medical and Med-Legal appointments
- Preserve the right for the party producing the witness to choose their interpreting service in order to keep the legal process neutral and fair, and the quality high
- Support the many Language Service Providers (LSPs) who comply with our California certification regulations and who provide jobs to professional interpreters statewide. We must keep them in business; it will benefit all parties involved.

Carmen N. Ortiz

May 6, 2015

My Daughter is an interpreter for the Workers Compensation Program.

I have read your proposed regulation and am appalled at the lack of fairness and justice I see in them.

How can you expect a professional interpreter like my daughter, who has a Masters degree in interpreting, to make \$23, or \$25, or \$27, or even your highest proposed rate which is \$60.00 per hour? And like her there are many other such interpreters whose whole life is devoted to this noble profession.

They work with doctors and lawyers to help the needs of injured workers to help these workers become whole again.

Interpreters have to drive to where the injured worker is being treated. As comparison a truck driver makes \$28 per hour; a courier driver makes \$25.90 per hour.

Interpreters are burdened with paperwork imposed by the system, to bill for interpreter work, or file a claim for payment, because insurance companies, and the regulations you have created make it so. As comparison, a postal worker makes \$25.00 per hour.

Interpreters must learn, and keep current on medical terms, they must know the human body very well. They must accurately and correctly interpret what the injured worker is saying, often in

dialects the interpreter must learn, so doctors can make a correct diagnosis, to avoid liability problems. As comparison a Registered Nurse makes \$36.00 per hour.

Mind you, the wages I have listed above are for average workers. My daughter has been in the interpreting business for many years. She has a BA degree from UCSB and a Masters degree in languages from the Monterey Institute in California.

Mr/Madam Director, I am appealing to you to do away with these proposed interpreter fees because they might cause my daughter and hundreds of interpreters to change professions. This might leave the Workers Compensation field with substandard interpreters.

Please do not let insurance companies, and legislators sympathetic to those companies, drive the level of workers compensation work quality down to such inadequate levels, which might leave injured workers unprotected; just so insurance companies can maximize their profits, at the expense of us all.

Thank You,

Bannie Chow

May 6, 2015

The latest proposal and guidelines as outlined by the Department of Industrial Relations for the hiring of interpreters for Workers' Comp. claimants whose native language is not English (for hearings, AME/QME, depositions etc.) is nothing BUT to ensure insurance companies for the employers will reap more profit by using non-certified and unqualified interpreters. It is a cost-cutting measure for the insurance companies, including the adjusters, because they can justify their attempt of contacting 3 certified interpreters and none being available. Imagine ONLY 3 from a list of how many?

Such practice will ONLY breed mediocrity and provide no incentive for interpreters to improve and get certification since they continue to get hired. And insurance companies hope these unqualified and inexperienced interpreters can muddle through and thus no complaint will be raised.

As a matter of fact, I had already heard more than thrice over the last 9 months from Law Offices that had dealt with unqualified interpreters being sent for depositions and settlement conferences which were subsequently cancelled within half an hour because the interpreters were UNABLE to do the work. Two of them indicated that they had NEVER DONE a deposition before (that lasted 10 mins.)!! I am sure these interpreters will still get paid for their minimum charge. Rescheduling will be necessary and a certified interpreter will be hired. Why NOT do it right the first time? Also let's not forget about the injured workers who have the right to get interpreting services from qualified if not certified interpreters. Their Workers' Comp. cases can have adverse outcomes if interpreters being hired are not doing their job. Honestly, it is a dis-service to the claimants! All in all, these guidelines reflect how trivial the role of an interpreter is being viewed (despite the fact that Judicial Council of CA had stressed over the years the significant role that a court interpreter played in all proceedings).

Therefore, I strongly disagree with the recently proposed guidelines.

Elva Reyes-Espinosa

May 6, 2015

All injured workers have the right to workers compensation benefits they also need to have the right of equal access in their language. This means having professional certified interpreters at minimum for all med/legals, depositions and WCAB.

As a certified interpreter who has worked in this system for almost 20yrs I have consistently seen the bottom line of insurance companies take precedence over the needs of injured workers.

The current regs devalue and serve to undercut the use of certified interpreters who have worked long and hard to obtain our certifications I the following ways:

Adjusters only having to call 3 certified interpreters before deeming someone qualified. Realistically we can not answer every email or text especially while on assignment. How are the rights of workers protected when untrained uncertified interpreters are used. We now have more certified interpreters than ever before and continue to encourage our non certified colleagues to pursue certification.

Fee schedule: the proposed fee schedule may work for court employees but we are not employees of the state. Additionally the current proposed rates do not distinguish between what an interpreter will be paid versus what an agency can charge. If the proposed rate is meant to cover both it will further undermine the ability of certified interpreters to be paid a just wage. A half day assignment which begins at 10:00 am does not allow the possibility of taking an afternoon assignment. So in effect lowering wages and the amount of hours we can work.

This is a chance for California to be the leader in protecting workers rights and those of us who serve as their voices in the system. Please don't let big business make the rules.

Janine Kozanda

May 6, 2015

The proposed changes to the Interpreter Fee Schedule for Worker's Compensation are based on a false assumption, that a professional can be "provisionally certified" by someone who is not also an expert in his or her discipline. If a service provider – be it a doctor, lawyer, interpreter, court reporter, etc. - is not currently licensed or certified by an entity with sufficient expertise in that subject area, then he or she is simply not qualified to do the job. An insurance claims adjuster, a doctor, an administrative law judge, even if they are bilingual, simply does not have the experience and expertise in linguistics to determine on the fly if an interpreter is qualified, provisionally or otherwise.

I am sure no one in the DIR, WCAB or Dept. of Insurance would permit a doctor or attorney who was “provisionally certified” (as described in your proposal) to evaluate their job-related injuries, prescribe them medication, recommend or perform surgery, determine their level of disability, or represent them in court. If that wouldn’t be good enough for you, why then should it be good enough for the injured non-English speaking workers trying to navigate their way through a system that can only be described as medieval?

Instead of further weakening a system that is already on the verge of collapse by de facto removing certification requirements for interpreters, I urge you to do just the opposite. Legitimate certification by a national or state entity must be a NON-NEGOTIABLE requirement for all service providers in the California Worker’s Compensation system.

J. Fernando Gonzalez

May 6, 2015

I would like to take this opportunity to express my concerns with the proposed fee schedule, and I know that many of my colleagues feel the same way.

Approximately 3 years ago, or so, we were told that if we were not certified, as of x x x x date, we would not be able to work. The problem was, there was no way to get certified. A year later, we were told the certification from NBCMI and CHIA would be recognized. Happy Day! Many of us immediately took action to be in compliance, invested our time, money and got certified.

Now, we still find non-certified interpreters working in the same places they have always been. And according to what I understand from this proposal there will be even more opportunities for non- certified interpreters to continue working!

I feel it unfair to those of us who have put in our time, got the professional training and invested the money to get certified. I have a hard time understanding where the shortage of certified interpreters is, when we are sometimes only getting one or two appointments a day!

I don't believe there is a lack of certified interpreters. I believe that in some instances that shortage may be fabricated to save money by using non-certified interpreters.

I have nothing against people trying to make a living by putting in an honest day's work. I was also a qualified interpreter at one time, however, I did my part to be in compliance, now I believe it's time for our legislators to do their part in protecting those of us who worked hard to get certified and provide the best service possible to non-English speakers or limited English speakers.

Now that there are ways to get certified, there is no excuse for an interpreter to not be certified. In my humble opinion, people who are still not certified, or in the process, do not possess the qualifications to be working as interpreters, or have become complacent because they are still being able to get work. Again, this is totally unfair to certified interpreters. Why would a non-

certified interpreter have a full agenda, while a certified interpreter only has one or two appointments and sometimes none?

All you have to do is look up the registry of the NBCMI or CHIA to see the number of professional interpreters who are ready, willing and able to go out and provide their services to the best of their ability.

Obviously, there are probably less populated rural areas where I would agree that it might be difficult to find a certified interpreter, but NOT in areas like Los Angeles, Orange County or the Inland Empire.

I truly appreciate the time taken to read my comments/concerns, and hope they don't fall on deaf ears.

Isaias Cabrera CHI
Spanish Certified Medical Interpreter

May 6, 2015

I am a Spanish certified medical Interpreter and I wanted to put my two cents in.

First of all,

We are service providers just like interpreters are. We provide the same services other language interpreters are. We Spanish interpreters are being discriminated against because of your demand for our services not our abilities nor our services.

The fee for languages all languages should be adjusted.

I as a Spanish interpreter have the same cost of living than any other language interpreter. There are no exceptions or fee differences for cost of living nor travelling expenses either. Your demand for Spanish Interpreters is not any fault of ours.

I want this to be considered and adjusted.

Second point

Please compare costs of living, travelling, insurance costs when considering fee increases

Compared to the last time the fee schedule was created.

The increase for other languages may be acceptable but once again, the increase in Spanish Interpreting is not

Diana Munoz

May 6, 2015

I have seen the proposal which completely goes against what defines an independent contractor. As you want to set the terms the rates the hours etc. I would also ask you to show me your benefit package, because I would be turning into your employee. The IRS would definitely see it that way and so would I. As such I have rights and you have the responsibility of paying part of my taxes offering me dental and medical insurance, I would also like to know who is your insurance carrier in case I suffer an accident on the job and who to speak to in that case and where to report it. There are many loose ends on this job offer you have sent us.

Natasha Kharikova
Certified Court Interpreter (Russian)

May 6, 2015

As a certified court interpreter (Russian) with a highly specialized education and many years of experience I would like to add my voice to those of us in the profession who vehemently object to the recent Interpreter Fee Schedule draft issued on April 27, 2015.

As an independent contractor I set my own rates and I am fine with the language of the previous regulations which, while providing guidelines, specifically mentioned the market rate. As someone who grew up in the Soviet Union, it seems incredible to me that the new fee schedule does away with the “market rate” and can even be considered in a free-market economy such as the United States. Interpreters fully understand the realities of the modern world and the constant pressure to cut costs that many businesses and organizations face. However, any cost saving efforts must be weighed against their possible consequences. I can speak for the Russian language, and the amounts suggested in the draft as maximum for legal assignments do not reflect the current reality of the market in Southern California. What is also not taken into account is that most interpreters work through agencies, who take a significant cut for their work with scheduling and billing. The introduction of such a fee schedule will lead to an exodus of competent interpreters who will simply not be able to make a living taking Workers' Comp jobs. This could potentially lead to the collapse of the whole system. A case in point is the recent situation in the UK where, albeit for a slightly different reason, court interpreters decided not to accept the meager rates offered by the private company which had won the government bid for providing interpreter services in court. The results of not having an interpreter in a legal environment can be disastrous. In a possible attempt to avoid such a scenario, the draft proposal also seems to simplify the procedure of “provisionally certifying” interpreters which in itself is a big concern for me as a professional interpreter who has invested a lot of time and resources into her education and training.

Other issues that haven't been considered in the proposal are the geographical location and the demand for specific languages. The cost of living varies widely within California based on your location while the amount of work available to qualified interpreters is not uniform across all languages. Therefore blanket fees across all languages (other than Spanish) and locations are simply unacceptable.

Certified court interpreters provide a professional service and should be able to set our own fees and be paid accordingly. A fee schedule that further suppresses fees for interpreters while

insurance companies continue to enjoy record profits is yet another example of corporate greed at the expense of the middle class.

Daniel Jacobs
Certified Spanish Court Interpreter

May 6, 2015

Certified as a Spanish court interpreter by California (1994) and the federal government (1995), I have interpreted professionally between workers' comp applicants, attorneys, doctors and judges for over 20 years in the San Francisco bay area and surrounding counties. I object to the DIR's draft "Fee Schedule for Interpreters at Hearings and Depositions" (Article 11, §9937) as a draconian violation of fair trade and an assault on the livelihood of language-service providers. Workers' comp interpreters serve as independent contractors, negotiating their hourly or daily fees (usually through interpreting agencies) on the basis of their professional qualifications and experience, the local cost of living, and prevailing market conditions for workers' comp proceedings.

The draft Fee Schedule aims to impose a uniform set of "reasonable maximum fees" on certified Spanish interpreters for hearings and depositions in all of California. To avoid charges of violating fair trade, the insurance-company lawyers who drafted that fee schedule tossed in this disclaimer: "Nothing in this section precludes an agreement for payment of interpreter services, made between the interpreter or agency for interpreting services and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section." — §9937(e)

If the draft fee schedule became law and got consistently enforced by agencies under the heel of the billionaire insurance companies, my pay for interpreting workers' comp depositions would get slashed by 60% to under \$40 per hour — less than what I was earning in 1994! Over the past six years, the monthly rent on my apartment has increased by 34% — while the monthly premium on my health-insurance policy has increased by 184% (from \$279 to \$792 per month).

Antonio Pelayo Lopez

May 6, 2015

The purpose of this missive is to address some very important issues related to a prospective amendment to the Administrative Rules that directly affect the competence of interpreters provided to the Worker's Compensation patients.

It is virtually an unfathomable notion, that a system whose primary purpose is to serve and provide adequate care for the injured patients of California, should find it so easy to destroy one of the few safeguards against the abuse and further harm of the traditionally vulnerable injured employee.

Nobody can argue against implementing rules and regulations that can help efficiency, but it

should never be done at the expense of the most defenseless and characteristically voiceless citizens.

In this institution's zeal to find ways of economizing there is an imminent danger in creating the greatest unintended consequence of all time.

First, the certification component is being undermined left and right! In summary, by allowing a doctor, an adjuster, and just basically anybody to "provisionally certify" the competence of an interpreter-It's so ridiculous for God's sake, that all the parties have to do is shake on it and the interpreter is provisionally certified! And contrary to the current rightfully strict rule, by allowing only three attempts at seeking a certified interpreter before they can use an uncertified interpreter, it is an open invitation to circumvent such an important requirement.

Second, by implementing a fixed fee for the remuneration of interpreter services; as a result, It has truncated the fair market rate which is in effect and the fee is now supposed to be linked to the Federal rate, yet it makes no provisions for the "cut" that traditionally is taken by the middle man. We strongly urge you to please realize that agencies are a primary source of interpreter manpower and that the fixed rate suggestions do not make it clear that when it comes to those fees there should be some "laissez faire" so to speak.

We don't portend to tell you how to do this but we would like to suggest that:

- A. There be a clear statement that emphasizes that the fee suggested is intended to be the amount the interpreter receives.
- B. That there be a provision for revising said fee periodically or perhaps keep it tied to the Federal Court Interpreter rate.

Third, that the medical appointments not pay in "15 minute increments" after but in "hourly increments" for any additional hour or fraction thereof. It is burdensome enough to only have two hours guaranteed, but to add insult to injury; to only pay in fifteen minute increments is just ludicrous, if not another example of the contempt shown for our preparation, competence and professional importance.

The certification that an interpreter obtains through arduous study and often times through self-didactic study, is to be admired and rewarded and not reviled and undermined. It is not a luxury to have a competent interpreter. There is a reason why all the respectable and competent examining institutions don't accept formal education credentials as proof of competence in interpreting in any subject matter; it is because interpreting requires fast thinking, fast talking, and adaptability. It requires excellent memory, common sense and the ability to understand colloquialisms as easily as the complex medical or legal jargon that often times comes up. How can an expert of a completely unrelated field; such as a doctor or a claims administrator, be able

to evaluate said capabilities and abilities when they themselves do not possess such professional training?

There are other important issues that seem to have been overlooked in the light of the reality of the real world: A 3.5 hour half day is not appropriate for depositions, AME, QME, IME, Psych. Evaluations etc.

These proceedings tend to be extremely grueling and non-stop, unlike other types where there are built in safeguards, for example in court where the court will take a fifteen minute recess and there is team interpreting which is universally recognized as the minimum required to be truly accurate and effective. A more appropriate standard for a half day is three hours and six hours for a full day.

The foregoing points are being made in good faith and in hopes that it is nothing more than an oversight by the entity which had the responsibility of coming up with said suggestions. We realize that you are the ultimate gatekeeper and we are hoping to appeal to your sense of justice and fairness when we assert our concerns. Don't make it easy to undermine what we have obtained with so much sacrifice in the pursuit of not just making a decent living, but of being of efficient service to our clients.

Don't trample one of the basic rights of the injured California workers who depend on a system that has a duty to protect and look after their interests; to wit, the right to an effective interpreter in order to communicate their pains and agonies. And please put the safeguard of our fees with wording that unequivocally states how much corresponds to the interpreter, so that we can have some sort of protections to ward off any potential predators.

Pedro B Ramirez Navas	May 7, 2015
Amalia Silvestri	May 7, 2015
Manuel Lopez	May 6, 2015
Pedro B. Ramirez Navas	May 6, 2015
Isaias Cabrera CHI	May 6, 2015
Pedro Osegueda	May 6, 2015
Vanina Sala	May 6, 2015
Laura Grosz	May 6, 2015
Vivette Zelaya	May 5, 2015

I am a Certified Court/Medical Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make

it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.

- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers , in which the laws and forces of supply and demand are free from any intervention by a government , price-setting monopoly, or other authority. ” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Certified Court Interpreter

I've been a Certified Court Interpreter for 11 years, and feel as if to be sitting in the passenger seat of a vehicle about to be veered off a cliff.

The proposal for a 3.5 hour half day would mean that for an interpreter to be able to work two half days, all morning assignments must start no later than 9 a.m., and all afternoon assignments must start no earlier than 2 p.m. There is a (good) rationale behind the 3 hour half day: It allows for greater flexibility for start times/jobs going over, while still ensuring the interpreter (and the court reporter) are able to work two half days (with travel time and a quick lunch between jobs). Even with the 3 hour half day, it is often very tricky being able to schedule two half days. By extending the half day by a half an hour, this delicate balance jeopardized, and so a rigid schedule of 9 a.m. /2 p.m. must also be taken into consideration.

In order for any party (e.g. a hearing rep) to deem an interpreter as provisionally qualified, this party must hold the same qualifications as a certified interpreter; to have undergone the same training; to share in the same skill set; he or she must be knowledgeable and fluent in the language in question, and have a deep appreciation for syntax; lexicon; normalization; med/legal terminology, etc.,...otherwise, imagine if the shoe were on the other foot, and the interpreter was to deem a hearing rep provisionally qualified in lieu of an attorney being present—there is no basis from which to determine qualifications when the parties are not even of the same profession. The notion is absurd (and insulting).

Dictating what an independent party may charge is unconstitutional. Regardless of whether these services are rendered within a system (WC system in this case) the interpreter is not an employee of the system. There is no contract with any entity within this system. Interpreters' fees are set by market demands, which are influenced by other, unrelated venues, e.g., civil, criminal court, conferences, etc., and the WC system is one of such venues. While a great deal of our work comes from the WC system, it is not the whole story. Dictating a fee schedule risks a great number of interpreters (like myself) currently working in all available venues, to abandon the WC system altogether. The result will be a schism in the profession, and the WC system will be left with its aftermath: a smaller pool of interpreters that are overwhelmingly under-qualified. This will in turn end up costing the WC system far more monetarily and logistically than if WC allowed independents to remain independents. by allowing them to continue to charge competitive rates. I, for one, have already transitioned to civil law at about an 8:1 over WC.

I could go on and on...I said earlier that these proposals and fee schedule felt like a car veering off a cliff...interpreter's correction: it is a train wreck.

Paco Somoano

May 5, 2015

Following my comments regarding propose changes for interpreters

Certification double standard: although there is emphasis on certification of interpreters all over the Labor Code and proposed text, the requirement only applies to independent language service providers but NOT to the insurance companies and the interpreting agencies that THEY use. We foresee this causing a massive displacement of certified professionals by inexpensive

'interpreters' used by the claims adjusters.

The Regulations, as written, give claims examiners (whose main goal is to save insurance companies money) a blanket license to use non-certified interpreters through 2 loopholes:

* Section 9931 (c) - they only have to contact THREE certified interpreters before they can claim no one certified is available and send a non-certified one. Three only, a big change from the previous Regs that required that they exhaust ALL certified before using a cheap non-certified 'interpreter'

Who will monitor and enforce this?

* Section 9932 (a)(3) - again, the claims administrator can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the latest regulations will give carte-blanche for adjusters to do it systematically.

Please keep in mind how unfair are these proposals

Helen Z. Arevalo

May 5, 2015

The purpose of this missive is to address some very important issues related to a prospective amendment to the Administrative Rules that directly affect the competence of interpreters provided to the Worker's Compensation patients.

It is virtually an unfathomable notion, that a system whose primary purpose is to serve and provide adequate care for the injured patients of California, should find it so easy to destroy one of the few safeguards against the abuse and further harm of the traditionally vulnerable injured employee.

Nobody can argue against implementing rules and regulations that can help efficiency, but it should never be done at the expense of the most defenseless and characteristically voiceless citizens.

In this institution's zeal to find ways of economizing there is an imminent danger in creating the greatest unintended consequence of all time.

First, the certification component is being undermined left and right! In summary, by allowing a doctor, an adjuster, and just basically anybody to "provisionally certify" the competence of an interpreter-It's so ridiculous for God's sake, that all the parties have to do is shake on it and the interpreter is provisionally certified! And contrary to the current rightfully strict rule, by allowing only three attempts at seeking a certified interpreter before they can use an uncertified interpreter, it is an open invitation to circumvent such an important requirement.

Second, by implementing a fixed fee for the remuneration of interpreter services; as a result, It has truncated the fair market rate which is in effect and the fee is now supposed to be linked to the Federal rate, yet it makes no provisions for the "cut" that traditionally is taken by the middle man. We strongly urge you to please realize that agencies are a primary source of interpreter manpower and that the fixed rate suggestions do not make it clear that when it comes to those fees there should be some "laissez faire" so to speak. We don't portend to tell you how to do this

but we would like to suggest that:

- A. There be a clear statement that emphasizes that the fee suggested is intended to be the amount the interpreter receives.
- B. That there be a provision for revising said fee periodically or perhaps keep it tied to the Federal Court Interpreter rate.

Third, that the medical appointments not pay in “15 minute increments” after but in “hourly increments” for any additional hour or fraction thereof. It is burdensome enough to only have two hours guaranteed, but to add insult to injury; to only pay in fifteen minute increments is just ludicrous, if not another example of the contempt shown for our preparation, competence and professional importance.

The certification that an interpreter obtains through arduous study and often times through self-didactic study, is to be admired and rewarded and not reviled and undermined. It is not a luxury to have a competent interpreter. There is a reason why all the respectable and competent examining institutions don't accept formal education credentials as proof of competence in interpreting in any subject matter; it is because interpreting requires fast thinking, fast talking, and adaptability. It requires excellent memory, common sense and the ability to understand colloquialisms as easily as the complex medical or legal jargon that often times comes up. How can an expert of a completely unrelated field; such as a doctor or a claims administrator, be able to evaluate said capabilities and abilities when they themselves do not possess such professional training?

There are other important issues that seem to have been overlooked in the light of the reality of the real world: A 3.5 hour half day is not appropriate for depositions, AME, QME, IME, Psych. Evaluations etc. These proceedings tend to be extremely grueling and non-stop, unlike other types where there are built in safeguards, for example in court where the court will take a fifteen minute recess and there is team interpreting which is universally recognized as the minimum required to be truly accurate and effective. A more appropriate standard for a half day is three hours and six hours for a full day.

The foregoing points are being made in good faith and in hopes that it is nothing more than an oversight by the entity which had the responsibility of coming up with said suggestions. We realize that you are the ultimate gatekeeper and we are hoping to appeal to your sense of justice and fairness when we assert our concerns. Don't make it easy to undermine what we have obtained with so much sacrifice in the pursuit of not just making a decent living, but of being of efficient service to our clients. Don't trample one of the basic rights of the injured California workers who depend on a system that has a duty to protect and look after their interests; to wit, the right to an effective interpreter in order to communicate their pains and agonies. And please put the safeguard of our fees with wording that unequivocally states how much corresponds to the interpreter, so that we can have some sort of protections to ward off any potential predators.

I am outraged after reading the "Draft Interpreter Fee Schedule Regulations for Forum Posting April 2015[,] California Code of Regulations, title 8, sections 9930 et seq.”.

I must object in the strongest terms to the notion that judges, lawyers, doctors and insurance claims adjusters have the capacity to provisionally "certify" interpreters. The very idea is absurd. What would they base that decision on? Their own knowledge of the non-English language(s) in question? Their own experience in the profession of interpreting? Should we interpreters turn around and license doctors, bestow bar cards on attorneys, and appoint judges?

Clearly, this draft of proposed regulations was written by insurance-industry lobbyists: the insurance industry's untrammled greed spurs it to prey on the most vulnerable people in society, namely immigrants, by robbing them of competent interpreters on their day in court, substituting greenhorns whom it proposes to pay less than half the rate charged by genuine certified interpreters.

I urge you to reject this draft and start over, without any input from the insurance industry. I also urge my colleagues not to stand for this absurdity: start making preparations now to abandon this segment of the industry in case this disastrous proposal is approved: sock away money, get additional training in another field, take in lodgers, move out of state — whatever it takes. Don't imagine for one second that if we accept these preposterous terms, the insurance industry's bottomless avarice will be satisfied.

M.T. Martinez

May 5, 2015

.In regards to some of the extreme changes that this proposal is seeking ...

Chapter 4.5. Division of Workers' Compensation

Subchapter 1. Administrative Director Administrative Rule

Once again the pursuit by the powers that be are trying to undermine the language service providers in the Work Comp sector. Every so many years it seems that a new ruling and or a new way to cut into the lively hood of WC certified interpreters is resuscitated. Back peddling again primarily to offer regression, contradiction and misgivings. If this latest attempt is being contemplated as a correction or an upgrade, seems to be more like a condemnation. This fee schedule unjustly fights the right to a market rate and undermines the progress certified interpreters have achieved. Some of the requirements stated in this proposal are a direct and biased hit against certified interpreters in general but specifically against Spanish-English certified interpreters (§9937(A)

California is the third largest state and is considered the most diversified state in the USA. Of the many different languages spoken throughout California , Spanish is very prevalent and if ever there was a day without Latinos this state would grind to a halt. . There are more Latino applicants because Latinos are the back bone of this state. Yes but there are also a lot of Certified Spanish Speaking Interpreters (admin, court, federal etc) working in

Comp. Therefore the daily status of an independent contractor is unpredictable and by no means do the vast majority of WC interpreters have 5-15 cases a day as some adjusters and defense attorneys will falsely have the DIR believe. That is very far from the truth and much less where the comp industry is today. The work fluctuates daily and with it the right to set an individual market rate. Many insurance adjusters and their lawyers would have the DIR believe that most independent certified interpreters make way more than an average middle class professional, we don't.

A fee schedule" is a blunt disregard to eradicate the right to work as an independent contractor and have a market rate which is an economic system set by private individuals rather than by the state. As is many insurance companies (claims examiners) either don't pay the agreed market rate, do not observe the time specified by regs & codes to pay for services rendered. All a fee scheduled will do is give more power to the same unsupervised system that delays payment, quotes the wrong objections as an excuse not to pay, give more revenue to their legal council to fight a language service invoice which many times the certified interpreter was requested by the same carrier that at the end does not want to pay. Yes that is the reality of the many unpaid invoices from language service providers in Work Comp!

According to § 9931 C That the hearing officer finds the interpreter who is present has sufficient skill to be provisionally qualified in the required language. " Sufficient skill" but §9931 does not specifies the method to do a language proficiency determination and the word sufficient sounds like less than adequate service. Who will determine the language skills of the "hearing officer" ? Who is going to qualify the qualifier? Does a course in Rosetta Stone or Ingles sin Barreras hit the mark? Does the "provisionally certified" situation comes with an expiration date? If someone gets provisionally certified one day is that a done deal?

§9931 (D) is very ambiguous as are other requirements throughout this proposal. The provisionally certifying practice will give cart-Blanche for claims adjusters to use it systematically. Soon a letter or a form created by the non-certs, as they are described in the business, will be utilized to solicit work away from the certified professional. Why are the professional interpreters investing so much money taking courses to maintain state imposed requirements, paying yearly fees to have a current badge? Why is the DIR moving in a direction which will create delays, appeals and more state expenses? There are so many rules and regulations already in place concerning language providers yet the DIR seems to be moving towards a laissez faire attitude in med-legal matters concerning injured people who should be provided more that sufficient skill.

The provisionally "certified" interpreter, will mostly be a bi-lingual individual lacking in technique (specially simultaneous) nuances, language labs for diverse vocabulary and speed, specialized courses, paid seminars, association meetings etc. A bi-lingual speaker will go around peddling their services and hovering at the appeals boards in search of work which it is not rightfully theirs. The market will be flooded with provisionally-certified individuals who have no purpose in passing state tests nor paying for a state certification yearly fees. Off course the non-certs fees are cheaper and so will be the quality level, protocol and the professional- ethical

aspect that is expected of a neutral party. Certified Interpreters like court reporters are often called officers of the court.

Once the can of worms of provisionally interlopers gets opened the quality of service provided in a med-legal setting will be murky, abused, corrupt, and state revenue will also be lost. Using a less than a legit "certified" interpreter/translator during a medical-legal proceedings such as taking testimony under oath which up to now requires the best form of interpretation to preserve the validity of testimony under oath. The provisionally certified interpreter's biggest lack of sufficient skill may very well be in the English language. Further more a legal document created using a provisionally qualified individual can be the best evidence used by any of the parties involved in a work comp case, to delay, recon and or dismiss a case because the language proficiency of the hearing officer can also be questioned and or the fact that the "sufficient skill" used to provisionally certified anybody was and is in fact very insufficient and totally unacceptable.

Why are we going backwards when so much hard work has been done to weed out the scammers, the impersonators? Many of the requirements in this proposal will erode fertile certification ground that has been gained. We, Certified Interpreters, are professionals.

As such we have the right to be recognize for our services and part of that recognition is to be properly compensated for the irreplaceable services provided to the injured workers of the State of California.

Francisco Porras

May 5, 2015

Certified Court Interpreter

I am a Certified Court Interpreter and I am someone who has taken the time to thoroughly read and carefully review the recently published recommend fee schedule for interpreters. Hence, I now find myself here, writing this missive to express my concerns about said fee schedule. I would like to say that on this very significant matter I strongly oppose the following:

- The imposition of a "half day" as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having "hearing officer" an "adjuster" or a "physician" certify an interpreter on the spot after "three [unsuccessful] attempts" are made to reach a certified interpreter completely undermines

the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?

- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mind-boggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about his profession, I urge you to take my comments into consideration to revise the proposed fee schedule. As a head of my household, I need to make a living and provide for my loved ones...my family. And the current proposal and rules make it extremely difficult, if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

So, I respectfully ask that you make conscious decision before the greatest unintended consequence of all time occurs.

Norma LeCea
Certified Court Interpreter (Spanish)

May 5, 2015

I am. Court Certified Spanish Interpreter with 10 years experience. I labored very hard to pass the Court Certification Exam in 2006. This is when it was administered by CPS and only a half dozen or a dozen people out of 200 would pass. Now that I have been working in this field I understand why the exam was so hard! It is because you have got to be ready for anything! Interpreting isn't merely translating a word into another language! It is so much more than that! There are nuances, idiomatic expressions, industry specific terminology, region specific slang and culturally bound terms. I could go on and on! There is no way for a lay bilingual person or a "Provisional Interpreter" can handle the demands of this job without the proper education and testing. It is even more ridiculous that an Insurance Claim Examiner with no experience whatsoever in Legal or Medical Interpretation be the one to decide who qualifies as a good Interpreter! The only thing they care about is saving the insurance company money! The ones who will pay are the Injured Workers, Certified Interpreters and Language Service Providers!

There is a large pool of Certified and Registered Interpreters in California. People who are experienced and professional. Allowing for only 3 attempts to contact a Certified Interpreter before claiming nobody is available in order to use a non-certified cheap Interpreter will harm my profession and the Injured Worker! I will be put out of a job, since the Claims Examiner has the liberty to bypass the labor code and the Certified Interpreter! The party producing the Witness should continue to have the right to choose their interpreting service in order to keep the process neutral, and the quality high! This means that small local Language Service Providers must be allowed to exist! They are neutral parties who comply with certification regulations and provide many professional, experienced and excellent Interpreters! There must absolutely continue to be certified interpreters for Legal and Med-legal settings, and I sternly oppose the allowance of claims adjusters and other laypersons to be able to 'provisionally certify' anyone unilaterally.

Additionally, there should be a fee for interpreter services commensurate with the level of education and skill required of Interpreters. The rate proposed for certified interpreters is a 50% reduction of our current market rate (at least in many areas in Northern California). The Med-legal rate proposed is a meager \$7 more than the suggested minimum published in LC 9795.3 some 20 Years ago! The billable legal rate is less than what certified interpreters charge currently in some areas. The proposed fees are completely out of touch with inflation and geographical differences of cost of living. Plus there is a proposal to eliminate the 2 hour minimum for Medicals, in addition to a flat fee for depositions and WCAB hearings. All of this means that on top of NOT having received a raise in the last 10 years now you want to lower my rates even more?

Please consider more than the Insurance companies. Aside from Certified Interpreters and the Injured Workers think of the State of California which stands to lose millions of dollars in State Income Taxes with this proposal! If There are no Language Service Providers and Certified Interpreters aren't working - there goes that revenue!

Berta A. DeFrench
Certified Interpreter

May 5, 2015

As a court-certified interpreter for the past 33 years, I absolutely, positively and categorically object to the proposed fee schedule.

I am required to complete 30 educational units every two years, which is more than someone with a juris doctor. Yes, the attorneys in the State of California are required to complete 25 units every three years, and most of those can be completed online. Keep in mind that applicants' attorneys bill at the rate of \$400 per hour.

So now another "committee" in their wisdom has proposed what they believe to be fair fees for interpreters. Fair to whom, I ask, the insurance industry?

My hair dresser charges \$58 for a hair cut based on her expertise. Sure, I can go to Superior Cuts and pay \$15, if I don't care about the quality of the service and the fact that the person cutting my hair recently graduated from beauty college. Why is someone trying to dictate my rates without taking into account that I am one of the most qualified in my area?

Depositions and medical evaluations get cancelled daily due to lack of interpreters (even after the list of noncertified gets exhausted, all of whom continue to work unsupervised). If the proposed rates become law, you can count on a larger number of cancellations because yours truly will refuse to work for those wages. This only means depriving injured workers to their constitutional right to a fair hearing, if you actually care about the rights of injured workers, that is.

Luz M. Espana
Certified Interpreter

May 5, 2015

I would like to complete my previous email which was sent by mistake.

- The Interpreter's profession is just like any other career. People sacrifice time and money to obtain the credentials required to their jobs. You will find in the interpreting profession people with masters in linguistics who have gone through an extensive and costly process of becoming certified, which up until few months ago was IMPERATIVE. If you replaced professional and certified interpreters by "bilingual" individuals, not only you will be doing a disservice to the LEPs but defeating the purpose of the Office of Civil Rights, Title VII.
- We are freelancers trying to make a fair living and care much about our profession. I hope you take into consideration my comments and concerns and reconsider this fee schedule change, so it will be fair to everyone rather than looking out for the interests of a few. If this schedule is implemented will make impossible for most interpreters as well as LSP to stay in business and compete with the non-certified interpreters and agencies out of state who are unfamiliar with the Worker's Compensation System in California already hiring non-certified interpreters at a cheaper rate and making a very lucrative business at the expense of the injured workers.

(First e-mail sent)

I am a professional CMI who complies with all the requirements of CEU's, conferences to keep myself up-to-date in the industry, but most importantly culturally and linguistically competent to serve our Spanish speaking injured workers. I have 15 years of experience as a healthcare interpreter in hospital setting as well as the Worker's Comp arena. These changes will be detrimental to our profession.

My name is Luz M Espana a State Certified Medical Interpreter as well as a NBCMI. I have taken a good look of the recently published fee schedule for Interpreters. Not only I am completely opposed to the "absurd" proposal but at the same time disappointed for the following reasons:

- I find discriminatory against Spanish Court/Medical Interpreters the proposed lower rates as opposed to other languages. There should not be any distinction as far as language interpretation skills goes between one language to another. We are all professional and linguists, just speak a different language
- Having a claim adjuster, physician, hearing officer certify the qualifications of an interpreter to serve as such during the course of a hearing, trial or medical-legal IME, QME, AME evaluation/examination due to the inability to find a certified court/medical interpreter (after 3 attempts to locate a certified interpreter) IT IS IMPOSSIBLE, considering that there is over 1.000 certified interpreters in the State of California. Who will be regulating this process to ensure that indeed three certified interpreters were contacted. What language expertise and skills will these doctors/hearing officers, judges have at their disposal to ensure that the LEP will have a skilled and professional interpreter?

Lorena Barrett
Certified Interpreter

May 5, 2015

First of all, thank you for taking the time to read my e-mail. As a court certified interpreter I am quite confused by the proposed fee schedule; I have a hard time understanding how somebody who has no qualifications in languages is capable of deciding who is "qualified" to interpret in such sensitive situations. California has been the gold standard when it comes to certifications with a rigorous exam that guarantees that the interpreter understands and is familiar with a wide range of dialects and situations. I also have a hard time understanding the proposed amounts which go against the fair market rate. Why is the insurance industry attempting to dismantle the interpreting industry? Just like doctors and attorneys, we provide professional services that we have work very hard to achieve. Not every person who knows anatomy is a doctor, not every person who understand the law is an attorney, not every bilingual is an interpreter.

Teri Szucs
Certified Interpreter

May 5, 2015

The rates being proposed for professional certified interpreters are so low as to deplete the market of such professionals. You must take into account that interpreters are hired through agencies that take a healthy cut.

It is particularly outrageous that a plaintiff's attorney is getting paid \$350 for mostly just sitting there plus their driving time.

If you believe that injured workers need to communicate at least as much as they need to be represented, then you must treat us as professionals also.

We are not employees of the state; as independent contractors we will set our own rates with the most likely consequence being claimant's right to an interpreter will go unfulfilled.

Additionally, the Department of Industrial Relations continues to define the duration of a half day deposition up to 3.5 hours, in Southern California, it would make impossible to allow for enough time to drive between two jobs.

I understand that the insurance lobby is behind this push, one of the richest industries in the world going after the least expensive professional, by far, in the room during a deposition.

I don't see the same treatment bestowed on the attorneys and the doctors, who by far amount to the lion share of all costs, and whose earnings, per case, surpass anything most injured workers ever get.

California has a government under Democratic control that is apparently and shamelessly working for the 1% and squeezing every drop from the weakest links: the injured worker and the interpreter who gives him or her ear and a voice at the table.

Shame on you.

Erika P Barajas
Certified Court Interpreter

May 5, 2015

My name is Erika P. Barajas and I am a Court Certified Spanish Interpreter. Today I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- Establishing lower rates for Spanish interpreters is plain discrimination. We go through strenuous schooling and training to obtain our certifications, just as much as other languages are required to do. Making the distinction to pay Spanish interpreters less than other non-Spanish interpreters is just plain wrong.

· Having a, “hearing officer” an, “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?

· The proposed fees of \$210 for a half day and \$388 for a full day, do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.

· The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.

· The exclusion of mileage and travel time compensation. We live in California. It is mind-boggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this for the Spanish language?

· The elimination of a two hour minimum for medical appointments. It is very rare that medical appointments last an hour or less, interpreters need to make a living and we cannot accept other assignments without knowing first hand how long we are expected to remain at other appointments. In particular with QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept, “one hour guarantee” assignments.

· The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a Certified Spanish interpreter, I spent years learning and training for my certification, I have complied with all the required continuing education courses, certification renewal fees, and provide accurate, competent and skilled interpretation on all assignments but most importantly, I love my profession, the ability to bridge the language barrier and to help the non-English speakers have a voice and be heard, however I also need to make a living. Unfortunately, with the current fee proposal and rules it would make it extremely difficult if not impossible to be able to provide a good quality of life for my self and family. I strongly urge you to please take my comments into consideration when you revise the proposed fee schedule.

To please think about the disservice this proposal will have not just on the interpreters but the patients, the applicants the non-English speakers. To take away their right to have competent/certified language assistance can be a make or break impact in their lives.

Thank you for your time and consideration in this matter.

Elisa Cabal
Certified Spanish Interpreter
U.S. Federal Court – CA State Courts

May 5, 2015

Instructor: Translation & Interpretation Certificate Program
UCLA Extension

I have been a court certified interpreter since 1984 and an instructor of translation & interpretation since the Fall of 2010. I am writing to address the proposed amendment to the Administrative Rules governing the rates and qualifications of interpreters for worker's compensation cases.

I teach because I care about the profession and the professional standing of certified interpreters. The certification process was created to ensure a minimum level of confidence, or certainty, in the interpretation being provided to LEP claimants, the injured workers, a very vulnerable segment of the population. I strongly feel that this amendment is undermining that standard not only by the rate of pay being offered but by the ability for a non-qualified language specialist to "provisionally qualify" an interpreter for the sake of expediency.

The proposed rate of pay is intended to be linked to the Federal rates; these changed in January of 2015 and they are now \$223 for a Half Day and \$412 for a Full Day. These rates are paid directly to the interpreter who has performed the services. The rates you propose are paid to the agencies, which then contract with the independent certified interpreters and pay them a (small) portion of that fee, thereby bringing the rate the interpreter receives down to an unacceptable level, which will, in fact, deprive the Division of Worker's Compensation of a most valuable asset: competent, certified, professional interpreters.

The ability to "provisionally qualify" an interpreter will take us back to the days before certification was made a requirement. The need for certification arose from the serious problems created by bilingual people with no professional skills acting as "interpreters", which led to defendants in court and claimants having a basis for appealing due to the fact that they were not "legally present" at their hearings because of the lack of qualifications of the bilingual person assisting them.

I train future interpreters in a one-year program that is still too short to fully prepare them. I know the level of skill, competence, and the broad range of knowledge it takes; I see the effort and the hours of study they invest in the hope of becoming certified interpreters. Please reconsider and do not undermine the standards of the profession we have worked so hard to uphold. Please provide claimants with professional certified interpreters whose skills they can trust.

Teri Szucs
Federal and California Court Certified Spanish Interpreter

May 5, 2015

The rates being proposed for professional certified interpreters are so low as to deplete the market of such professionals.

It is particularly outrageous that a plaintiff's attorney is getting paid \$350 for mostly just sitting there plus their driving time.

If you believe that injured workers need to communicate at least as much as they need to be represented, then you must treat us as professionals also.

We are not employees of the state; as independent contractors we will set our own rates with the most likely consequence being claimant's right to an interpreter will go unfulfilled.

I understand that the insurance lobby is behind this push, one of the richest industries in the world going after the least expensive professional, by far, in the room during a deposition.

California has a government under Democratic control that is apparently and shamelessly working for the 1% and squeezing every drop from the weakest links: the injured worker and the interpreter who gives him or her ear and a voice at the table.

Shame on you.

Ace Interpreting

May 5, 2015

Applicant Attorneys should have the ability to chose their interpreter for depositions, WCAB, med-legal appointments and treatment. The attorneys have a closer professional relationship with the local interpreting agencies. They know that the local interpreting agencies will send certified interpreters. The agencies know the interpreters as well. They know who to send where. Relationships are important for providing quality service.

The fee that the interpreter gets needs to cover their expenses. Standard of living cost has increased a great deal. In other words, inflation. \$7.50 increase is well below that. It'll be very difficult for the interpreter to make a living. Agencies won't even survive.

Violeta Tidwell
Certified Court Interpreter

May 5, 2015

I am a Certified Court/Medical Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a "half day" as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having "hearing officer" an "adjuster" or a "physician" certify an interpreter on the spot after "three [unsuccessful] attempts" are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to "determine the interpreter

present has sufficient skills to be provisionally qualified to interpret in the required language”?
What language expert will the physician have at his/her disposal to ensure those skills?

- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.
As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Patricia Beer
Certified Medial Interpreter

May 5, 2015

I do not believe it is fair for a non-Spanish speaking interpreter to be able to charge so much more than Spanish speaking interpreters.

We haven't really had a raise for many many years. And the cost of living has gone up.

Agencies should be forced to call ALL certified interpreters before they are allowed to call a non-certified interpreter, and it should be monitored that they do comply.
This is our livelihood and it isn't fair for us, or for the patients that need a reliable interpreter to have a non-certified interpreter interpret for them, just so the insurance company and the agencies can earn more money.
We should be able to charge for mileage to all agencies.

Maria Bogue
CMI-Spanish

May 5, 2015

I highly object to the proposed regulations in regards to the Interpreter Fee Schedule.

I believe there is a certification double standard: although there is emphasis on certification of interpreters in the proposed text, the requirement only applies to independent Language Service Providers, but NOT to the insurance companies and the interpreting agencies that THEY use. I believe this will cause a massive displacement of certified professionals by unqualified 'interpreters' used by the claims adjusters.

* Section 9932 (a)(3) - again, the claims administrators can send a non-certified interpreter as long as THEY authorize it. This is already happening frequently due to the language of SB863, but the proposed regulations will give carte blanche for adjusters to do it systematically. The proposed regulations have completely stripped Applicant Attorneys of the ability to choose their interpreter for depositions, med-legal appointments and treatment.

Liability, liability, liability! If any kind of issue arises and the interpreter becomes part of a disagreement, how will it be handled if the "interpreter" is NOT certified?
Would a non-certified "qualified" interpreter carry an Errors and Omissions insurance policy??

In order to become certified, we have to carry the cost of certification. We also have to carry the cost of re-certification, which means we are paying for workshops, conferences etc. that we attend to earn our Continuing Education Units. Our professional fees are commensurate with our education and experience.

It is my belief that those of us who are Certified Interpreters working as Independent Contractors are typically freelancers. We set our own rates and come to agreements with the agencies that hire us. Our rates reflect the level of experience and education we have. We cannot allow an "outside party" like an insurance claims adjuster or administrator to step in and decide what our agreement should be when we are hired by a Language Service Provider. This is between us, the interpreters, and the entity hiring us.

The existing draft language needs to be modified into a more sensible and fair set of regulations, respecting the value for all parties of using a professional Certified Interpreter who also carries an Errors and Omissions insurance policy.

I believe that in order to maintain and live up to the Standard of Care for professional Certified Interpreters, we must:

Insist on Certified Interpreters for Legal and Med-Legal settings. We cannot allow claims adjusters and other laypersons (i.e. not part of the professional language service industry) to 'provisionally certify' anyone unilaterally, nor can we allow them to set our rates.

Exhaust ALL resources in locating a Certified Interpreter before using someone who is not certified, not properly insured, or who does not have the proper experience for the assignment.

Preserve the 2-hour minimum for all Medical and Med-Legal appointments

Preserve the right for the party producing the witness to choose their interpreting service in order to keep the legal process neutral and fair, and the quality high

Support the many Language Service Providers (LSPs) who comply with our California certification regulations and who provide jobs to professional interpreters statewide. We must keep them in business; it will benefit all parties involved.

Carmen A. V. Patel, J.D.
California Certified Court Interpreter # 900054

May 5, 2015

1. These regulations will result in the Limited-English worker not receiving due process of the law because the services of a provisionally certified interpreter are inadequate to enable the worker to be placed in the same position as an English-speaker. I assure you that the Limited-English workers, the administrative judges, and the attorneys and doctors will be strongly protesting the inadequate quality of non-certified interpreters if these proposed regulations are implemented.

· Section 9931(c) indicates that a provisionally certified interpreter may be used if a claims administrator (or others) cannot obtain the services of a certified interpreter after three tries. This provision creates a significant loophole that enables the easy use of non-certified interpreters. Certified interpreters must be capable of rendering an interpretation that exactly reflects the original speech, sometimes at a pace exceeding 200 words per minute, with a wide breadth of vocabulary, and without paraphrasing, omitting, or adding anything. The certification exams test this proficiency. For example, the certification exam for court interpreters certified by the Judicial Council of California Administrative Office of the Courts requires an 80% score on a written exam of language proficiency, court-related terms and usage, and ethics; and a 70% score on an oral exam that tests simultaneous interpretation skills at a minimum of 120 words per minute, consecutive interpretation requiring the repetition of passages containing up to 50 words in both languages, and sight translation of documents. In addition, these certified interpreters must take a mandatory orientation course and a mandatory ethics course, and every two years must complete 30 hours of continuing education (half of these hours led by instructors beyond self-study) and 40 legal interpretation assignments. These requirements can be found at <http://www.courts.ca.gov/documents/CIP-Info-Packet.pdf> , at <https://www.prometric.com/en-us/clients/California/Pages/courtintwritten.aspx> and at <https://www.prometric.com/en-us/clients/California/Pages/Bilingual-Interpreter-Exams.aspx> . Common errors in the exam which show the high level of proficiency required can be found at <http://www.courts.ca.gov/documents/oral-commonerrors.pdf> .

2. Furthermore, the inadequate fees will result in the exodus of certified interpreters to other areas of interpretation where they can earn a living wage.

· Sections 9937(B)(e) and 9938(c) permits, among other things, an agreement between a claims administrator and an interpreting agency for fees that exceed the amount set forth in the proposed regulations. In reality, a claims administrator would be seeking the least costly option. Interpreting agencies are crucial in the facilitation of interpreters and must be able to pay a true market rate for certified interpreters that enables them to obtain these services as well as to leave a small margin of profit for their business. As an experienced certified legal interpreter who has the option of more than one assignment daily, I can assure you that I would focus on many other

interpretation opportunities if I were unable to earn a living wage by accepting workers compensation assignments as proposed under these regulations.

Laura Reynolds
Vice President
Communications Workers of America District 9

May 5, 2015

I write to voice our strong opposition to the recommended changes in the proposed fee structure for individuals providing live language interpretation during Workers Compensation proceedings.

I am the District 9 Vice President of CWA. We represent hundreds of interpreter members through our affiliates, including the Interpreters Guild of America (IGA), a unit of San Francisco-based Pacific Media Workers Guild, CWA Local 39521. Pursuant to SB863, the Workers Compensation Reform Bill, the Department of Industrial Relations, Workers Compensation Division, was given the task of reducing costs in the workers' compensation system.

We in CWA support this goal, but not at the price of damaging the interests of injured workers and our members who provide the vital services necessary to make the Workers' Comp system function for persons of limited English proficiency.

The Department recently issued a proposed fee schedule which:

*Negatively impacts the quality of interpreting services to injured workers in that it provides for doctors and hearing officers to provisionally qualify nonprofessionals to serve as interpreters. Research has proven without doubt that relying on nonprofessionals introduces unacceptable levels of inaccuracy into official cases.

*Sets fees for freelancer services and removes the existing "or market rate" language from the fee schedule. Quality service demands fair reimbursement, and the proposed fees fall well below the fairness standard.

*Dictates what an interpreter can charge for hearings, depositions and medical proceedings.

*Dictates impractical working conditions, such as by extending the hours that interpreters work.

*Takes away mileage and travel time compensation.

The fee schedule revisions proposed directly affect all of the interpreter members of IGA and Local 39521. All told these changes affect

approximately 3,000 or more interpreters of all languages.

The DIR cost-cutting proposals would infringe on our members' ability to earn a fair living as independent contractors and would impose unfair changes in working conditions.

The fee schedule also fails to account for the extent to which Language Services Agencies function in the system and makes no provision for agency mark-ups.

CWA wishes to be on record in opposition to the proposed fee revisions as drafted. We stand prepared to work collaboratively with agency staff and others in order to achieve the laudable goal of saving public funds while at the same time preserving quality services and fair treatment of working Californians and their families.

We look forward to further dialogue on the important matters raised by the agency's draft revisions.

S. James Tsui
SJT & Associates

May 5, 2015

Dear DWC Forum,

1. Re 9937

For State certified Chinese interpreters, they bill more and are paid more in civil cases. For WC hearing and depo jobs, they will have to bill less than \$240 for the agency to make a profit to cover the cost of billing, running an office and often, to pay the interpreter in advance. I predict a lot of State certified interpreters will not take WC related jobs as a priority. Interpreters will cancel the assignments once they get a better paying job, which is highly likely.

2. Re 9935(b)

This contradicts with LC 4620 which authorizes the use of interpreters and mandate payment of the bill. It does not specify who is to procure those services. However, since it says that the expenses can be incurred by "any party", applicant is authorized to designate the interpreter. Also, Section (d) of that statute says that "upon request of the injured employee, the carrier shall pay the costs of the services.

This obviously confirms that the Applicant chooses the interpreter.

3. Re 9937 (e) and 9938 (c)

These proposed fees are really not for interpreters, are they? Agencies will have to set up another fee schedules for the interpreters. It seems to be DWC is hiding its head in the sand.

3. I know non-medically certified individuals getting applicant medical assignments, AME and PQME assignments. They are assigned by agencies whom the adjusters favor. These said agencies use non-medically certified interpreters because these interpreters charge the agencies much less than certified interpreters. Applicant doctors are strict with the certification to avoid their reports being deemed invalid or challenged, but AMEs, PQMEs and defense PTPs hardly check the interpreters' certification because they know it is the claims examiner who arrange the interpreters.

5. Re 9939 Min Time Period Fees

Regardless the min 2 hours or the min 1 hour, when does the clock start? We know for a fact that for both private insurance doctors and WC doctors, it is not uncommon that the wait could be one hour to hour and a half. For some WC MRI facilities, the wait could be 2-3 hours.

6. Re 9939 (a) and (b)

What is the difference between the "medical treatment appointments" in (a) and the "medical treatment appointments in (b). I think it needs clarification.

7. Re 9935

Who is responsible for arranging interpreter for C&R reading?

Who is responsible for arranging interpreter for depo transcript reading at the AA's office?

For medical appointments, the general practice has been the interpreter informs the agency of an applicant's subsequent PR2, MRI, EMG, physical, chiro and acupuncture treatments. Is the claims examiner going to assume the role of an agency?

Angel J Ortiz Jr

May 5, 2015

I would like to comment on the proposed Interpreter Regulations and Fee Schedule Chapter 4.5. Division of Workers' Compensation Subchapter 1. Administrative Director—Administrative Rules §9930. Definitions.

(j) "Provisionally certified interpreter for hearings and depositions" means an individual who a hearing officer has determined is qualified to perform interpreter services at a hearing or deposition, who has met all the requirements set forth in section 9931.

This provision gives the hearing officer discretion he/she should not have due to his/her inability to judge about an interpreter's qualifications. All the requirements set forth in section 9931 are designed to give the hearing officer authority he/she should not have, as this would degrade the accuracy of interpreting, which would place the injured worker at a disadvantage vis-a-vis the insurance company.

(k) "Provisionally certified interpreter for medical treatment appointments and medical-legal exams" means an individual who a physician has determined is qualified to perform interpreter services at a medical treatment appointment or medical-legal exam, who has met all the requirements set forth in section 9932.

This provision is even worse than provision (j) because it leaves the injured worker unprotected from arbitrary assessments made by the insurance company's medical or other representatives. It likewise places the hearing officer, and the insurance company's physician, in a position of authority he/she is not qualified to exercise because he/she does not have qualifications to judge on language proficiency by the provisionally certified interpreter.

Both above provisions appear to be designed to place insurance company's interests above those of the injured worker, whose rights and wellbeing are the crux of this entire legislation. Your proposed rules should be designed with the purpose of objectivity; however, as currently conceived and presented, they seem to be taking sides with the insurance companies. Provisionally certified interpreter for hearings and depositions and provisionally certified interpreter for medical treatment appointments and medical legal-exams should not be contemplated, ever, because this degrades the level of service we are supposed to be rendering injured workers, and because it places professionally certified interpreters at the whim of

insurance companies and the hearing officer. I suggest all references to “provisionally certified interpreter,” wherever they appear should be stricken out.

§9931, §9932

(c) “Cannot be present” as used in this section should be stricken off these regulations. This again places the hearing officer and the insurance companies in a position where they can arbitrarily rule out professionally certified interpreters.

§9933.

The above comments made for 9931 and 9932 apply here.

§ 9934. Events Qualifying for Interpreter Services.

(3) A comprehensive medical-legal evaluation as defined in subdivision (c) of Section 9793, a follow-up medical-legal evaluation as defined in subdivision (g) of Section 9793, or a supplemental medical-legal evaluation as defined in subdivision (m) 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.

The above underlined clause should be changed to require payment for interpreting services. Again, these entire regulations seem written to favor insurance companies, leaving injured workers and professional certified interpreters at the whim of regulators and insurance companies. This whole thing borders on illegality. As a citizen of the State of California and the United States of America, I expect that WORKERS COMPENSATION legislation should continue to serve the interests of injured workers and not become unduly influenced by insurance companies interests. The Administrative Director should please see to it that this original philosophy be maintained and strengthened, fending off insurance companies profit motives which always tend to weaken this law to favor their own interests.

§9935. Selection of Interpreter; Duty to Notify of Selection; Duty to Assure Presence of Interpreter.

(b) At medical treatment appointments and medical-legal exams the claims administrator is responsible for arranging for the presence of the interpreter.

This provision leaves the injured worker at the whim of the claims administrator. This should be stricken out. The State of California should continue to rely of the competence and professionalism of medical doctors, and the need of injured workers, for arranging for the presence of interpreters.

(c) At medical treatment appointments, the following rules shall apply:

(1) If interpreter services are ancillary services provided under the employer’s Medical Provider Network, the injured worker may select either an interpreter services provider listed or if interpreters are individually listed, the interpreter to be used, and must notify the claims administrator in sufficient time to make arrangements to provide for the presence of the interpreter.

(2) If interpreter services are an ancillary service of the employer’s Medical Provider Network but there are no interpreters that proficiently speak or understand the language spoken by the injured worker, the injured worker may select any interpreter who meets the qualifications of this section, and is responsible for notifying the claims administrator in sufficient time to make arrangements to provide for the presence of the interpreter.

(3) If interpreter services are not an ancillary service of the employer’s Medical Provider Network, or if the treating physician is not within a Medical Provider Network, the injured worker may select any interpreter who meets the qualifications of this section, and is responsible

for notifying the claims administrator in sufficient time to make arrangements to provide for the presence of the interpreter.

(1), (2) and (3) above should be stricken out of this regulation. Injured workers by definition are in need of help. The Division of Workers Compensation's duty is to help these workers out so they can regain good health and go back to work. Injured workers also lack the wherewithal to find interpreters, no matter the lists you might supply. Therefore "We the people" cannot expect them, while they are injured, to also go out and find an interpreter. This task should be left where it belongs: at doctor's offices, and at attorneys offices.

§9936. Notice of Right to Interpreter.

(a) The notice of hearing, deposition, medical-legal exam, or other setting shall include a statement explaining the right to have a qualified interpreter present if the injured worker does not proficiently speak or understand the English language. Where a party is designated to serve a notice, it shall be the responsibility of that party to include this statement in the notice.

(b) It shall be the obligation of the party or individual needing interpreter services to communicate the need for an interpreter to the claims administrator as soon as the need becomes known.

At the risk of being repetitive I want to emphasize that the attending physician or attorney should decide whether or not an interpreter is required.

§9937. Fee Schedule for Interpreters at Hearings and Depositions.

(A) For Spanish language certified interpreter for hearings and depositions: \$210 for each half-day of service and \$388 for each full-day of service.

(B) For a certified interpreter for hearings and depositions in all languages other than Spanish: \$240 for each half-day of service, and \$418 for each full-day of service.

The hourly rate range resulting from the above paragraphs (A) and (B) is from \$48.50 per hour for a full day to \$60.00 per hour for half day.

To assess the above proposed rates please consider that a plumber makes 70.00 per hour, an electrician \$80 to \$118 per hour. How could the State of California, without being unfair and without disparaging the well earned rates of these stated professions, expect to pay professional certified interpreters less than a plumber or an electrician? Interpreters went to college, some have masters degrees, all have passed certification exams, etc. etc. Please do not insult my intelligence and my experience in these businesses. Just consider that the US Congress is considering minimum wage at \$12.00 an hour. The Administrative Director should consider that wages in the USA are established by market forces, which is a very healthy way of arriving a prevalent rates. Please respect the market and let Professional Interpreters set their rates.

(1) For Spanish language provisionally certified interpreters for hearings and depositions: \$103 for each half-day of service and \$187 for each full-day of service.

(2) For provisionally certified interpreter for hearings and depositions in all languages other than Spanish: \$133 for each half-day of service and \$217 for each full-day of service.

The above regulation would set hourly interpreter rates at a range between \$23.375 per hour to \$33.125 per hour. Does the Administrative Director consider these rates appropriate for interpreter services?

Again, I insist that interpreters and the market place should set rates. A democratic system of government, like the one we enjoy in the United States of America does not "dictate" professional hourly rates; they are set by market forces and competition.

(e) Nothing in this section precludes an agreement for payment of interpreter services, made between the interpreter or agency for interpreting services and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section.

As stated in the above clause (c) I suggest that the Administrative Director direct his/her people to strike out of this proposed regulation any and all language dealing with professional interpreter fees. The fact that there is an Official Medical Fee Schedule, of which in my opinion there should be none, because it interferes and distorts prevalent doctors' fees, should not be a reason for attempting to impose Interpreter Fees. While doctors have offices where patients come to be seen, interpreters must travel to those offices. Please do away with OFMS and do not impose arbitrary Interpreter Fees. Let market forces determine those fees. Your proposed regulation would distort interpreters practices and, if imposed, would decimate this profession by the resulting exodus of good interpreters and the advent of mediocre, low paid ones. This would open up Workers Compensation to liability caused by inaccurate interpreting leading to erroneous diagnosis.

§9938. Fee Schedule for Interpreters at Medical Treatment Appointments and Medical- Legal Exams.

(1) For Spanish language certified interpreters for medical treatment appointments and medical-legal exams: \$52.50 per hour.

(2) For certified language interpreters for medical treatment appointments and medical-legal exams interpreters in all languages other than Spanish: \$82.50 per hour.

(3) For Spanish language provisionally certified interpreters for medical treatment appointments and medical-legal exams: \$25.75 per hour.

(4) For provisionally certified medical treatment appointments and medical-legal exams interpreters in all languages other than Spanish: \$33.25 per hour.

The proposed rates for interpreting services stated in (1, 2, 3 and 4) above are a glaring evidence of the ludicrousness of this proposed regulation. As stated above please strike out all language dealing with professional interpreter rates and let the market place set them. Currently, and for the foreseeable past, rates have prevailed at a reasonable level. This should constitute a datum for the present.

(c) Nothing in this section precludes an agreement for payment of interpreter services, made between a qualified interpreter or agency for interpreting services and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section.

Again, the above clause (c) makes mute any proposed regulation on professional interpreter rates. The Administrative Director should direct deletion of any regulation on interpreter rates.

Gloria Bentson
Certified Court Interpreter

May 5, 2015

To the DIR- Comments opposing fee schedule for interpreters

I am a Certified Court Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a "half day" as 3.5 hours in Deposition or Arbitration settings. These morning proceedings usually begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it

IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.

- Regarding lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than for other languages is plain discrimination.
- Having a “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession! Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between [sellers](#) and [consumers](#), in which the laws and forces of [supply and demand](#) are free from any intervention by a [government](#), price-setting monopoly, or other authority.” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Mary Lee Behar
Certified Court Interpreter

May 5, 2015

I am a Certified Court Interpreter and as such I do a lot of worker's compensation med-legal and legal appointments. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. My colleague Linda Zamora drafted this and since I

am a mother of two I will just echo her comments which I have read and feel represent my stance on this legislation. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having a “hearing officer,” an “adjuster,” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
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- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a

highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

John McCandless
Certified Court Reporter

May 5, 2015

I'm a court certified spanish interpreter, #300688. If this new fee schedual is implemented I will no longer be able to interpret in worker's comp depos, it would cut my fees by about 1/2 after the agency takes it's share.

Thank you

Richard P. Horevitz. PhD., ABP, QME

May 5, 2015

Board Certified in Clinical Psychology, American Board of Professional Psychology Fellow,
American Psychological Association Fellow, American Academy of Clinical Psychology
Licensed California Psychologist # PSY 21981

Associate Adjunct Professor of Psychology, University of Illinois Chicago, Retired

Assistant Clinical Professor of Psychiatry, University of Illinois Chicago School of Medicine,
Retired

Lecturer in Basic Neurosciences, Department of Neurology, University of Illinois Chicago
School of Medicine, Retired

Please find the attached letter of reconsidering in behalf of Dr. Richard Horevitz PhD.

Respectfully yours with sincere gratitude,

- JORGE VELAZQUEZ LVN - Supervisor Psychology Department

Paramount Physicians Health Center, Inc.

- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. "A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority." Wikipedia.
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"one hour guarantee" assignment.

- The exclusion of a "service fee" for Language Service Provider agencies. As an entity that provides a service, a "service fee" must be added to the proposed fees.

As a professional psychologist who very much cares about the integrity of work provided in Workers' Compensation Evaluations, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Helen S. Ruiz

May 5, 2015

This proposed fee schedule will certainly attract shoddy service, sloppy and erroneous interpreting, unprofessional conduct and all that goes with cheap services. It will NOT save anyone money but will increase the cost of litigation for failure to attract the correct attitude and pride of rendering a professional job. Certification (not an easy credential to obtain) will become meaningless.

Market rate as defined in Title 8, California Code of Regulations 9793. (1) is important to retain as it applies to agencies and all service providers that pride themselves in "saving the day" for insurance companies, adjusters, and attorneys when their "preferred vendors" fail to send the appropriate interpreter or sometimes ANY interpreter at the requested day and time. Interpreting agencies will not be financially able to provide the excellent and very necessary service for which they are known during these critical moments.

We, the agencies, will certainly close our doors because these proposed fees are not practical, feasible nor reasonable for all the labor spent in obtaining the best certified interpreter for specified time and area requested. Some jobs take hours, days and even weeks to obtain the best available certified interpreter. Our service has been existence for over 30 years and our reputation is well known for the excellent service we provide. If our reasonable market rate is eliminated, we have no other recourse but to close down.

Retention of "Market Rate " as defined in Title 8, California Code of Regulations 9793. (1) is strongly urged as a practical solution to this proposed impractical fee schedule. As it stands now, it is blatantly biased in favor of insurance companies. A reconsideration of these unworkable fees for interpreters and agencies is strongly urged because if they are implemented as stated this will certainly bring chaos and the worst of working conditions for all involved.

I am a Certified Court/Medical Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
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- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about this profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST

importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Carolyn Bouchard

May 5, 2015

I am a certified Spanish interpreter and I have been following the implementation of SB863 and all activities related to it since its implementation. It is my belief that this draft of the interpreter fee schedule is nothing less but another atrocity, an attack against my profession and yet again another way to search for profit for large corporations who do not even belong to the State of California. While action is taken on based of findings from heavily biased figures presented by entities that do not partake on the daily activities which encompass the effective care of the injured worker, it is further aggravated by obvious financial interests of parties who are not the main reason for the existence or Worker's Compensation: the injured workers, nor of those who provide health services, or of what is also now called "ancillary" services.

In direct reference to this draft, which I absolutely oppose, I must highlight the following:

1. Should the use of provisionally certified interpreters become necessary, as stipulated in Section 9932, the examiner, just as the hearing Officer in Section 9931, should establish qualification and basis of such qualification.
2. The languages for which provisionally certified interpretation should only be used in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40.

If this condition is valid for hearings, it should have the same validity for medical legal evaluations since the level of expertise of "provisionally certified" interpreters has proven to be substandard, lacking any sophistication to interpret successfully in complex medical situations.

This practice, of the use under qualified bilingual speakers, so far, has become overused and done without any due diligence in finding a certified interpreter, who, instead, has proven to have the adequate vocabulary and skills required to adequately and precisely convey true and coherent meaning. I have personally witnessed such practice by being present for medical evaluations as a certified interpreter and finding non certified interpreters appear, "approved by the adjuster" for such event in behalf of agencies who never questioned or tested their qualifications, only to see myself dismissed. As an aggravation, there is no recourse to denounce such actions.

3. If interpretation services are to be included in MPNs, then interpreters should be allowed to join MPNs individually, instead of being under the command of third parties or "agencies" which are favored by the insurance provider and the selection of such interpreter should follow equal practice as for the selection of a Medical Evaluator. The use of many of these "agencies" has not only proven an ongoing disregard and unaccountability for the use of non certified interpreters in events that require certification, but also has demonstrated unfairness in compensation, which is clearly reflected in the fees payable to the interpreters. It would be in the best interest of the insurance companies to hire proven certified interpreters directly rather than compensating

middlemen for illicit activities which are detrimental to the entire system. I must add the added aggravation that the vast majority of the interpreting business has been put in the hands of out of state agencies, which not only take money from California, but do not bring it back to our local markets, worsening our state's financial condition.

4. The fees established in this draft, reflect figures that were suggested in 2013, which are absolutely invalid for the economy of 2015 and further on. Most importantly, it is discriminatory to set a lower rate for Spanish speaking interpreters and is also against national origin discrimination stipulations set forth in a Title VII of the Civil Rights Act of 1964. See excerpt below from publication found in <http://www.eeoc.gov/eeoc/publications/fs-nator.cfm>

About National Origin Discrimination

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. Examples of violations covered under Title VII include:

Employment Decisions

Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

Harassment

Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Language

- **Accent discrimination**

An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.

The figures presented are offensive, since these would represent an excessively substantial reduction of income, worsening the livelihood of an already impacted profession. It represents the destruction of small businesses all throughout the state, for a policy which is only benefitting large corporations out of the state of California. These rates are lower than those stipulated by the United States District Court Central District of California, and which only states fees payable directly to the freelance interpreter, without middle parties. With the inclusion of interpretation services, as an ancillary service (which, by definition is not an ancillary service) into MPNs and with the impossibility to join such networks as individuals, our compensation is reduced even further, and by incurring in costs of self employment, it sets our net income at poverty level.

5. With policies such as these, providing services for Worker's Compensation does not make sense, not only for interpreters but to any other providers in the medical field. The highest price being paid by those whose are the reason for the existence of the DWC, the injured workers.

I urge you to reconsider these figures and these proposals, since the benefit is minimal compared to the damage done.

Guillermina Thorlaksson
Certified Interpreter

May 5, 2015

I oppose the proposed Regulations as follows:

There seems to be a certification double standard: there is emphasis on certification of interpreters but it does not seem to apply to insurance companies and the agencies they use. Interpreters should always be certified for all services thus guaranteeing the knowledge, professionalism and unbiased position of the interpreters.

The idea of “temporary certified” by a claims adjuster, an attorney or a doctor is ridiculous. How a monolingual adjuster/attorney/doctor can “temporarily certify” a person as an interpreter if they can not verify the knowledge themselves?

In California one needs to pass written and driving tests to obtain a driver’s license and thus show the knowledge of the rules and regulations and the ability to safely operate a vehicle. Nobody has the authority to “provisionally” issue a driver’s license. The certification for an interpreter verifies the knowledge and ability to perform the duties of an interpreter and those who work as interpreters without that certification have not passed those tests and therefore they lack the knowledge and abilities; using those individuals is an insult to the injured workers and a liability for doctors and lawyers, and ultimately for the insurance companies.

With the language of the Regulations, claims examiners have two loopholes to use non-certified, cheap interpreters:

1. Section 9931 (c) states that claim examiners only have to contact three certified interpreters before they can claim no one is available, whereas in the previous Regulations required that they exhaust all certified ones before using the non-certified one. Who and how will this be monitored and enforced?
2. Section 9932(a)(3) authorizes claims examiners to send a non-certified if they authorize it. With this, adjusters can always use their preferred vendors with non-certified, cheap interpreters and always bypass certified interpreters.

Section 9935 (a) affects the ability of Applicant Attorneys to choose their own interpreters for med-legal evaluations and medical treatment appointments. Applicant Attorneys should have the right to choose their own interpreters in those situations as they use local, certified interpreters

who they know and trust and who comply with the certification mandate. Again, that opens the door for the claims examiners to use their own providers, many times large corporations from out of state who use non-certified and even non-qualified interpreters.

The rate proposed for certified interpreters is a large reduction of our current market rate. The proposed fees are completely out of touch with inflation and geographical differences of cost of living.

I advocate for the following:

- Preservation of the 2-hour minimum for all Medical and Med-Legal appointments.
- The right of the party producing the witness to choose their interpreting service in order to keep the legal process neutral and the quality of services high.
- The exclusive use of certified interpreters at all Medical and Med-Legal appointments and eliminate the ability of adjusters and other laypersons to be able to “provisionally certify” anyone unilaterally.
- A professional fee for interpreter services commensurate with the level of education and skill required of interpreters: \$150 for 2 hour minimum for med-legal evaluations and medical treatment appointments; \$240 for half day/ \$400 for full day for hearings (half day 3.5 hours).

Stephanie Wohl
Certified Spanish Interpreter

May 5, 2015

A few things come to mind when reading about the new rate schedule for interpreters by someone who is not our employer. We do not receive any type of benefit such as health insurance, dental insurance, vacation pay, sick pay, a retirement plan and things that an employee is normally compensated for by his or her employer. This means that we are independent contractors in most cases, and as independent contractors we have the right to set our own rates. As independent contractors we have to be assured that we will be compensated for our time and when hired to do a job we put aside that period of time and give up all other possibility of work and therefore must be assured of earning a minimum amount. Another issue that is so absurd is that it can ever be acceptable to use someone who is not certified or a registered interpreter just as the Court would not allow a person who wasn't an attorney to represent a client just because he grew up watching Law and Order all his life. It would never happen. Passing the State and Federal Exams is no easy task, in fact it seems that a higher percentage of people pass the bar than pass the Court Certification test for Interpreters. We are required to meet a certain standard and if we do not, that means we are not qualified to perform that job. Doctors have to pass a certain standard, firefighters have to be trained in an appropriate manner, each profession has its requirements and should be respected. I don't believe an insurance adjuster would appreciate and think it appropriate should their company hire someone with no training or

experience because they could pay them less after they themselves trained and worked hard to be in the position that they are in. The law requires that Interpreters across the board be Certified, be that as a Medical, Administrative Hearing or Court Interpreter.

I believe our profession is not being taken seriously or respected. Grave consequences can occur when we skip over the rules to save a few bucks. Peoples futures are at stake, their health, their well being, as well as their freedom. It also goes both ways when a qualified interpreter is not utilized the insurance companies can end up not catching cases of fraud, or getting a true and honest picture of a claimants condition or the circumstances surrounding and leading up to his claim. As they say you get what you pay for. The cost of living is going up everyday, and instead of a these professionals receiving an increase, they are being asked to take a 50% cut, that is pretty outrageous.

I ask each one of you who helped to write this new rate proposal, would you be willing to accept a 50% pay cut?

Please give our profession the respect it deserves as well as the compensation we have fought and worked hard to obtain.

Gabriela Sosa

May 5, 2015

I am a State of California and Federal Court Certified Spanish Interpreter. I recently became aware of the proposed fee schedule and I do not agree with them. Our skills are extremely difficult and we had to undergo years of study to become the professionals that we are. We are lucky to get a full day of work per day and most days are half days. Living in Southern California on \$210 per day would make it impossible for me to pay my rent and bills - much less have any left over for retirement saving or medical emergencies.

I am adding what Linda Zamora so clearly stated in her email since I could not express it any better.

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
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- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three

certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?

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- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
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- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

Thank you for taking the time to read our views on this matter.

Ana Sevilla
Certified Court Interpreter

May 5, 2015

I am a Certified Court interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
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- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
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- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees. If you are going to set a fee schedule for interpreter and not a market rate, then you have to be specific about the service fee that should be separate amount than the fee for the interpreter.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Jackie Foigelman
President

May 5, 2015

We appreciate you establishing a fee schedule to facilitate our invoices being paid with insurance companies and hopefully have less wait time and stop wasting the WCAB's time with unnecessary lien conferences in the future for services that should be paid. We do feel that this new fee schedule will help the industry but NOT at these rates. Furthermore you have excluded Medical & Legal administrative interpreters from Section 9944.

My agency has been in business for over 20 years when the first Article 5.7 was established in 1975.3. The first fee schedule was set at 90.00 per hour with a two hour minimum. This means that in 20 years you feel that 15.00 is enough to raise the minimum fee schedule for interpreters in about 20 years. We sent in our market rate to you for 120.00 per hour with a two hour minimum. This is only 30.00 increase in 20 years. We hope that you reconsider the medical rates for certified medical interpreters.

The deposition rates have been reduced to our market rate and set at 210 up to 3 1/2 hours. We hope that the deposition rate can go up to at least 240.00 or we will struggle to find interpreters to commit to depositions.

The "other than Spanish" interpreters in all languages except maybe Vietnamese will not continue to work in the workers' compensation industry at these rates. They currently charge the agencies MORE than you have allowed for their fees. We propose although our market rate for other languages except Vietnamese is 340.00 half day for legal that you raise it to 300.00 or even 280.00. We will not be able to hire any interpreters at the new drafted rate.

The "other than Spanish" interpreters will not do any medicals at this new drafted proposed rate of 82.50 an hour with a two hour minimum. They charge the same as legal, no hourly and will not work with us at this rate. I hope that you can raise this to the same fee schedule as legal or at least higher the hourly to 120.00 an hour with a two hour minimum.

We are grateful for the WCAB hearing and reading of depositions rates set by you. We have struggled finding a market rate for those and are happy you established them.

The majority of the medical interpreters used for the past 30 years are Medical and are paying their renewals each year. However, they were excluded from the Section 9944 Interpreter Directories which means insurance companies will NOT consider them valid for Section b - Medical treatment and medical legal exams. They will object since they were not included in this section. The new allowed interpreters are only National Board and CCHI.

You are giving the insurance companies the power to use NON-Certified interpreters after only calling 3 interpreters from the list of 3 different bodies of over 1000 interpreters. This allows them to hire unqualified interpreters with no proven educational background to interpret at a medical or medical legal examination. The injured workers life could be harmed by not having the proper interpreter.

Thank you for your time and we pray you consider our information in this email.

Silvia Uribe

May 5, 2015

As a Certified Medical Interpreter CHI # 002488 I would like to express my opinion and suggestions re: the Interpreter Regulations and Fee schedule:

1 - Claim examiners and claim administrators MUST NOT use non-certified interpreters for any reason, at any moment. This opposes Section 9931(c) which suggests that claim examiners may use non-certified interpreters. This proposed section allows for a special interest to manipulate the possible outcome of a medical appointment through the decisions made by the patient due to a faulty interpreting. This manipulation, in the end, could bring important money saving outcomes for insurance companies.

2 - Claims administrators represent the insurance companies. They should not be able to authorize the use of a non-certified interpreter. This could represent a conflict of interest. Attorneys, representing the patient, should be the ones selecting always a certified interpreter to guarantee the accuracy of the interpreting.

Section 9932(a)(3) should be eliminated.

Also, claim adjusters, claim managers or anyone representing insurance companies interests should NOT be able to "provisionally certify" anyone. There are State and National organizations that exist for that purpose.

3 - The 2 hour minimum for all Medical and Medical-Legal appointments should be preserved for certified interpreters. Otherwise, the education, skill and experience level of this professionals is being ignored. It would be awkward to have any other professional, like a doctor, charging the same fee as an medical assistant, or an attorney making the same money an intern makes.

This is about the health of California's residents, not about what's convenient for insurance companies. Our State legislators need to focus on what's important and on why the voters elected them. Those are the same voters who may, in a time of need, rely on a certified interpreter to be able to understand their medical situation so that they can make the decisions that may save their own life.

Nancy Rossenouff

May 4, 2015

Interpreter's name: Nancy Rossenouff

My comments for the DWC forums- for the Interpreter Fee Schedule are as follows:

§9938 (a) (4) I disagree with this section because, as an Spanish Interpreter I will be earning \$25.75 per hour (3) while other non-Spanish interpreters will earn \$33.25 per hour. It does not make sense to me the rate difference based on spoken language. Would you please amend this section reflecting an equal rate for all languages.

§9939 (d) Please clarify why a non-certified interpreter is not entitled to any minimum time period fee.

§9940 (a) (2) Compensation for cancellations at least 24 hours for medical treatment should be the same as cancellation for medical exam per §9940 (a) (1)

Your time is greatly appreciated,

Judit Marin
Certified Medical Interpreter

May 4, 2015

Thank you for the opportunity to submit my comments.

1- Under section b) Certified Interpreter for medical treatment appointments and medical legal exams means an individual who:

Please include the California State Medical Certification. I am an interpreter based in Oakland, CA that holds this certification and I don't see it listed in the Fee Schedule. There are hundreds of us in the State of CA.

CA Certified Medical interpreters are listed on the State Personnel Board webpage at <http://jobs.spb.ca.gov/Interpreterlisting>

2- I am very concern about laypersons (doctors or adjusters), who is most cases are not language specialists, to provisionally certify anyone. How is this done? Do they have a screening process, a language exam? It seems unfair to interpreters who took the time, and money to prepare and take a certification exam. Certified interpreters should be used at all times, at least in Spanish. There is a growing amount of interpreters being certified, specially now that the passing rate of the new certification exams is extremely high (75-80%).

3- Please, have a 2 hr- minimum for medical appointments. Most agencies don't pay mileage, much less travel time, and we think that this is necessary to maintain a level of professionalism in our profession.

Marc Trachtman, LLP

May 4, 2015

My name is Marc Trachtman and I am a partner with the Law Firm of Trachtman and Trachtman, LLP. Our firm has provided services in this industry for over 20 years serving different communities in our area. Throughout the years the Laws under the Workers Compensation system have changed dramatically. Although we appreciate the efforts that are taking place in order to establish rules and regulations to facilitate the use of interpreters in the system, it has come to our attention that with the new proposed changes it would be difficult, if not impossible, to gain access to Language Service Providers Interpreters, due to the new proposed regulations. We count on the use of reliable, certified interpreters that adhere to a code of ethics. Under the new rules proposed, the insurance companies will have full control of the

use of unqualified, non-certified, non-professional individuals that are merely known as “bilingual”. There is no code of ethics and privacy that would need to be followed by these individuals. As a professional law firm we wish to offer our clients with the best, most reliable professionals in the industry. The Workers Comp Insurance Companies wish to strip our clients and ourselves of that level of privacy and service. As stated under Section 9931 (c) the claims administrator has to contact only THREE certified interpreters before said claims administrator can claim that NO CERTIFIED INTERPRETER is available and then send a NON-CERTIFIED INTERPRETER in its place. Furthermore, under the proposed 9932(a)(2) “The physician determines the interpreter present has sufficient skill to be provisionally qualified to interpret in the required language” This is unacceptable, since when does a physician have any qualifications in his medical profession and in his licensing, to have the knowledge, education, qualifications and discernment to determine and deem any individual to be the least or most competent in any field other than what he/she practices, which is medicine. To place the life of injured workers on the hands of individuals with no interpreting qualifications, no certificate, and no proof of educational background to support their knowledge of a second language is appalling. In order to protect the integrity of the process only CERTIFIED INTERPRETERS should be allowed to conduct any type of service in this system.

The proposed Regulations are designed to strip applicant attorneys of any ability to choose our interpreters for Preparation Prior to Deposition, Med-Legal and Treatment appointments. It should be our right and choice to select individuals we have professional relationships with established protocols in order to communicate effectively and with full knowledge and assurance that the strictest standards of confidentiality will be adhered.

It is our prayer that our concerns will be heard and evaluated with utmost care.

Maria E. Greilach
Certified Court Interpreter

May 4, 2015

I am a Certified Court Interpreter proud of my profession.

Our role is very important in society.

Here some important reasons:

In legal situations involving a person who does not speak the native language of that country, an accurate interpretation is vital to prevent misunderstandings between defendants, prosecutors, lawyers, judge and jury. Highly skilled interpreters should be employed to ensure a fair trial.

A court interpreter needs to possess not only a deep understanding of the languages, in which they specialise, but also a certain level of knowledge about the justice system and criminal procedures. It is essential that court interpreters remain impartial and interpret what is being said precisely, without allowing their own personal prejudices or values to seep in.

Please let's not cheapen our profession. We have to maintain the high level of knowledge and skills only a Certified Interpreter can provide. Interpreters should be paid accordingly.

Let's not use non-certified interpreters!!,

We should aim to use certified interpreters for Legal and Med-legal settings, and I am sternly opposed to the allowance of claims adjusters and other laypersons to be able to 'provisionally certify' anyone unilaterally.

I oppose the proposed Fee schedule too!!!

Please consider the facts

Maribel Tossman
Certified Interpreters

May 4, 2015

This proposed interpreter fee leaves a lot to be desired. Many of us submitted our market-rate fees which as you know have been frozen in time for over ten years. The cost of living has increased greatly but our fees have stayed the same. It seems to me the solution to this pesky issue of market-rate from the insurance point of view is to do away with it, delete it, re-write the regulations and reduce our ability to work for a living wage. I personally feel deeply disappointed and I urge you to consider increasing the fees for certified interpreters and others. please reconsider this proposal, as it is I find it unfair and onesided.

Hazel Georgetti

May 4, 2015

I am a certified court interpreter, who has been following closely the developments of the fee schedule for interpreters. I would like to express my opposition to the following points:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters,

EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.

- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.
- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about this profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Araceli Zamora Murphy
Certified Healthcare Interpreter

May 4, 2015

As a Certified Medical Healthcare Interpreter, I'm extremely troubled by resent proposed fees changes. I take my job very seriously, I paid all my fees for training, additional courses for medical terminology, and continued education to maintain my certification active and ensure that I'm fully prepared for each interpreting session by researching material that can make me a better interpreter. I have gotten to this point on a shoestring budget, sacrificing much to make sure that I make myself more employable. However, I must bring the following to your attention and to ask you to please keep certified interpreters employed and patients safe from untrained, potentially dangerous individuals who do not have the proper training and experience to be interpreting.

Please take a moment to review and consider the following:

- * The preservation of the 2-hour minimum for all Medical and Med-Legal appointments
- * The right for the party producing the witness to choose their interpreting service in order to keep the legal process neutral, the quality high, and the hundreds of small, local Language Service Providers (LSPs) who comply with the certification regulations and provide countless jobs to interpreters statewide in business
- * The insistence on certified interpreters for Legal and Med-legal settings, and we are sternly opposed to the allowance of claims adjusters and other laypersons to be able to 'provisionally certify' anyone unilaterally.
- * A professional fee for interpreter services commensurate with the level of education and skill required of Interpreters.

Thank you for your consideration and hope a positive resolution in favor of our profession.

Phyllis Bourne

May 4, 2015

I agree with all the issues brought up, also because we are forced to work with agencies, we need a maximum amount that agencies are allowed to discount from our rates for themselves. I still don't know why aren't we allowed to work and earn directly without the middle man.

Carrie Alfaro

May 4, 2015

We are not making that much money to begin with.... at least not me. If they go thru with this i guess I'm going to have to get a tenant or go live under the bridge. LOL

Khanh Pham, M.S

May 4, 2015

California State Administrative Vietnamese Interpreter

For the best interest of and fairness to injured workers the quality of interpretation services must be guaranteed. The only way to ensure the quality is by hiring professional state certified interpreters. They are professionals whose level of education and language skills were legally certified by the state exam. Therefore, I would like to suggest:

1/ Adjusters cannot have the allowance to use non-certified or provisionally certified interpreters. This will seriously compromise the quality of the interpretation service and will be unfair to both injured workers and certified interpreters.

2/ Adjusters can use the non- or provisional certified interpreters only after exhausting certified ones.

3/ Applicant attorneys can hire local LSP's for certified interpreters. This is fair to injured workers whose medical conditions need to be faithfully reflected in medical doctors'

evaluations and legal depositiond by certified interpreters.

4/ Preservation of the two hour minimum for all medical and med-legal appointments.

5/ Hourly rate needs to match current market rates for certified interpreters. Lower rates would discourage certifieds especially for the threshold ethnic languages.

Linda R. Zamora
Certified Court/Medical Interpreter

May 4, 2015

Thank you for your time in reading my comments. I am a Certified Court/Medical Interpreter. I am writing to express my concerns about the recently published recommended fee schedule for Interpreters. I strongly oppose the following:

- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
- Establishing lower rates for Spanish interpreters. Interpreters of any language go through strenuous schooling and training to obtain their certifications. Making the distinction to pay Spanish interpreters less than other than-Spanish is plain discrimination.
- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
- The proposed fees of \$210 and \$388 do not reflect the current “Federal Court rate” as of January 2015. Those current rates are \$223 and \$412 and, except for non-certified interpreters, EVERY ONE gets the same rate. There is NO distinction nor discrimination between Spanish and other than-Spanish interpreters.
- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.

- The exclusion of mileage and travel time compensation. We live in California. It is mindboggling to understand why it is being proposed that these get eliminated. What factors were taken in consideration to eliminate this language?
- The elimination of a two hour minimum for medical appointments. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of language regarding QME’s, AME’s and IME’s. On average those appointments can take between 3-5 hours. No interpreter will accept only a “one hour guarantee” assignment.
- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about her profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Caterine de Virgilio
Certified Interpreter

May 4, 2015

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- The imposition of a “half day” as 3.5 hours in Deposition or Arbitration settings. These morning proceedings begin at 10am. Afternoon proceedings begin at 2pm, providing interpreter is not requested to arrive early to assist with prep. Having a 3.5 hour would make it IMPOSSIBLE for the interpreter to get a meal and arrive on time to the afternoon deposition. The 3.5 hour half day ONLY works when an interpreter is working at the WCAB.
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- Having “hearing officer” an “adjuster” or a “physician” certify an interpreter on the spot after “three [unsuccessful] attempts” are made to reach a certified interpreter completely undermines the profession. Who will be the regulating body to ensure that indeed three certified interpreters were contacted each and every time? How will a physician be able to “determine the interpreter present has sufficient skills to be provisionally qualified to interpret in the required language”? What language expert will the physician have at his/her disposal to ensure those skills?
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- The exclusion of “market rate” language. We live in a “free country” and have “free market” conditions. “A free market is a market system in which the prices for goods and services are set freely by consent between sellers and consumers, in which the laws and forces of supply and demand are free from any intervention by a government, price-setting monopoly, or other authority.” Wikipedia.
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- The exclusion of a “service fee” for Language Service Provider agencies. As an entity that provides a service, a “service fee” must be added to the proposed fees.

As a professional certified interpreter and one who very much cares about this profession, I urge you to take my comments in consideration to revise the proposed fee schedule. I need to make a living and the current proposal and rules make it extremely difficult if not impossible. I am a highly trained and skilled interpreter. I comply with all my required continuing education courses, certification renewal fees, I provide culturally competent interpretation and MOST importantly, I make sure I bridge the communication gap for the injured worker in an educated, professional, and ethical fashion.

Annette A. Bewley

May 4, 2015

In regards to Interpreter's Fee Schedule, I do not find in your document any area that addresses a cost of living increase. Also you are giving room for dishonest procedures in many other areas.

Do you really want to implement these rules before you fix them???? I am sure that by now you have many comments by other interpreters addressing the many problems, I urge you to postpone adopting these rules and fix them first.

Luis M. Echeverry

May 4, 2015

President

Continental Interpreting Services, Inc.

Subject: Response to Tentative Proposed Interpreter Fee Schedule

I understand that the overall purpose behind SB 863 is to lower the cost of Workers’ Compensation insurance for businesses in California, and thus keeping or increasing jobs here in California. The problem that I see with SB 863 and some of the proposed changes for

interpreting services is that it actually helps many large corporations that provide interpreting services in California but have headquarters outside of California. Empowering corporations outside of California will result in taking jobs away from California workers. Furthermore, it will force many Language Service Providers (LSPs) based in California to close shop because of the classification of interpreting services as ancillary services for treatment appointments in an MPN. By establishing unreasonable rules for LSP's to be able to provide services, only the large corporations, mainly from out-of-State will prosper under these conditions. At a time when California is in need to keep jobs here in California, I feel the DWC should look into ways to reduce costs without compromising California's workforce, especially when these jobs and services can be provided by California based companies.

I also feel that this proposed Fee Schedule for interpreting services is too complex. This is specially so when defining what is a half day and a full day. Interpreters providing services should not be tied to unrealistic standards. Let's take a look at what is defined as a half day according to §9930(e), a half day when appearing for a deposition is defined to be up to 3.5 hours. Let's look closer at how absurd this really is. At least 75% of the depositions in any given day begin at 10:00 am. The depositions that get scheduled for the afternoon start at 1:00 pm or 1:30 pm. If an interpreter is to schedule his or her services for a morning deposition and be expected to remain at the location where that deposition is taking place for up to 3.5 hours, that interpreter would not be able schedule his or her services for an afternoon deposition. This is because when a morning deposition starts at 10:00 am the interpreter is expected to stay up until 1:30 pm, thereby making it impossible for that same interpreter to make an afternoon deposition that starts at 1:00 or 1:30 pm. Not to mention that the interpreter needs to take a lunch break and drive to another location for an afternoon deposition. By setting these illogical definitions as to what makes a half day, a Court Certified Spanish Interpreter (remember the state has stopped certifying Administrative Hearing Interpreters and that small pool of Administrative Hearing Certified interpreters is constantly shrinking) can only do one deposition per day. This means that a certified interpreter can only expect to make what an LSP can afford to pay him or her since the LSP will only be paid \$210 for a deposition. From this \$210 that LSP needs to pay for the man hours required to process that job as well as the overhead involved in running a business including paying taxes, insurance, employee benefits, rent, phones, supplies etc. The amount received by the interpreter could be a little more or a little less depending on the profit margin established by the LSP. The interpreter may only be able to get about \$125 for his services for a day's work. From this \$125 the interpreter will have to pay for their own expenses to provide services, including paying taxes, healthcare, automobile insurance, etc. How can you expect a professional to make a living on these mere wages? How can we continue to attract professionals to become interpreters if they will be forced to make such absurd wages? Not to mention, certified interpreters in Northern California charge a minimum of \$100 per hour with a two hour minimum plus travel and mileage fees. Nobody will be able to afford to hire Certified Interpreters in Northern California at these rates. Interpreters in Northern California will simply refuse Workers' Comp depositions and concentrate on doing only civil depositions for which they have no problems collecting their customary fees.

To eliminate the negative impacts on business and the industry as described above, I feel that the best approach is to set a fair hourly fee with a two-hour minimum requirement. The interpreter would be scheduled for the amount of hours they anticipate for the deposition, medical evaluation or treatment appointment to take place. This way the illogical definition as to what is a half day and a full day can be eliminated and the fee schedule can be simplified.

Thank you for the opportunity to present our comments.

Anonymous

May 4, 2015

I have worked as a medical interpreter for the last 12 years. And not only have I seen the need of providing quality interpretation for those who do not speak English but also, I have built a life style based on my profession. I believe that if the interpreting industry suffers financially, a lot of us medical interpreters who are head of household will suffer as well along with our families. Please do not allow this change to happen so that we may continue working and having a stable job.

Jinn Ree

May 4, 2015

The fee for exotic languages should be sufficient enough per patient compared to Spanish. The exotic languages are not only rare but also one interpreter hardly serve two or more patients at the same time. Not double or triple earnings for those language interpreters.

Sylvia J. Andrade

May 4, 2015

The proposed regulations state that a claimant is permitted to choose his/her own interpreter. As a court interpreter, I am very concerned about this. One of the provisions of our ethics code is that we maintain impartiality. The interpreter should always be a neutral party to the action. I presently have two personal friends who are involved in the workers' comp process. They both require the use of an interpreter. My belief is that the interpreter should be impartial and chosen by an impartial party. With our own agency I could always send someone else but would still benefit some by this. Also, the friends would be asking why I had not been able to help them. I most certainly should not be interpreting for friends in any legal proceedings. Non-certified interpreters would not be aware of any of this need for impartiality.

Esmey Villacreses
California Certified Medical Interpreter

May 4, 2015

Dear Sirs,

This is in response to the proposed Interpreter Fee Schedule. As a Medical State Certified interpreter, I'm very concerned about the following:

First and foremost, the definition of, "Certified interpreter for MEDICALS" neglects to include interpreters certified by the State of California. Also, there is no mention of the Personnel Board's website listing these interpreters.

[\(http://jobs.spb.ca.gov/InterpreterListing/\)](http://jobs.spb.ca.gov/InterpreterListing/)

I can only hope this is an oversight and not a deliberate omission by the department in order to strip thousands of professionals of their certification and ability to make a living. Please include verbiage including Medical State Certified interpreters in the language of the following section:

(b) "*Certified interpreter for medical treatment appointments and medical-legal exams*", means an individual who:

- (1) Has a valid and current Certification Commission for Healthcare Interpreters (CCHI) certification/credential and which specifies the language of the exam, if certifications/credentials from CCHI so indicate.
- (2) Has a valid and current National Board of Certification for Medical Interpreters (National Board) certification/credential and which specifies the language of the exam, if certifications/credentials from the National Board so indicate; or
- (3) Is a certified interpreter for hearings and depositions.

Secondly, the proposed Labor Code emphasizes the requirement of the use of certified interpreters by independent language providers but NOT by the insurance carriers, allowing them to 'provisionally certify' unqualified, cheaper interpreters.

Also, in section 9931(c) a loophole for insurance carriers is being created by allowing them to use non-certified interpreters after only trying 3 certified interpreters. Who will monitor and enforce this?

As it stands, insurance companies already use out of state language providers, such as One Call who, for the most part use unqualified, untrained and unprofessional interpreters who come into medical offices to take the place of qualified interpreters who have gone through the trouble of taking training courses and paying expensive fees in order to pass certification tests. Insurance companies are systematically implementing this 'provisional certification' practice to their advantage and the disadvantage of the injured worker who gets stuck with lower quality interpretation.

Please re-evaluate this language and stop or at least limit the ability of insurance companies to 'provisionally certify' unqualified interpreters. Insurance companies should also be required to

exhaust ALL certified interpreters not just three before using non-certified interpreters. Again, Who will monitor and enforce this?

Furthermore, The proposed regulations have entirely stripped the applicant attorney's right to schedule interpreters for depositions, med/legals and treatment. Previously, the party producing the witness had the choice to request the interpreting service in order to keep the process neutral and fair. What else will the insurance companies control? Will they decide the claimant 'speaks enough English' and forgo the interpreter? It's obvious the applicant will get the short end of the stick if this process is allowed to take place.

Why take away the two-hour minimum from treatment appointments; is a med-legal interpretation somehow more important or more valuable? The only goal of this misguided and unfair proposed regulation will do is allow the insurance companies to use uncertified, unqualified interpreters of their choosing for these appointments; again, to the detriment of the claimant's process to have to a qualified interpreter present.

Finally, the proposed fees are entirely out of touch with inflation and with geographical differences of cost-of-living. Yes, with this proposed change Spanish Med/Legal fees would increase by \$7.00 (first increase in 30 yrs!) But in general the billable rates are less than what certified interpreters charge currently in some areas. I would ask that you please review the fee amounts and change them to reflect at least market values.

It would be to the industry's benefit for the department to remain impartial in these proceedings. Unfortunately, this draft only reflects an unfair bias towards the insurance companies agenda. An agenda that will have a deep and negative impact on the injured worker and the language providers that serve them.

Please modify the existing draft to reflect all of the changes mentioned above.

Lawrence I. Stern
Mallery & Stern, A Professional Corporation

May 4, 2015

Let me ask this hypothetical question...”assuming you are charged with a first degree murder and you have the choice between a certified interpreter and one who is not- who would you select and why?”

When my clients go to the doctor or are testifying in court, this is no different that if they were on trial for their life...why...it is their life...maybe not incarceration but certainly their economic future and medical well being. Would anyone with any sanity select a “non” certified interpreter over a certified interpreter if your financial or medical well being depended on it?

Furthermore, English or Spanish is spoken with many dialects...again...if you were an English speaker from California and needed translation would you prefer someone from California or someone from Ireland? They both speak English don't they? The idioms in Spanish differ from country to country and if we can't get individuals who understand and can speak the idiom and dialect of our clients we are doing them a great disservice and perhaps dooming their financial future and medical benefits.

Rosa Barrera Nunez
Nunez and Barrera Interpreters

May 4, 2015

To Whom It May Concern,

I have read and reviewed the proposed regulations in regards to the Interpreter Fee Schedule. I highly object and urge the DIR to go back to the drawing board. The Statue clearly states that all services provided by an interpreter must be done by a CERTIFIED interpreter. Why does the DIR feel the need to dumb down the system? Giving a tiered rate for Certified and provisionally certified interpreters only gives the carriers and excuse to utilize the cheaper of the ladder. Not to mention that they only have to attempt THREE certified interpreters before they can proceed to the use of a provisionally certified; yet the statue states that they must exhaust the entire certified list! Furthermore why have the Medical State Certified Interpreters listed on the SBP website removed from the fee schedule? The proposed regulations have completely omitted them from CCR 9930 (b) and only mention legal interpreters NBCMI and CCHI certified interpreters, are you trying to lessen the pool?

Moreover, LC 5811 states that the party producing the witness is entitled to the arrangement of the interpreter. Yet the proposed regulations now state that the carrier has the full responsibility of providing the interpreter for all settings, why is that? Most importantly the rates proposed as a "maximum" is APPAULING. How is it that in the 20 plus years interpreters have had a minimum of \$45 per hour with a two hour minimum yet the DIR feels that a \$7 dollar increase is just? Why should the minimum for medical treatment be reduced to an hour? What is the justification for that?

My agency has worked extremely hard to prove our market rate for legal and medical settings which are well over the rates you are proposing. The rates and language proposed is completely biased and in favor of the carrier.

Yvonne Martin

May 4, 2015

I have already experienced the negative effects of these measures. Some of my patients now receive interpretation services from individuals who not only lack certification, but also qualifications.

Just as doctors, evaluators, therapists, etc, require certification by law to provide treatment, so should an interpreter. An unqualified and uncertified interpreter does not facilitate proper

communication, and in turn may cause severe consequences on a patient's treatment, recovery, and health in general.

I would also like to add that some of our colleagues, who only have medical/healthcare certification are hired by local and smaller agencies to provide legal interpretation at the Board, and this, too, is completely unlawful, unprofessional and unethical. Medical providers need to take partial responsibility and demand verification of certification from an interpreter before providing any type of service to an injured worker.

Lastly, the insurance company and interpretation agency should be held liable and fined for hiring unqualified/uncertified interpreters.

Richard Schneider
President, RSE Global Translation & Interpretation

May 4, 2015

To whom it may concern

Our service has been providing language services to the legal profession since 1980. We once served the workers compensation industry, however, due to the lack of concern about clear understanding resulting from language interpreting services delivered by certified interpreters and the focus on the bottom line only we have virtually ceased providing services in that industry.

Regardless of the fact that accurate interpreting rendered by certified interpreters results in a process that shortens the duration of an open claim, insurance carriers have attempted to unite in making sure that reasonable rates for services rendered by certified interpreters are not implemented. Therefore, the door has opened to those who focus on charging low rates by supplying bilingual people who are neither sufficiently prepared nor have the credentials to render accurate services.

We propose rates which reflect a respect and recognition of the value of the Certified Language Interpreting professional.

We propose payment as follows:

Medical examinations (except psychiatric) \$150.00 (0 – 2hours); thereafter \$18.75/15 minutes

Psychiatric exams \$150.00 (0-2 hours); thereafter \$75.00/hour or any portion thereof.

Depositions, hearings \$165.00 (0 – 3 hours) and \$330.00 (3 – 6 hours).

Victor Fridman
Administrative Hearing Interpreter.
State of California Certification #100729

May 4, 2015

The new regulations proposed empower claims adjusters to replace certified interpreters with whoever they choose, and their job is to send the cheapest possible person who can pretend to interpret.

The use of MPN by Insurance Carriers is an unconstitutional way to deny the access to a free market for interpreters and an example of what Pope Francis calls an "Economic Dictatorship."

The extreme low fee for interpreters and the removal of the two hour minimum means that by defunding interpreters the Government of California is denying non English speakers their constitutional right to access the system of Justice. **THIS IS A CONSTITUTIONAL PROBLEM AND A CIVIL RIGHTS ISSUE** which will be fought with the support of the entire Hispanic community.

The Administration of Governor Brown should not act as the extension of the Insurance Lobby.

Momir Memarpuri
MBA, CRTP, CMI, ACB

May 4, 2015

I support the action of advocate to benefit the interpreters's fee.

Charles Penman

May 4, 2015

Please find the written response of Charles Penman Interpreting, Inc.

RE: Proposed Amendments / Fees and requirements for Interpreting Services.

DEPOSITION FEES:

A DEPOSITION is a highly labor intensive legal proceeding where the interpreter is overwhelmed and overloaded by source language information, then compelled to allocate resources and processing capacity in order to form and deliver verbatim a cohesive structure to the target language... Interpreters are committed to excellence. We are dependable and reliable. We expect commensurate consideration from a Fee Schedule at Depositions.

Now, Court Reporting is a very important part of a deposition, certainly no less important than the interpreter.

Court Reporter's Fees

As a general rule Minimum Charge is \$399.00, which are 100 pages.

The party noticing the deposition (defense/claims adjustor) pays for the rental of the Conference Room if any, applicant's attorney fees. and court reporter's fees. (The Court Reporter's fees will include the original deposition transcript, although parties sometime stipulate that a non-noticing

party will take custody of the transcript pending trial. One certified copy is often included as part of this cost). Expect the claims adjustor to pay something in the range of \$400 to \$700 or \$800 for court reporting services at a deposition that lasts 2 or 3 hours...

Why should the Claims Administrator devalue the interpreters service and drastically cut their fees by slashing payment down to \$210.00 for half a day's work at a deposition?

EXOTIC INTERPRETERS As far back as January, 2008 documented market rates for all languages other than Spanish (exotic) were basically for half day \$485.00 and \$750.00 for a full day. The total rate of inflation to 2015 is about 11.80%

The new proposal in 2015 is for \$240.00 for each half day and \$418 for full day service. Again, what is the basis to devalue the interpreter's fees and drastically cut their income?

I have also attached a copy of a very interesting article dated July, 2012 and entitled "Interpreters at Workers' Compensation Appeals Board (WCAB) By The Hon. Myrtle Petty. Myrtle Petty is a WCJ from San Bernardino

Thank you

ATTACHMENT: Judge Petty Article re: Interpreters

July 2012 Workers' Comp E-News

Interpreters at Workers' Compensation Appeals Board (WCAB) By The Hon. Myrtle Petty

Myrtle Petty is a WCJ from San Bernardino

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Disclaimer: The following article and any opinions expressed therein are solely those of the author and are not necessarily the positions of the State of California, Department of Industrial Relations, Division of Workers' Compensation, the WCAB or any other entity or individual. This information is intended to be a reference tool only and is not meant to be relied upon as legal advice.

While an entire book can be written about the many interpreter issues that exist in workers' compensation cases, this article is intentionally limited to address those issues relating to interpreter services at WCAB appearances.

Labor Code Section 5811 states unequivocally:

“(b) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter...

...Interpreter fees which are reasonably, actually, and necessarily incurred shall be allowed as cost under this section, provided they are in accordance with the fee schedule set by the administrative director...”

Early last year, before going on the record on the third day of trial in an extremely complex case involving multiple witnesses, the Spanish language interpreter politely asked me if there was something he could do to be paid for the two prior dates of trial at which he had been present and served as interpreter. He said that he had provided defense counsel with an invoice for his services on each of the dates of trial, but he had not received payment nor had defendant filed an objection. A period of at least two months passed between each date of hearing. Frankly, I was surprised that defense hadn't paid the interpreter for their services at the prior WCAB hearings and, on the record, I ordered defendant to pay the invoices in full, as the amounts charged were reasonable for each morning and afternoon session and the services were certainly required and used. Further, the interpreter had done an excellent job during the trial.

It was then that I began to become aware that there was a problem with interpreters getting paid for their services rendered at WCAB appearances. It seemed that many claims examiners, some defense attorneys and even some judges were construing the services rendered by interpreters at WCAB appearances as pesky liens and not as the necessary communication services required for competent hearings. Many defendants have been putting them into the same category as unauthorized medical treatment lien claimants -- not paying for their services and not objecting to their bills or liens, and doing both with impunity.

Interpreters are an absolute necessity at WCAB appearances when an injured worker, a dependent of a deceased injured worker, or another necessary witness is not proficient in English to a degree necessary to communicate during a legal proceeding. If a person does not have the ability to speak and understand English well enough to understand what is going on, then an interpreter is required for the hearing to be construed as valid and competent. It is a fundamental due process issue. How can it be said that one has been given an opportunity to be heard if that person doesn't understand English well enough to be able to communicate in a court proceeding? If a proceeding goes forward without an interpreter when one is needed to effectively communicate, the likelihood is very great that upon closer scrutiny by a reviewing court, the proceeding will be deemed to be incompetent and any documents signed or rulings made will likely be deemed to be invalid and void.

I often hear defense arguments that the employer in question requires their employees to speak English, so they refuse to authorize payment for interpreter fees. I typically remind parties that the ability to speak and understand English well enough to drive a vehicle, to get by in a manual labor job, to do assembly line work, or to work as a housekeeper or custodian is different than understanding English well enough to engage in complex legal proceedings, when an error of understanding could have serious legal ramifications and may lead to a charge of perjury. The point is, we want our hearings to be competent and valid, and we want our evidence, our decisions and our orders to hold up to scrutiny. I would like to think that a prudent defendant would find it preferable to pay for an interpreter's services than to face the potential result of having to re-litigate a claim or having key evidence excluded or deemed insubstantial because a court found that due process had been violated by failure to provide an interpreter. Why would a defendant want to dispute a charge that affords them some protection from such a claim?

Government Code Section 68560(e) specifically states:

“The Legislature recognizes that the number of non-English-speaking persons in California is increasing, and recognizes the need to provide equal justice under the law to all California

citizens and residents and to provide for their special needs in their relations with the judicial and administrative law system.”

Government Code Section 11435.25 sets forth that the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the WCAB or the administrative director (AD) of the DWC. The Rules of Practice and Procedure, 8 CCR 9795.3 states that the fees for services performed by a 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. Examination by physician at request of the claims administrator, the AD or the appeals board.**
- 2. A comprehensive or supplemental medical-legal evaluation, per 9793, subject to compensability of the report to which the services apply. Party retaining interpreter may be liable to pay the interpreter’s fee in the event the claims administrator isn’t liable.**
- 3. A deposition of an injured employee (or their dependent) at the request of the claims administrator, including: preparation of the deponent immediately prior to deposition; reading of deposition prior to signing; and reading of prior volumes to a deponent in preparation for continuation of a deposition.**
- 4. An appeals board hearing, arbitration, or formal rehabilitation conference.**
- 5. An informal rehabilitation conference.**
- 6. An I&A conference (per LC 5450 et seq.) to assist in resolving a dispute between an injured worker and claims administrator.**
- 7. Other similar settings determined by the WCAB to be reasonable and necessary to determine the validity and extent of injury to an employee.**

What should always be remembered is that per Labor Code 3202, workers’ compensation laws must be construed liberally in favor of extending benefits for the protection of persons injured in the course of their employment. Thus, when there is a question as to whether or not a person is proficient in English, a prudent judge or practitioner should err on the side of caution and allow the services of an interpreter so as to not risk an attack as to the competency of the evidence or the validity of the hearing.

Interpreters at WCAB appearances and depositions are NOT medical-legal lien claimants, they are NOT medical treatment lien claimants, and they are NOT even required to file a lien. Just as deposition attorney fee petitions per Labor Code Section 5710 may be filed and ordered paid by judges at any time during the pendency of a claim, an interpreter’s petition for costs or services pursuant to Labor Code Section 5811 or 5710 does NOT have to wait until conclusion of the case-in-chief to be addressed by a judge. A judge has the authority and discretion during the pendency of the claim to order payment of reasonable litigation costs per LC 5811. Why should interpreters have to wait until a case concludes to be paid for their necessary services at WCAB hearings and at depositions? This just doesn’t make sense. There may be times when there is a true dispute as to the services rendered by an interpreter at a hearing or deposition, but those should be the exception and not the rule.

Interpreter services at WCAB hearings and depositions constitute a litigation cost pursuant to Labor Code Section 5811, and that section clearly states that interpreter services for such events *shall* be allowed as a cost. There is even an EAMS document entitled, “Petition for Costs/5811,”

which, when filed appropriately, will generate a task in EAMS for a judge to address. Even though such a petition will generate a task assigned to a judge, there is no guarantee that a judge will act on such a petition before conclusion of the case. If the 60 days mandated by 8 CCR 9795.4 to pay or object to any interpreter bill has passed without payment or objection, and a judge had declined to act on a LC 5811 petition, the interpreter may wish to consider filing a lien to make sure they are added to the Official Address Record. Any lien filed by an interpreter should clearly identify whether the lien is for services for medical-legal examinations (LC 4628), treatment (per LC 4600 and *Guitron v. Santa Fe Extruders*, SCIF (2011) 76 CCC 228), depositions (per LC 5710), appeals board hearings (per LC 5811), or “other” types of settings.

Since there is no provision in the Labor Code or in the AD Rules for penalties and interest to apply to the untimely payment of interpreter fees for WCAB appearances and depositions, there is little inducement for defendants to comply with the time deadlines for payment of or objecting to interpreter fees. However, parties should keep in mind that failure to timely pay for or object to interpreter services is a violation of the AD Rules (8 CCR 9795.4) and may be construed by a judge to be in bad faith per Rule 10561(b)(4). The imposition of sanctions, fees and costs may prove to be more expensive (and a more effective enforcement tool) in the long run than penalties and interest.

Interpreters who appear for depositions and at WCAB hearings must be certified or “qualified.” Currently, there are 15 languages designated for certification status through the Judicial Council, and there are eight languages certified through the State Personnel Board for Administrative Hearing or Medical Interpreters. An interpreter certified through the Judicial Council may interpret for all state court proceedings and medical examinations. An interpreter of a language not designated for certification may become qualified as a “registered interpreter of a non-designated language,” which requires passing an English proficiency written examination, an English oral proficiency examination and to fulfill Judicial Council requirements. A person certified through the SPB as an Administrative Hearing Interpreter is qualified to interpret at Workers’ Compensation hearings and medical examinations. Those persons certified through the SPB as Medical Interpreters are certified to interpret for medical exams, but not for administrative hearings. All interpreters certified through either the Judicial Council or through the SPB receive ID badges which should be worn or displayed at all proceedings for which they are performing interpreting services.

The qualifications of interpreters may be verified at the following websites:

<http://www.courts.ca.gov/programs-interpreters.htm> (for Judicial Council-certified or registered interpreters)

<http://jobs.spb.ca.gov/InterpreterListing/> (for Administrative Hearing and Medical interpreters certified through the State Personnel Board)

An interpreter who is not certified may perform services when a certified interpreter cannot be present ONLY if they are provisionally certified. An interpreter may be “provisionally certified” by the presiding officer at an appeals board hearing or arbitration at the request of a party or parties, OR upon agreement of the parties for services other than at an appeals board hearing or arbitration. There must be good cause shown as to why a certified interpreter cannot be present (i.e., interpreting in one of the non-designated languages, no certified interpreter available), and the person provisionally certifying such interpreter needs to be persuaded that there is competent

communication to insure the validity of the proceeding.

Prudent interpreters protect their interests by obtaining something in writing from the party requesting their services or benefitting from the use of their services. For example, when an interpreter is used for a medical treatment appointment, the interpreter should get something in writing from the physician that meets the requirements for reimbursement per the Guitron case (i.e., the interpreting services were required to communicate with the patient/examinee who is not proficient in English, the doctor isn't proficient to communicate without interpreting assistance, their office doesn't provide interpreters to assist patients, and it is their office policy that an interpreter should accompany a patient/examinee who isn't proficient in English). It is likely easier to get the doctor to sign some type of form setting this forth at the time of the examination than trying to get something from the physician after the fact.

Prudent interpreters may also request the assigned judge to sign an order for the payment of their fees on the date interpreting services were rendered for appeals board hearings, MSCs, trials and conferences. Attorneys who represent non-English-proficient injured workers and dependents should be requested to present such petitions to the judge when they obtain a disposition.

Overview:

1. WHO PAYS FOR INTERPRETER SERVICES AT WCAB APPEARANCES AND ARBITRATIONS?

THE CLAIMS ADMINISTRATOR per 8 CCR 9795.3.

2. WHAT IS A REASONABLE FEE FOR INTERPRETER SERVICES AT WCAB HEARINGS, ARBITRATIONS, DEPOSITIONS, MSCs AND STATUS CONFERENCES?

THE RATE FOR ONE-HALF DAY OR ONE FULL DAY PER THE SUPERIOR COURT FEE SCHEDULE FOR THAT COUNTY OR MARKET RATE, WHICHEVER IS GREATER per 8 CCR 9795.3(b)(1).

Title 8 CCR 9795.3 states, in pertinent part:

“(b) The following fees for interpreter services provided by a certified interpreter shall be presumed to be reasonable:

(1) For an appeal board hearing, arbitration, 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...”

3. WHAT IS A REASONABLE FEE FOR INTERPRETER SERVICES AT AN INFORMAL I

& A CONFERENCE OR OTHER EVENT ENUMERATED IN 9795.3(a)?

\$11.25 PER QUARTER HOUR, WITH TWO HOUR MINIMUM, OR MARKET RATE, WHICHEVER IS GREATER per 8 CCR 9795.3(b)(2).

Title 8 CCR 9795.3 differentiates between formal legal proceedings (appeals board hearings, arbitrations, depositions and formal rehabilitation conferences) and all other events for which interpreter services are appropriate (i.e., physician examinations, medical-legal evaluations, informal rehabilitation conferences, informal I & A conferences and “other similar settings” determined by the WCAB to be reasonable and necessary) and has specifically set forth two separate fee schedules. Subsection (b)(2) of 8 CCR 9795.3 states:

“...(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...”

4. CAN AN INTERPRETER REQUEST PAYMENT FOR MILEAGE AND TRAVEL TIME?

YES, WHEN REQUESTED, ADEQUATELY DOCUMENTED, WHERE REASONABLE AND NECESSARY TO PROVIDE THE SERVICE AND WHERE THE DISTANCE BETWEEN THEIR PLACE OF BUSINESS AND WCAB IS OVER 25 MILES per 8 CCR 9795.3(b)(3).

Title 8 CCR 9795.3 also states, in pertinent part:

“...(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 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...”

5. IS IT APPROPRIATE FOR AN INTERPRETER TO REQUEST PAYMENT WHEN THEY SHOW UP FOR AN EVENT THAT HAS BEEN CANCELLED AT THE LAST MINUTE OR WHERE THE PERSON NEEDING INTERPRETING SERVICES DOES NOT APPEAR?

YES per 8 CCR 9795.3(c).

Title 8 CCR 9795.3 also states, pursuant to subsection (c),

“...(c) Unless notified of a cancellation at least 24 hours prior to the time the service is to be provided, the interpreter shall be paid no less than the minimum fee.”

Just because a claims examiner is required to pay the fee for late cancellations or events where the person requiring interpreting services fails to appear (per 8 CCR 9795.3), that does not mean they have no recourse if they are not at fault. Since interpreter fees for depositions, appeals board hearings and other settings are considered litigation costs per Labor Code Section 5811, and such costs as between the parties may be allowed by the WCAB, there is nothing to prevent a defendant from filing its own “Petition for Costs/LC 5811” for charges paid by defendant to an interpreter when a non-defense witness requiring an interpreter has failed to appear or when defense is not at fault for insufficient notice of cancellation of an event requiring an interpreter.

6. WHEN MUST AN INTERPRETER BILL BE PAID?

WITHIN 60 DAYS AFTER RECEIPT OF BILL FOR DATES OF SERVICE ON OR AFTER 1/1/94 per 8 CCR 9795.4.

Title 8 CCR 9795.4 states, in pertinent part:

“(a) All expenses for interpreter services shall be paid within 60 days after receipt by the claims administrator of the bill for services unless the claims administrator, within this period, contests its liability for such payment, or the reasonableness or the necessity of incurring such expenses. A claims administrator who contests all or any part of a bill for interpreter services shall pay the uncontested amount and notify the interpreter of the objection within 60 days after receipt of the bill...”

This section also includes what specific information must be included in any notice of objection.

7. WHAT CAN AN INTERPRETER REALISTICALLY DO TO GET PAID FOR WCAB APPEARANCES?

REQUEST THE JUDGE TO SIGN AN ORDER FOR PAYMENT OF THEIR SERVICES ON HEARING DATES OR FILE A “PETITION FOR COSTS/5811” NO SOONER THAN 60 DAYS AFTER BILL WAS RECEIVED BY DEFENSE WITHOUT PAYMENT BEING MADE.

A number of judges, myself included, when requested at WCAB hearings by interpreters or attorneys who have requested interpreter services for their clients who are not proficient in English, will sign an Order per LC 5811 requiring defendants to pay for interpreter services at that hearing. The order is at the bottom of a brief Petition filled out by the interpreter and signed under penalty of perjury listing the date, time and type of setting scheduled, who requested the services of the interpreter, the fee requested, the certification number, the printed name and the signature of the interpreter. The order has a “self-destruct” clause stating that a timely objection filed will void the order and cause the issue to be reserved for time of trial, at which time appropriate sanctions, fees and costs will be addressed. The order further states that all non-disputed amounts must be timely paid and objection to disputed amounts must be timely made per 8 CCR 9795.4.

We have all heard the horror stories of the interpreters who sign in on every case with a Hispanic

surname (just in case they may need an interpreter whether they do or not and whether they have been contracted to appear or not), interpreters who “steal” each other’s clients, and unqualified interpreters who sign in using someone else’s certification number. Transgressions of this nature have been brought to my attention in my 10+ years of being a judge. There are always people who abuse the system and try to get away with it. However, the system has a regulation to address those who engage in unethical or fraudulent conduct (8 CCR 9721.32) and the WCAB has broad powers to address issues brought to its attention. It is just not worth the risk of losing one’s certification or being criminally prosecuted to engage in such behavior and we should ALL work towards maintaining, promoting and enforcing professional and ethical conduct of ALL participants in the workers’ compensation process.

Interpreters are a necessary and valuable component in our workers’ compensation system for injured workers, dependents of injured workers, and necessary witnesses not proficient in English. Every participant in our judicial process should have a vested interest in ensuring that qualified interpreters remain in our system -- whether claims administrator, attorney, physician, injured worker or judge. Understanding and acknowledging the interpreter’s role in this process is a good start -- making sure they are appropriately and timely paid will go a long way in retaining and attracting qualified professional interpreters required for valid and competent workers’ compensation proceedings.

Myrtle Petty is a WCJ from San Bernardino.

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Jesus Rivera
Certified Interpreter/Translator

May 4, 2015

Dear Sir/Madam:

As an interpreter who has spent 15 years working in the private sector in California, I opposed any attempt at imposing limits on what interpreters may earn in the private sector. But since the Division of Workers’ Compensation will impose a fee schedule, all I can do now is press for a schedule that reflects the true value of interpreters’ contributions to legal proceedings, including workers’ compensation depositions.

Regrettably, I have come across many non-interpreters who truly believe that because they sort of understand or sort of speak another language besides English, the work done by an interpreter is actually not work, but something more like having a “knack for language.” And because the services interpreters and translators provide are seen as a knack, quite often these essential services are underappreciated and undervalued.

It’s offensive to see the hard work and extensive preparation of Certified Interpreters undervalued. In order to become Certified Judicial Interpreters we put in long hours of study in order to pass California’s certification examinations; many of us also studied for the very rigorous examinations by the U.S. Federal Courts and the American Translators Association. Many of us have college degrees and many have the accumulated mastery – in interpretation as

well as translation – that comes with 15, 20 or more years of experience, as well as the required Continuing Education courses.

The rates that have been proposed for interpreters in workers' compensation cases do not at all reflect the value of the services we provide. Most disconcerting still is the lower rate proposed for us Spanish-language interpreters, vis-à-vis all other languages. Does the DIR believe that our preparation, our studies, are less valuable? Or is this discriminatory proposal based simply on supply and demand, as Spanish-language cases and interpreters are more numerous? And if that is the case, then the market itself, and not an unelected government entity, should determine what independent contract interpreters can earn.

Considering that agencies are involved in this business, and this is a business, your proposed fee schedule would make it impossible for me – and many other experienced interpreters – to continue providing our professional services in workers' compensation proceedings. I, for one, would not render my services for a fee that did not at least closely mirror the rates paid interpreters in the Federal Courts. And with interpretation agencies first taking their cut off a proposed \$215 for a 3,5 hour half day, whatever is left over for the interpreter is decidedly untenable.

Clearly, any fee schedule that undervalues our work would have negative repercussions that can best be summarized with the old saying that “you get what you pay for.” And that is no way to conduct the business of the people of California.

Marina Camarero-Ortiz
Certified Interpreter

May 3, 2015

I have been a court certified interpreter for 11 years and for the last six I have also been federally certified. Current Federal rate is \$223 for a Half Day of work and the most I am normally able to get for Worker's Comp is \$185, so as it is, I hardly ever do workers comp anymore for the obvious reasons.

Because agencies keep anywhere from 40-50% of what they bill the insurance companies, if the proposed fee schedule gets implemented, certified Spanish interpreters like me would in actuality be getting about \$100-\$125 per deposition. I would definitely never accept a job for that fee, and I am sure most other certified interpreters would not either. This would result in only non-certifieds doing the bulk of the work or in the agencies going out of business.

In addition, we interpreters define our Half Day as a 3 hr. period, whereas the DIR defines it as 3.5 hrs. If I were to start a deposition at 10am (which is the time most start) and had to commit to remaining at the job for 3.5 hrs. (or until 1:30pm), I would never be able to cover an afternoon job (which usually begins at 1:30 or 2pm). Therefore the miserable \$125 would probably be the most we'd be able to make for the whole day. If this were the case, I would just change careers.

In order to become a certified interpreter, one must not only have the equivalent knowledge of a college degree in both languages, but must also pass an exam, do an ethics course, do a large number of hrs. of approved continuing education every two years and pay a yearly fee of \$100 to the Judicial Council. Non-certified interpreters are not required to go through ANY of these requirements. Additionally, most of these non-certifieds would be qualified by the “claim administrators” or insurance agency, potentially making them partisan in the process since they would not want to risk losing their “provisional certification”. Most importantly, claim administrators have no knowledge or way of assessing the interpreter’s skill set. Other interpreters would be provisionally qualified by judges who also possess no expertise in determining an interpreters’ language abilities.

The State certification is the lowest requirement needed to assure competency in this very difficult job we must perform, which guarantees applicants and their attorneys, as well as defense attorneys, witnesses, judges, arbitrators, mediators and all the parties involved in the process accurate communication. Access to Justice is a constitutional right, by denying proper, competent, impartial interpretation we would be denying the applicant his or her right to justice, to due process and most importantly, we would be making a mockery of the whole process by denying this same benefit to ALL the other parties involved as well. Could this cause additional appeals? Is this an extra costly risk all the parties are willing to take?

WC rates for interpreters are low as it is, and must actually increase in order to take into account cost of living increases, geographical areas, interpreters experience, skill, language pair, etc. Interpreters, as independent contractors should not be restricted from freely setting their own rates based on their individual education, experience, skills, training etc. Interpreters cannot get together and dictate a minimum fee because it would be considered illegal= price-fixing, so how can any entity legally dictate a maximum fee for our services?

In short, I myself as well as most other experienced, certified, capable interpreters would completely abandon the worker’s comp arena, leaving applicants, attorneys and judges in the WC system at the mercy of unqualified bilingual people. This fee schedule, if approved, would have a devastating effect on the livelihood of thousands of professionals, Language Service Providers (or Agencies) and the WC system. Please reconsider it!

Alan H. Fenton
Law Offices of Alan H. Fenton, a PC

May 3, 2015

The new regulations for the interpreter fee schedules will further reduce the protections to injured workers.

They are already poorly paid and usually require multiple Board appearances just to get paid for work that was already done sometimes years earlier.

It will also cause the lowest priced company to supply incompetent interpreters. I can relate the story where my client went to a medical appointment by transportation supplied by the insurance

company. the interpreter turned out to be the transportation driver who happened to also speak Spanish.

Not the best of circumstances which doesn't inspire confidence in the translation(s).

The proposed regulations are a BAD idea do not enact them.

Janice Angela Burt

May 3, 2015

Hello! My name is Janice Burt and I am a court certified Spanish interpreter working in the Sacramento area. I have just read some of the key components of the proposed Interpreter Regulation and Fee Schedule and felt it necessary to express my concerns. I usually don't take time out of my day to write these types of comments, but since this directly affects me and my fellow certified interpreters, I thought it worth my time.

I became court certified in 2012 after commuting to San Francisco State University from Sacramento once or twice a week for two and a half years to be a part of their Legal Interpreter program. I spent thousands of dollars on schooling, books, and tests to get my legal certification. I failed the test the first time and had to wait six month and pay another good chunk of money to take it again. The second time, I passed the test and have been an independent LSP since then. The reason I tell you all of this, is to point out the time and commitment involved in becoming truly skilled in this line of work.

This concerns me: **the rate proposed for certified interpreters is a 50% reduction of our current market rate (at least in many areas in Northern California). The Med-legal rate proposed is a meager \$7 more than the suggested minimum published in LC 9795.3 some 20 Years ago!**

Reading through the proposed Fee Schedule felt a little like a slap in the face. All of us certified interpreters have worked hard and have spent considerable time and money in obtaining this certification. We don't deserve to have our pay cut or our work taken away by unqualified interpreters.

Debra Schellenberg

May 3, 2015

The proposed changes (i.e. the \$52 per hour) without a 2 hour minimum make NO sense. No one in their right mind would drive across a major metropolitan area, for \$26 that an agency, e.g. One Call will be able to pay the interpreters for medical appointments if they are paid \$52. Uber drivers make more money. Individual interpreters do not by and large, have the resources to bill/collect from the insurance carriers. It's far too costly and time consuming and given the % of "creative" objections and denials that bill review frequently sends out on initial reviews, and often subsequent reviews, it makes little or no sense for an individual interpreter to direct bill.

Moreover when an adjuster objects to a bill, the typical response is "file a lien." Given lien filing fees and hearing costs, is it cost/effective to pay the fees for a \$52 claim?

If the DWC wants to preclude injured workers from access to interpreters-this is exactly what the DWC is doing if the 2 hour minimum is removed or the fee schedule cut to \$52 for a medical appointment. There is a sizable difference between \$52 per hour and \$45 per hour with a 2 hour minimum in most peoples' minds. Did the California Legislature intend to deny access for injured workers to interpreters? That's the result that the proposed changes will create. It's basic economics and should be obvious to anyone doing this analysis, Would any employee of the DWC spend 1/2 day (considering driving time and typical wait time) for \$26 if they contract with an agency, or for \$52 if they were billing themselves (given the expenses that can be expected with that process)?

The DWC and California, given UR, MPN rules, and medical fee schedule are precariously close to precluding access to medical care as well. I don't know a physician who currently treats work comp patients who plans to do so for much longer. Given the vast amounts of required paperwork, creative denials, often preposterous UR denials by any standards of medical care (yes, worse than a 3rd world country), my prediction is within 5-10 years, or sooner, it will be virtually impossible to find a competent medical physician or more specifically orthopedic surgeon (ok, I guess you will still have chiropractors) to treat critically injured workers. Believe it or not, most who do are currently losing money on treatment in Los Angeles and the Bay Area. And since the vast majority of work related injuries in the manufacturing industry in California are orthopedic in nature, in effect the DWC is denying treatment and interpreting to injured workers. Is that what the California Legislature intended to do?

Anabella Tidona May 3, 2015
Board Member of the Association of Independent Judicial Interpreters of California
Federally Certified Court Interpreter, Administrative Office of the US Courts
California Court Certified Interpreter, Judicial Council of California
Certified Healthcare Interpreter™, Certification Commission for Healthcare Interpreters
Certified Medical Interpreter, National Board of Certification for Medical Interpreters
M.A. Medical Translation and Interpretation

As a certified Spanish interpreter, I oppose the changes to the interpreter fee schedule. No certified interpreter will be willing to interpret at a Worker's Compensation deposition, appeals board hearing, medical-legal examination or a medical treatment appointment for less than the current market rate - the proposed rate for certified interpreters represents a 50% reduction of our current market rate.

With the current proposed fee of \$210 for a 3.5-hour half day and \$388 for an 8-hour full day, certified interpreters will have no other option but to stop working in the Worker's Compensation system, and we will be limited to interpreting in the criminal and civil arenas. However, work in the Workers Comp system represents a very significant portion of the work we do.

What necessarily follows is that, in those worker's compensation proceedings where interpreters are needed, an uncertified interpreter will be used. The use of an uncertified, untrained,

unqualified interpreter, who does not meet the high standards in interpreting skills and linguistic abilities that certified interpreters have proven by passing the state exam, will lead to devastating consequences: miscarriage of justice, further waste of resources (if a certified interpreter is not present during a medical examination the whole examination is inadmissible) or the endangerment of the injured worker (see the Willie Ramirez case regarding language miscommunication in the medical setting).

This draft of the proposed fee schedule makes it really easy for the insurance companies to hire non-certifieds instead of certifieds: they just have to call 3 certifieds before they can say that a certified is not available and send a non-certified.

Certified interpreters by the State of California strictly follow a code of ethics which states that interpreters are officers of the court, an UNBIASED and NEUTRAL participant in the process. What neutrality will guarantee an interpreter chosen and approved solely by the insurance carrier?

Last but not least, we must take into account the role that Language Services Providers (LSP) play. LSPs are interpreting companies that connect the clients (law firms, medical offices, insurance companies) with the interpreters that serve the Limited English Proficient (LEP) person. Obviously, in order to operate and provide their valuable services these companies have to add on a premium to the amount that interpreters bill. This is a very important element to bear in mind which the currently proposed fee schedule does not acknowledge.

Please consider the tremendously negative consequences to the injured worker in adopting a fixed fee schedule for interpreting services in California.

Carolina Nunez-Ballina
Court Certified & Conference Interpreter

May 2, 2015

To whom it may concern:

I've only been an interpreter for the past 3 years but I love my profession and take it very seriously. I started interpreting only after preparing myself and going through the appropriate channels to obtain the necessary certification. It should be mentioned that to obtain said certification one must have a strong command of both languages (English and Spanish in my case) and undergo a very rigorous exam.

While it's true that there has been a certain level of abuse of the workers comp system, as there is in just about any other system, think social security or welfare, simply because people are just people and there are those who will take any advantage they can at every level, it is also true that the workers comp system is being manipulated to the benefit of only a few, namely insurance companies.

The proposed rates for interpreters are a fine example of the complete disregard for the profession as a whole, and of the injured worker who has the right to a competent interpreter.

There are a few things I plain don't understand.

First of all, interpreters are warned time and time again, about the anti trust laws and the illegality of price fixing, yet it is ok for the insurance companies to lobby for their own benefit and do the very same price fixing for us. Seems contradictory to me.

Second, the rates proposed don't seem very practical for anyone involved. On one hand, I don't see the interpreters agreeing submissively to a roughly 50% pay cut overnight at the whim of legislators or rule makers, on the other hand I don't see the agencies ok with folding over night to save the insurance companies the expense and I don't see the insurance adjusters making their own calls to book interpreters for every single deposition and doctor appointment. Something's got a give.

If the rates are cut as drastically as proposed, all or at least most of the competent interpreting professionals would be forced to look for another source of income as these new rates would not allow us to make a living and the system would be left with only a few certified interpreters and the "provisionally certified" ones, which bring us to another point.

What qualifies an insurance claims adjuster to "qualify" an interpreter? Insurance adjusters have no knowledge of the skills necessary to be an interpreter. Interpreting is a profession. It takes preparation and skill to be one. To become an attorney, you must first learn the law and then prove that you do by passing the bar exam, only then someone would consider that individual an attorney and at any point before that, at best that person would only be considered a law student! So what gives the adjuster (insurance companies, or legislators for that matter) the authority to arbitrarily decide who is or can perform the job of an interpreter?

There is also the point about the definition of half and full days. These proposed rules don't take the private sector into consideration. I understand that someone who is in court or the board doesn't have to go anywhere and they would be done with his/her morning at 12 noon but in the private sector, the schedule is very different than at the board. Depositions are hardly ever taken before 10 am and time must be allowed for the interpreter to commute from one assignment to another. I'm not even considering a reasonable amount of time for a meal here! The only possible way to accommodate these necessities is by maintaining the current standard in which a half day is considered anything from 0 to 3 hours and a full day anything from 3 to 6 hours.

I truly believe these changes if approved, would adversely affect me as a professional but it would also affect the hundreds or thousand of applicants who would find themselves without the benefit of a competent interpreter in an important medical appointment or legal proceeding. These may very well be life changing events to someone and being denied a competent interpreter may be as detrimental as being denied competent council.

Please reconsider your position.

Patricia Munevar

May 2, 2015

Unbelievable. Where is this state going to? Poor patients, Is there anyone willing to do charity work? I don't think so. Who pays for gas and expenses, not to forget time spent for peanuts! Are you willing to do it?

Raymond Chon
Ace Life Inc.
dba Ace Translation Services
Exotic Language Agency

May 2, 2015

1. Ca. State certified medical interpreters should be included to cover med legals as well including board appearance and depo .

2. Korean etc. as an exotic language fee
(Medical appts)
\$350 for half day upto 3.5 hours
\$700 for full day more than 3.5 hours

(Med legals)
\$400 for half day up to 3.5 hours
\$800 for full day more than 3.5 hours.
Thanks

Esther Moscona
Certified Medical Interpreter 101197

May 2, 2015

I am a Certified Medical Interpreter working in San Diego.

The situation is as follows:

National Interpreting agencies have hired non-certified interpreters. They are doing most of worker's Compensation appointments. Certified Interpreters are getting fewer jobs, three or four per week, half of those disappear from the portal as they find a cheaper interpreter to do them. They remove the jobs sometimes a day or two before the appointment date, and re-assign them. Doctors complain, but when the appointment comes, they have to reschedule the appointments with another more qualified interpreter and waste their time or take the non-certified interpreter. The big national agency offered me forty dollars for two hours of work as a way to keep my schedule full.

I would like to suggest:

1. All interpreters must be Certified, and wear a badge to identify ourselves. Provisional certification will mean that big companies can continue allowing people without certification to interpret, without any quality control.
2. To establish a minimum wage per two hour of appointment time that would protect us from abuse and coercion into lowering our fees.
3. To establish a way for interpreters to report non-compliance with the law.
4. To be able to bill for the scheduled time if a cancellation occurs with less than 24 hours notice. If we were booked for a day, they cancel the appointment, why are we being paid for two hours?

We need regulation to protect the profession. Big companies are looking at their profits, while they keep pressuring us to reduce our fees to laughable levels. Unfortunately, these companies have found people who have one-week computer training and experience to hire, disregarding experience and quality.

Hyesun Lee
State Certified Court Interpreter for Korean Certification Number 301036 Official Federal Court Interpreter Former UCLA Extension Instructor for Translation and Interpretation Studies

May 2, 2015

We, certified court interpreters for Korean, are very concerned about the proposed regulations.

We strongly feel that court certified interpreters for Korean need to be compensated according to their academic qualifications and skills. Since the linguistic distance between the English and the Korean languages are so great, it takes Korean speakers years, or even decades, of diligent studying to achieve a high level of fluency in English. This is one of the reasons why so many Korean witnesses, after living in the US for 20 or 30 years, still need interpreters to be "present" in all legal proceedings. Out of 60 plus Korean court certified interpreters in the Southern California, I only know of one interpreter who do not have a college degree, and the rest have a minimum of four-year college degrees. Many of us, including myself, hold master's degree, and there are some people who hold doctorate degrees.

Using non-certified interpreters disservice everyone, including defense attorneys and insurance companies. In work comp cases, delicate meanings related to pain, symptoms, or situations where the injury occurred, can only be accurately interpreted when the interpreters is properly trained and familiar with relevant terminologies. This is especially true in interpreting for Korean speakers, due to the cultural or linguistic tendency of making multiple omissions in a sentence. There are precedents in civil cases where the court granted a new trial after taking weeks for a bench trial. All this was because the interpreter used during the trial was not a court certified one. Just think of the wasted time and resources.

The proposed regulations suggest non-realistic fee schedule with which the local interpreting agencies will not survive, and out-of-state agencies will be most likely to provide interpreters. This is already causing problems because many non-certified interpreters hired by such out-of-state agencies do not show up to their appointments (due to their lack of professionalism), or in many cases, two or more interpreters show up at the same appointment. These mishandled appointments cost a lot because doctors and/or attorneys will charge fees if the appointment needed to canceled due to non-appearance on the part of the interpreter.

Hiring non-certified Korean interpreters mean using unskilled individuals whose linguistic ability in one or both languages is severely lacking. These people are not gainfully employed by anyone and just willing to accept jobs to earn small pocket money. They lack professionalism and that is why they often chose not to show up to appointments without notifying anyone involved. They are not at all qualified to be interpreting in legal procedures where nuances in a sworn testimony make all the difference, or the terminology can become highly technical. It will be tremendously unfair for the applicant/deponent to have their testimonies interpreted by such unqualified individuals. Non-certified interpreters should not interpret on med-legal appointments either, because Korean phrases to describe pain are delicate, and they can only be accurately interpreted with proper training.

What will happen if the patient/deponent says something but you lack the vocabulary in order to properly render? The interpreter is most likely to simply omit what was said, instead of making every effort, including asking for clarification or resorting to a dictionary. In addition, if the interpreter is not certified, there is no traceability and hence, she or he is not held responsible for any mistakes. This will make a huge difference in how careful one is when making every single rendition. When an interpreter becomes certified by the Judicial Council of California, the same interpreter is deemed to be qualified to interpret in a capital punishment case. We, as sworn officers of the court, take our job very seriously and we know the consequences of any possible mistakes made in interpretation. Therefore, we are extremely careful interpreting every single word, a phrase, and a sentence, and hone our skills regularly, through meeting continuing education requirements, and self study. Do you think a non-certified will act the same way?

Please remember that having a good, qualified interpreter SAVES costs, because if everything goes well and smoothly, the proceeding will end faster. This saves time and money for insurance companies as well as the court. Imagine a defense attorney is in a trial, and the non-certified interpreter is not doing a proper job, and the applicant attorney and his client keeps objecting to his/her poor interpretation. The proceeding may be halted until a certified court interpreters comes, but this will cost money to the insurance company, and it is a waste of the court's time.

In conclusion, please consider that Korean court certified interpreters need to be compensated for their education and skills, and that having regulations which will lead to or allow or encourage using non-certified interpreters in legal/med-legal proceedings is not only unfair to the applicant, but also will cost more money to the insurance company at the end of the day.

Thank you for your reading and kind considerations.

Barb Walker

May 2, 2015

I would think that the doctors and lawyers would want to cover themselves in case they get hit with a liability suit when something goes wrong.

Madeline Newman Rios
Certified Interpreter

May 2, 2015

I wish to express my concern over the proposed changes regarding interpreter certification requirements and fee schedules.

The proposed changes will amount to a severe pay cut for certified interpreters and will result in the use of unqualified interpreters given the ease with which it can be declared that a certified interpreter was unavailable.

It should be noted that in order to be certified as an interpreter, one must merely perform at an acceptable level on an examination that can be repeated as many times as one wishes. An interpreter who never attained certification is literally one who was never able to perform acceptably. To allow a non-certified interpreter to make a legal record of another person's statement is a severe injustice.

Virginia Wilson
Certified Court Interpreter, #300665

May 2, 2015

In its present form, the proposed Schedule contains a certification double standard: although there is emphasis on certification of interpreters in the Labor Code and proposed text, the requirement only applies to independent language service providers but not to the insurance companies and the interpreting agencies they utilize. The Regulations, as written, give claims examiners a blanket license to use non-certified interpreters through 2 loopholes:

1. Section 9931 (c) - they have to contact only THREE certified interpreters before they can claim no certified interpreter is available and therefore utilize a non-certified 'interpreter'. This represents a major change from the previous Regulations, which required that they exhaust the list of ALL certified interpreters before using a non-certified 'interpreter'. How will the proposed process be monitored and enforced? I am firmly opposed to allowing claims adjusters and other laypersons to 'provisionally certify' anyone unilaterally and I insist on the utilization of certified interpreters for Legal and Med-legal settings.

2. Section 9932 (a)(3) - again, claim administrators can utilize a non-certified 'interpreter' as long as THEY authorize it. This is already happening quite frequently due to the language of SB863, but the latest regulations will give carte blanche to adjusters and allow them to do this systematically.

The proposed Regulations have completely stripped applicant attorneys of their ability to choose a specific interpreter for depositions, med-legal appointments, etc. (Section 9935 (a)). The language is unclear as to whether an interpreter can be chosen for WCAB hearings but it leans towards the carrier having control over that selection as well. This would prove detrimental to the injured worker because applicant attorneys traditionally hire local language service providers (LSPs) who use mainly certified professionals and comply with the certification mandate. The right of the party producing the witness to choose the interpreting service professional **MUST BE PRESERVED** in order to keep the legal process neutral, the quality of services high, and to keep in business in California the hundreds of small local Language Service Providers (LSPs) who comply with the certification regulations.

The rate proposed for certified interpreters represents a 50% reduction of the current market rate. The Med-legal rate proposed is merely \$7 more than the suggested minimum published in LC 9795.3 some 20 Years ago!!! The proposed fees are completely out of touch with the rate of inflation and the geographical differences in cost of living.

I sincerely hope that the above comments are taken into consideration and that the existing draft language is modified to create a more sensible and fair set of regulations. A Professional Interpreter Fee Schedule must reflect the level of education, training and skill required of professional interpreters.

Ivonne Abrajan
Certified Interpreter

May 2, 2015

So much emphasis was made in the past get all interpreters certified, that It's ridiculous to think that know there is so much emphasis on a schedule fee for non certified which is basically citing fees in half. As you are authorizing non qualified interpreter to cover legal depositions or hearing.

The new fee schedule should include a 2 hour minimum fee. Most interpreters are freelances. We need to coordinate jobs and give enough time between them to arrive on time and have extra time for unexpected Dr's offices delays. Not having 2 hrs warranties payment will have as a consequences. As interpreter will overbooked to compensate for loss income.

Elaine Wohl
Certified Interpreter

May 2, 2015

Hi, my name is Elaine Wohl from Fresno and I was recently certified nationally (CCHI) as a medical interpreter for Spanish speakers. The new proposed Interpreter Regulations and Fee

Schedule makes a mockery of all the time and money spent to become certified. Do you know what can happen when non-certified interpreters are used? Non-English speaking patients have told me of "interpreters" they've had that KEPT SILENT during the appointment because they barely spoke Spanish! One patient told me their interpreter "interpreted" using their cellphone language app. What do these "interpreters" all have in common? None of them was certified. It is very clear to me that the people who drafted this new proposal couldn't CARE LESS about the quality of interpreting services patients are receiving. It's pretty obvious it was put together by the insurance industry, because that's the only group it benefits.

Here are the major parts of the proposal I object to:

- Section 9931 (c) Claims examiners would only have to contact three certified interpreters.
- Section 9932 (a)(3) This gives claims administrators free reign to send non-certified interpreters so long as they authorize it.
- Rates: Completely out of sync with inflation.
- Putting the medical-legal wage on a par with treatment sessions.
- Two-hour minimum treatment being eliminated.
- Reimbursement of travel time.

Pedro Salcedo

May 2, 2015

I was reading the proposal for interpreting and you should included 2 hours minimum like is being in the past. Also the fee schedule should be higher. You only increase \$ 7.00 for the last 20 years, that is ridiculous. A lot of people are going to be out of work with that proposal. Please modify those subjects.

Olimpia Black
Certified Interpreter

May 1, 2015

I was greatly disappointed to see the state certified interpreters were left out of the proposed regs. We had to go through a more rigorous testing in order to earn our certification. It took us an average of 18 months of classes and practicing before we were ready for the test. The newly certified interpreter are not nearly as well prepared nor they were held to, the standards we were and yet they are able to earn the same rates. It is also obvious you have written the regs in favor of the insurance companies. You are allowing them too much leverage to undermine the certified interpreter with not accountability on their part. You have established no guidelines on how one can apply to be on a MPN. Your proposed increases are literally insulting. We have gone more than 15 years without an increase, really? Your proposed regs will force many LSP out of business giving more power to adjusters to use non certified interpreters.

Sally Wong Avery

May 1, 2015

This is a civil lawsuits
They cannot curb interpreter fees nor any other fees for that matter

Manuel Dominguez
Certified Interpreter

May 1, 2015

It's very sad that you continue to ravage a once proud profession by lying in bed with big money insurance carriers. You continue to rule favorably on their behalf at the cost of the injured workers their treating physicians and now the systematic taking apart of the state certified interpreters. Pretty soon the injured worker will have to provide their own interpreter or have to use an incompetent interpreter thanks to all the concessions you are allowing for these insurance carriers. Shame on you!

AnaElvia Sanchez
Certified Interpreter

May 1, 2015

It is truly unfortunate that interpreters, regardless of certification are treated as second rank citizens. Like it or not, this is unethical and illegal. The codes are being violated. Interpretation takes the exact same effort in any language. We drive the same distances and many of us have paid the fees for certification. I don't doubt there are good interpreters amongst the none certified. This is a job and a most needed service to the public. The codes state that interpreters must be certified. It is plain abuse to us that have worked so hard to maintain our certification. It is a shame to see the corruption. Not only are we not getting paid what we are worth but, we are also being substituted by non certified interpreters who get paid less for lack of credentials. It is plain corruption, discrimination, utter abuse and violation of the codes. Another issue is with Exotic Languages; that's ridiculous! A language is a language. It is time to stop considering and treating us like wetbacks. There is no reason why there should be a difference between legal, medical or "exotic languages". There's should not be any difference between Los Angeles and San Diego. We are in the same state. My final question is; why on earth do we have codes if agencies don't want to obey them. This is not only a huge disservice to us and the public but, a corrupt system.

Deborah Schowalter, Esq.
Problem Solvers Mediation Services

May 1, 2015

I find it really uncomfortable that a maximum fee is being set instead of a minimum fee. I was pretty shocked to see this! There are certain languages for which there is seldom a call for an interpreter. But these interpreters spend the same amount of money on dues, education, etc. as those who work all the time. I spend about \$800 a year to be on lists and then make maybe \$1500 a year. I do it as a service to the courts. The language is Italian. Who knows why, maybe the Italians don't get caught. I could never evereverever show up for the low amount of money listed as the "maximum" fee in these proposals. The amount is much too low. Why would you need to have a maximum at all? Rethink this please.

Fabienne Chonavel
French Translator and Interpreter
MA (English), MS (International Business), MBA (HEC)
BA (French Law)
Court Registered (Judicial Council of CA)

May 1, 2015

In response to your email, please let me thank you for your vigilance. As a **registered** interpreter, I have more concerns, which are language requirements in my field in particular. At least, certified interpreters are tested on their skills... Not so the 'other' interpreters, so we, as professionals, see our potential clients turn to the cheapest possible bid. I have spoken with so-called registered interpreters who can barely make it in my language, but who are yet chosen again and again because the end-client is an individual who usually does not complain about the quality of the interpreter. In Los Angeles, dozens are on the Judicial Council list, when 4 of us (max) should be.

So this is my only request: make French a certified language to weed out language impostors. With today's Skype-like technology, it shouldn't be too hard to put in place a real panel to judge the quality of the aspiring candidates.

California interpreter.

May 1, 2015

I would like to see something in the new Fees and Requirements for Interpreter Services to place a stop for interpreter agencies from hiring people from Tijuana Mexico from doing interpreting here in San Diego. Currently local agencies (a major contributor to this is Sierra Interpreting) hire people from Mexico at much lower rates and they come across the border everyday and work here in San Diego at various locations performing interpreting services for work comp patients. If the State of California would change the wording in this new law to make it a definite must to have a Spanish Certified Interpreter at all appointments this usage of people from Tijuana would be eliminated and interpreting services would greatly increase in quality and accuracy for the Spanish speaking claimants. Another point is that people from Tijuana have no idea of what HIPAA encompasses and how to protect patient privacy. I see them week after week sitting in the waiting area asking patients question after question about their conditions and then giving them medical advise as to what medications the patient should take or what treatment they should follow. U.S. based interpreters know better than to be asking questions and giving medical or legal advise. We are also held liable for our interpreting accuracy while a Tijuana interpreter returns to Mexico every night and is not held liable. As it reads now, these new

regulations/requirements would allow anyone to be provisionally certified by the physician. Also I think you should define that interpreters should be at least 18 years of age with a high school diploma at a minimum. And that now children be used as interpreters.

Anna Kelsey

May 1, 2015

I am an interpreter living and working in the San Francisco Bay Area. I have a Master's degree in Spanish Interpretation and Translation and I am certified in the California and Federal Courts. With this new fee schedule, I would simply no longer accept interpreting assignments for worker's comp depositions. It makes no sense to set one fee schedule for the entire state of California when cost of living varies dramatically from one place to another as does market rate for interpreting services. Travel time also needs to be taken into account. When taking into consideration travel time, the effective rate of pay for me under the new rates would be \$38/hour. That is completely unacceptable. Interpreters hired through agencies in this area are generally paid \$90-100 per hour for depositions .

I assume Federal and State Court rates were used as a basis for comparison when attempting to come up with these rates. However, when interpreting in the courts, there is a great deal of time spent waiting for cases to be called and longer hearings make use of team interpreting. Depositions require intense concentration over a much longer period of time and are exhausting. Most of the certified interpreters I know would not agree to work under the current proposed rates, which would lead to the use of non-certified interpreters and a dramatic reduction in the quality of the interpretation.

Carlos Chang

May 1, 2015

My name is Carlos Chang, I would like to include my following thoughts and requests in the DWC forum for the Interpreter Fee Schedule.

§ 9938 (a)(1) Amend "\$52.50" to an up to date wage correlating with cost of living and minimum wage increases to read "**\$105.89**" as per Table-2.

Interpreter Fees were established in the mid 1990's at \$11.25 per quarter hour with a two hour minimum. Since then there have been no increases to this rate adjusting for cost of living increase or inflation. However there have been many increases for hourly minimum wages that the Department of Industrial Relations has a historical account of all the increases Californian's have received (<http://www.dir.ca.gov/iwc/minimumwagehistory.htm>) See Table-1. If a fair and justifiable increase was applied to the 45 dollar wage commencing from October 1996 and we apply the same correlating percentage rates of increases that all other Californian's received over the decades, we arrive at a fair and honest application in Table-2 which proves that Certified Interpreter fees should be at least a minimum of \$105.89 per hour.

Table - 1					
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History of California Minimum Wage				
effective date	new	old	amount of	percentage of increase over
1-Jan-16	\$10.00	\$9.00	\$1.00	11.1 percent
1-Jul-14	\$9.00	\$8.00	\$1.00	12.5 percent
1-Jan-08	\$8.00	\$7.50	\$0.50	6.7 percent
1-Jan-07	\$7.50	\$6.75	\$0.75	11.1 percent
1-Jan-02	\$6.75	\$6.25	\$0.50	8.00 percent
1-Jan-01	\$6.25	\$5.75	\$0.50	8.70 percent
1-Mar-98	\$5.75	\$5.15	\$0.60	11.65 percent
1-Sep-97	\$5.15	\$5.00	\$0.15	3.00 percent
1-Mar-97	\$5.00	\$4.75	\$0.25	5.26 percent
1-Oct-96	\$4.75	\$4.25	\$0.50	11.76 percent
1-Jul-88	\$4.25	\$3.35	\$0.90	26.87 percent
1-Jan-81	\$3.35	\$3.10	\$0.25	8.06 percent
1-Jan-80	\$3.10	\$2.90	\$0.20	6.90 percent
Historical Data Source: http://www.dir.ca.gov/iwc/minimumwagehistory.htm				

Table - 2				
Keeping in line with 1-Oct-96 increases.				
Date	new Interpreter wage	old wage	Amount of increase	SAME Percentage of increase
1-Jan-16	\$105.890	\$95.311	\$10.580	11.10
1-Jul-14	\$95.311	\$84.721	\$10.590	12.50

1-Jan-08	\$84.721	\$79.401	\$5.320	6.70
1-Jan-07	\$79.401	\$71.468	\$7.933	11.10
1-Jan-02	\$71.468	\$66.174	\$5.294	8.00
1-Jan-01	\$66.174	\$60.878	\$5.296	8.70
1-Mar-98	\$60.878	\$54.525	\$6.352	11.65
1-Sep-97	\$54.525	\$52.937	\$1.588	3.00
1-Mar-97	\$52.937	\$50.292	\$2.645	5.26
1-Oct-96	\$50.292	45	\$5.292	11.76

Francisco Hulse
 Certified Court Interpreter
 State certification number: 301362

May 1, 2015

I am outraged after reading the "Draft Interpreter Fee Schedule Regulations for Forum Posting April 2015[,] California Code of Regulations, title 8, sections 9930 et seq.". I must object in the strongest terms to the notion that judges, lawyers, doctors and insurance claims adjusters have the capacity to provisionally "certify" interpreters. **The very idea is absurd.** What would they base that decision on? Their own knowledge of the non-English language(s) in question? Their own experience in the profession of interpreting? Should we interpreters turn around and license doctors, bestow bar cards on attorneys, and appoint judges?

Clearly, this draft of proposed regulations was written by insurance-industry lobbyists: the insurance industry's untrammled greed spurs it to prey on the most vulnerable people in society, namely immigrants, by robbing them of competent interpreters on their day in court, substituting greenhorns whom it proposes to pay less than half the rate charged by genuine certified interpreters.

I urge you to reject this draft and start over, without any input from the insurance industry. I also urge my colleagues not to stand for this absurdity: start making preparations now to abandon this segment of the industry in case this disastrous proposal is approved: sock away money, get additional training in another field, take in lodgers, move out of state — whatever it takes. Don't imagine for one second that if we accept these preposterous terms, the insurance industry's bottomless avarice will be satisfied.

Thomas Powlison CHI
Spanish Interpreter
Houston Methodist Global Healthcare Services

May 1, 2015

Dear Sirs; I have had to study interpreting and even without the study I am aware that not every bilingual person can interpret clearly. This being so, how is a monolingual Doctor or lawyer going to be able to tell if the person who is acting as interpreter knows the terminology or even the meaning of English terms in order to provide the 'Limited English Person' with a clear understanding of what is being said?

On the technical side, this proposal implies that if I need a service I can also judge as to another person's qualification to provide such service. I know we do that daily but many times we choose the wrong person because we are too lazy to find the right one or we want to save money but can't do it ourselves. When it comes to a decision that affects other people besides myself then I also put myself in a position to be sued for negligence or fraud. Are we to have the courts pass off the responsibility that normally is assigned? So then I can go bring my friend who studied English in school and ask them to take a Doctor's vocabulary and give it to the family who speak even less English and I can 'certify' them and it makes it legal. (Woe is me and them).

I would hope there are enough wise people in the deciding panel that can see the danger of providing certification outside of the group of people who have the experience to truly judge an issue.

Julia Sanchez

April 30, 2015

To whom it may concern,

I would like to know what is required for one to become a certified interpreter please. Where might one sign up to do so?

Thank you.

Esther Moscona

April 30, 2015

Certified Medical Interpreter

My name is Esther Moscona, I am a Certified Medical Interpreter English-Spanish; certification by National Board of Certification number 101197. I have worked in San Diego for several years. My comments are as follows:

9930. (k) and 9932 (2)

How can a physician determine if an individual is qualified to interpret an appointment when the physician does not understand what the interpreter is saying? These are two completely different fields, unable to qualify each other. A linguist should not determine if a physician is qualified as a medical provider.

9932 (c)

The first medical appointment is most important: the injured person is in shock and eager to know about his condition. An interpreter is necessary, unless he is unconscious. Injured workers should be taken to hospitals that have interpreting services when it is an emergency. Most of the

first medical treatment appointments are done by appointment one or two days after the accident date, in the doctor's office, and an interpreter should be present.

9935 (1) and (2)

The claim administrator, human resources, lawyers or doctors, should assign interpreters, seeking to accommodate the injured worker's preferences regarding gender or other particulars of the interpreter.

9938 (a) (1)

Fees for medical interpreters should have a **MINIMUM**, as interpreting agencies are constantly pressuring interpreters for lower fees, removing previously assigned cases, using threats and offering very low compensation for services. The maximum fee should be established by the market. Please consider adding mileage and parking compensation. Also necessary to review the fees periodically and increase them accordingly.

9939 (b)

A qualified medical interpreter should be paid a minimum of **TWO** hours for medical treatment appointment conducted, as it is now. One appointment requires transportation to the doctor's office, arrival at least 10-15 minutes before appointment time, and the time in the medical appointment itself, and some time parking fees or time spent looking for parking.

9940 (a) (1) and (2) Cancellations:

Interpreters should be compensated for the time scheduled. Some appointments require 4 to 6 hours like QME or Psychological assessments. It is not right to schedule for six hours and get payment for two if patient doesn't show or cancels at the last minute.

9941 (10) (c)

Proof of certification **SHOULD** be required, and non-certified interpreters should get certification in order to work in this field. This is a way to establish quality control of the services provided.

Thank you very much for the opportunity to provide comments.

Debra Schellenberg

April 30, 2015

I would like to address the fee schedule for medical appointments. I think it's unrealistic to expect a certified interpreter to drive all over a large metropolitan area for \$52 (oh, and the \$5.00) currently proposed. If there were a 2 hour minimum, as there is now, it would work. Since waiting time is not reimbursed, and physicians often run behind in their schedule, an interpreter can therefore be expected to work for what might consist of an hour of driving time, an hour or often cases much more in a busy physician's office in this scenario for \$52.00.

I am OK with a fee schedule, but believe that a 2 hour minimum must be allowed to make this this a financially feasible proposition. Otherwise, there is little doubt that the supply of certified interpreters will quickly diminish.

Julienne Hsu
CA Court Certified Mandarin Interpreter #301635
UCLA Extension Legal Interpretation Certification

April 30, 2015

Hi,

I'm a professional interpreter working southern California who is actually for this fee schedule, but I have some concerns regarding this page on State Personnel Board (<http://jobs.spb.ca.gov/Interpreterlisting>).

1, I know for a fact that Mandarin is also a very popular language, and I do not see that option on the website.

2, How do you guarantee the certified interpreters the proposed fee if you are allowing agencies to be the middle man and undercut what interpreter should earn? Will there be interpreter coordinators like the judicial court system to provide trusted and certified interpreters?

Thanks

Susan Randolph

April 29, 2015

It is laudable requiring certification of interpreters wherever possible and those who have gone through the certification process deserve higher remuneration, but the no minimum time period fee for non-provisionally certified interpreters is unrealistic.

It is not possible to make a living traveling to an assignment for less than a two hour minimum, (9939(d) nor is it reasonable to deny those interpreters late cancellation fees since they will have refused other work to be available for the cancelled assignment (9940 (b)).

If the unspoken aim of these conditions of use for non-provisionally certified interpreters is to encourage them to leave the industry or get certified, there needs to be a period of grandfathering in for those who have worked in the field for a number of years covering those assignments for which no certified interpreters are available. The certification process is expensive and it will be even more difficult to finance on no minimums and no late cancellation fees.

9939 (a) and (b) seem contradictory - is it a two hour minimum or a one hour minimum for medical treatment appointments?

Does the one hour minimum refer to the situation where an interpreter sits at a doctor's office covering all non-English speaking patients at the one site? If so, that should be specified. It is not possible to travel to different offices for a one hour minimum per patient.

I am curious about the billing codes since they do not seem to add any extra information beyond what is already required to be on the invoice.

Will there be a standardized form for the interpreters to take to the doctors office for the doctor to sign verifying any overtime?

It would be helpful if a clearer distinction could be made between payments to individual interpreters and payments to agencies (9937(e)). It would recognize that the services of

agencies save the claim administrators considerable time and that agencies have overhead costs beyond what individual interpreters have to cover.

Carlos Chang
Spanish Certified Interpreter

April 29, 2015

My name is Carlos Chang, I am a Spanish Certified Medical Interpreter certified in 2013 by the National Board Certificate # 100915. I have been working as a professional interpreter in San Diego County for over 10 years. I would like to include my following thoughts and requests in the DWC forum for the Interpreter Fee Schedule.

§9930 (b) (3) Please clarify the definition as to which certifications are valid and acceptable.

§9930 (k) How will a physician determine if an individual is qualified to perform interpreter services? Will DWC issue a benchmark battery of skills questions a physician administers to determine if said individual passes the test and therefore is qualified. Or will the physician simply ask the individual “do you speak the LEP’s language?”, Answer: Yes, Physician: OK you are qualified.

§9930 (k) The physician is required to be familiar with all the requirements set forth in section 9932 when making the determination if said individual is qualified or not. How much personal liability risk is the physician taking on when they qualify someone that delivers an interpretation with errors and omissions? What is the protocol to follow if the physician determines that said individual does not qualify to perform interpreting services?

§9931 (c) In an effort to avoid ambiguity please include a clear distinction for “after contacting at least three certified interpreters” be amended to include a geographic proximity to the particular event. Contacting three interpreters in Northern California for an event in San Diego can be an easy way out and a loop-hole for the adjuster, claims administrator, or individual responsible for providing the interpreter service to warrant why they went ahead and used a non-certified to interpret an event in San Diego.

§9931 (c) Amend “after contacting” to include specific methods of contact. Contact by telephone, email, text,sms, fax, mail or any other verifiable method.

§9932 (c) Amend “after contacting” to include specific methods of contact. Contact by telephone, email, text, sms, fax, mail or any other verifiable method.

§9932 (c) First medical treatment interpreter services are “Excluded from the requirements of this section”, however in order to provide the injured worker-LEP with interpreter services and not violate their rights by making a blatant exclusion to their California Labor Rights to have interpreter services, I would like to see an inclusion in this section that would encourage interpreter services be earnestly sought after for the first medical treatment appointment. With today’s advances in technology employers and work/industrial clinics and hospitals can maintain a directory of local Interpreters and send out a “blast” message to request interpreter services for first medical treatment.

§9934 (a) The injured worker should not have to request interpreter services. The services should be offered first and then the injured worker would decide if they want to accept interpreter services.

§9934 (a) Amend “events shall be paid by the claims administrator:” to read “events shall be paid to the interpreter by the claims administrator:”

§9935 (c) (3) Please provide a clearly defined time frame for “in sufficient time”.

§9936 (b) Clarify which methods of communication are acceptable in order to request the need for an interpreter.

§9938 (a) Removal of the word “maximum”.

§9938 (a) (1) Amend “52.50 per hour” to read “13.13 per quarter hour with a two hour minimum or established market rate, whichever is greater.”

§9938 (c) Amend “between a qualified interpreter or agency for interpreting services and the claims administrator” to read “between a qualified interpreter or LSP and the claims administrator”. LSP is the industry standard term for an interpreting agency.

§9939 (a) A med-legal exam takes upwards of 2 hours to complete. Interpreters function in the capacity of scribes for LEP’s when we fill out the paperwork and documentation required at med-legal exams. The completion of paperwork and writing down the claimant’s history is a lengthy process and depending on the complexity of the claim it can take more than 2 hours to complete the paperwork. It is with my years of experience with AME/IME/QME appointments that I recommend amending the two hour minimum be amended to 3.5 hours. This will ensure that the Interpreter is scheduled for the appointment with sufficient time for the completion of the exam.

§9939 (a) Amend “for each medical-legal exam conducted.” to read “for each medical treatment appointment and medical-legal exam conducted.”

§9940 (a) (1) Please clarify that the notification of the cancelation be done in a verifiable manner with one or more of the following manners, notifies in writing by email/text/sms/fax/mail.

§9940 (a)(1) Amend “two hours of compensation” to read “two hours of compensation or the full amount of hours scheduled and/or booked for the event, whichever is greater for each such exam cancelled.” The reasoning behind this request is that an Interpreter will be booked for a 4, 5 or even 6 hour Psychological evaluation and if for some reason it ends up being a late cancelation or a no-show then the Interpreter who reserved the entire day for this event and who turned away other appointment will only get paid for two hours of late cancelation/no-show.

§9940 (a)(2) Amend “responsible for providing for an interpreter” to read “responsible for providing an interpreter”

§9940 (a)(2) Amend “paid no less the equivalent” to read “paid no less than the equivalent”

§9940 (a)(2) Amend “one hour of compensation” to read “the minimum rate as set forth in section 9939 as compensation for each such exam cancelled.”

§9941 (a)(10) Missing (10)(a) There is a (b) but no (a)

§9941 (a)(10)(b) Amend “examining physician verifying time” to read “examining physician or staff verifying time”

§9941(a)(10)(b) Please provide a sample of such verification statement letter.

§9941 (a)(10)(b) Amend “beyond two hours.” to read “exceeding three hours.”

§9941 (a)(10)(c) Amend “beyond one hour.” to read “exceeding two hours.”

§9941 (a)(10)(c) Amend “treating physician verifying” to read “ treating physician or staff verifying”

§9943 (a) Include a reference to 9795.4

Michelle Thomas
Sr. Claim Representative
Workers' Compensation Claims

April 29, 2015

Will the applicant’s attorney be able to stand in the shoes of the claimant?

Is mileage ever allowed? If not, it should be stated in the code. And if it ever is, those parameters should be stated.

Dan Nachison SBN#80458

April 29, 2015

Dear Forum,

This is so misguided that it is shocking. \$210 for a half-day for a certified Spanish interpreter will guaranty that it will become very difficult to get qualified interpreters for depositions. While they can double set hearings, why should they do depositions and medical evaluations. Honestly in the busiest venues in California, LA and the Bay Area a person could not make a living based on these rates. The U and C for years has been \$120 an hour for certified. That is the market. The market is currently flooded with unqualified interpreters who charge excessively high rates for the qualifications but this punishes the well qualified and experienced interpreters and will in the long run deprive us of their services. I have been an attorney specializing in workers' compensation for 37 years and this is just another in a long line measures that are counter productive. It is weird that a measure like this is thought to be an effective cost saving measure when a doctor producing a \$3000 to \$5000 report cannot even communicate with the patient without the interpreter who is being paid \$52.50 per hour. The rates are absurd for Certified Interpreters..

Desiree Millikan

April 29, 2015

I have a master's degree from the Monterey Institute in simultaneous interpretation and currently work as a court-certified Spanish intepreter, both in the courts (civil and criminal) and at workers' compensation depositions and hearings. Title VI of the Civil Rights Act, which is the basis for providing interpretation service for non-English speaking persons, was intended to "prohibit discrimination on the basis of race, color, and national origin in programs and activities." I find it therefore incomprehensible and egregious in the extreme that the proposed workers compensation fee schedule should discriminate against Spanish interpreters by proposing a lesser fee for Spanish interpretation, as if Spanish interpreters are inferior in their knowledge and ability, or are not required to meet the same standards and requirements to become certified. Leaving aside whether the proposed fee is adequate or not, it makes no sense to discriminate against interpreters on the basis of their language knowledge.

Adriana De Dominicis

April 28, 2015

am a Spanish certified medical Interpreter and I wanted to put my two cents in.

First of all,

We are service providers just like interpreters are. We provide the same services other language interpreters are. We Spanish interpreters are being discriminated against because of your demand for our services not our abilities nor our services.

The fee for languages all languages should be adjusted.

I as a Spanish interpreter have the same cost of living than any other language interpreter. There are no exceptions or fee differences for cost of living nor travelling expenses either. Your demand for Spanish Interpreters is not any fault of ours.

I want this to be considered and adjusted.

Second point

Please compare costs of living, travelling, insurance costs when considering fee increases compared to the last time the fee schedule was created.

The increase for other languages may be acceptable but once again, the increase in Spanish Interpreting is not

Sincerely

(1) For Spanish language provisionally certified interpreters for hearings and depositions: \$103 for each half-day of service and \$187 for each full-day of service.

(2) For provisionally certified interpreter for hearings and depositions in all languages other than Spanish: \$133 for each half-day of service and \$217 for each full-day of service.

(c) Interpreter services provided by interpreters described in this section, which exceed 8 hours during a full-day shall be paid the pro-rata hourly, full-day rate, calculated for the category of interpreter used, as set forth in subsections (a) and (b) of this section, for each hour, or portion thereof, of service over 8 hours. An interpreter shall not be paid more than one hour of pro-rata hourly, full-day rate, for each hour worked beyond 8 hours in a full-day.

(d) The fees set forth in this section 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.

Hilary D. Satzman & Guadalupe Barragan
Barragan & Satzman LLP

April 28, 2015

Good afternoon:

The following are comments regarding the proposed interpreter fee schedule.

If interpreter fees for Board Hearings are going to increase in Southern California as currently proposed (from \$165.00 per Board session to \$210.00 per Board session), wherein quite frequently, one interpreter may appear on 5-15 cases in the morning and 5-15 cases in the afternoon, and therefore collect the minimum fee per case on 10-30 cases per day, 4-5 days per week, than the proposed fee, whether \$210 or \$165 for ½ day or \$388 or \$330 for full day, should be divided pro rata between the number of cases for which the interpreter interprets during a given court session. Otherwise, it is an extreme windfall for the interpreters. Many cases in Southern California involve interpretation services that do not exceed a few minutes of services, if any at all. Otherwise, interpreters should be legally prohibited from interpreting on more than one case per session, if they are going to be paid a full fee by each defendant for services that may last less than 5 minutes on multiple cases.

By way of example of the potential costs, if one interpreter appears on 30 cases per day, 15 in the morning and 15 in the afternoon (which is very common at most Southern California Boards), that interpreter would charge insurance companies \$6300 per day and would be entitled to collect \$6300 per day from the defendants. Even if only 10 cases per day, one interpreter could bill insurance companies \$2100 per day, for one date of service.

Workers' compensation is touted as a system that is supposed to provide benefits to applicants efficiently, effectively and economically. Codifying an economic windfall for interpreters at So. Cal. Boards to earn \$2100-\$6300 per day, while only working 7 hours per day, does not promote an efficient, effective or economic system, and does nothing to benefit injured workers, insurance companies and/or the employers who pay premiums in this State.

Also, if the applicant is not present, there should be a provision that no fee is owed whatsoever. Also, if the handling attorney is fluent in Spanish, as many are, perhaps there should be a special provision to cover those instances regarding the interpretation fees.

Thank you for allowing us to voice our opinions.

Thank you.

Ganna Gudkova, CMI

April 28, 2015

The 1st Draft of the Interpreter Fee Schedule

Should be 2 hours minimum for treatment appointments. The fees should be higher. Thank you.

Adriana De Dominicis

April 28, 2015

I am a Spanish certified medical Interpreter and I wanted to put my two cents in.

First of all,

We are service providers just like interpreters are. We provide the same services other language interpreters are. We Spanish interpreters are being discriminated against because of your demand for our services not our abilities nor our services.

The fee for languages all languages should be adjusted.

I as a Spanish interpreter have the same cost of living than any other language interpreter. There are no exceptions or fee differences for cost of living nor travelling expenses either. Your demand for Spanish Interpreters is not any fault of ours.

I want this to be considered and adjusted.

Second point

Please compare costs of living, travelling, insurance costs when considering fee increases Compared to the last time the fee schedule was created.

The increase for other languages may be acceptable but once again, the increase in Spanish Interpreting is not.

Debra Schellenberg

April 28, 2015

To whom it may concern:

I sent an email early this morning that was not lengthy and it has not been posted. What is the process for posting on this forum and what is the estimated timeframe to post on the forum? Is there a reason that it was not posted?

Thank you.

Kate Adams

April 28, 2015

I would like to know the correct modifier to use for the Doctor/ Professional charge. I would also like to know the % of increase in the reimbursement per the fee schedule. Thank you

Ramona Rodriguez

April 28, 2015

To whom it may concern,

I am a Spanish Court certified interpreter. I do mainly worker's compensation depositions and some med-legal appointments. I work for agencies who give me work.

I read the newly proposed fee schedule. This will not work. The rates proposed are rates that are close to what i get paid as an interpreter. What will happen to the agencies who find interpreters for the depos and med-legals? They will be forced to close down. I am not interested in being an agency and billing.

You will find that appointments will not be covered. This will incur more costs, as doctors and attorneys will have to wait. They will bill for their time waiting to see what interpreter will show up.

I beg that you modify this preposterous proposed fee schedule.

Debra Schellenberg

April 28, 2015

My comments are directed at who actually selects an interpreter. I believe it's unrealistic and impractical for a claims administrator or injured worker who needs an interpreter for every medical treatment appointment, which are typically every 6 weeks for an injured worker, to arrange to have an interpreter present at each medical appointment. Certified interpreters are resources and in limited supply. It makes far more sense for a treating physician's office or group practice, which may treat many injured workers in any day who need interpreters, to

arrange for the presence of a certified interpreter(s) in their office(s). The interpreter(s) should expect to be reimbursed at the appropriate hourly fee schedule. This will mitigate travel time and mileage, and avoid the need, as in this example, for what could amount to many certified interpreters or more for a busy treating physician's office in any given day, to criss cross California's already congested freeways and roads. This will also reduce travel costs to all insurance carriers. If an interpreter is certified, and the injured worker has access to an interpreter when required, and interpreting costs managed to a fee schedule, what difference does it make who selects the interpreter? The selection process/person should be irrelevant for that matter and based upon practical criteria, much like the selection of an anesthesiologist in a hospital. Hospitals hire anesthesiologists to be present based on the volume of patients in need, rather than having several criss crossing cites for surgical procedures. The selection of an interpreter should be handled similarly in a manner based on volume of patients in need of an interpreter in any given location.

A medical office can achieve far better economies of scale in the use of a limited supply of certified interpreters, because a busy treating physician's office or group will typically treat injured workers whose claims are handled by a large cross section of claims adjusters who would otherwise not be able to use the same resource/interpreter. A claims administrator or patient would never select an anesthesiologist for purely practical reasons. The selection of an interpreter should be identical for the same reasons.

Goli Khatibloo
Farsi Interpreter
Judicial Council - #700529

April 27, 2015

Good evening,

As a freelance Farsi interpreter working in Orange County, I would like to express my displeasure and disappointment in the proposed fee schedule. This proposed schedule will allow agencies to reduce our fees even more and for unqualified individuals to do our jobs. I am proud of the work I do and have gone through a great deal of effort in order to get here. I do not want to see my efforts, professionalism and experience abused by the system. Interpreting is a very demanding and tiring job and sitting through an 8 hour deposition for the rate that has been proposed is definitely an insult to us an individuals and interpreters. Therefore, I am requesting that the proposed fee schedule be removed and for interpreters of all languages to be able to receive proper compensation for the difficult work that they do.

Frank Aguayo
State Cert. Interp.
Dear gentlepersons,

Monday, April 27, 2015

Based on the definition of a Certified Interpreter, State Certified Medical Interpreters are not longer considered Certified.

Under Article 11, §9930, (a), the word "medical appointments" has to be added and mentioned in the body of it. It should read "Certified interpreter for hearings, depositions and medical appointments" means.....

I'm sure this was an oversight on the part of the persons in charge of putting this together. Thank you

Prof. David Chetcuti

Monday, April 27, 2015

I have three comments about the proposed Interpreter fee schedule.

1. Rule 9935(a): This section needs a minor amendment to close a loophole. Let me explain. At applicant depositions, we are now seeing applicant attorneys agreeing to use interpreters selected by the defendant since applicant was legally produced by notice of deposition. But what some attorneys do is hire a second interpreter at their selection for deposition preparation and post deposition debriefing. There are two interpreters; one before/after the depo and one during the depo. It's silly and expensive. It's a loophole that needs to be closed.

Recommendation: The interpreter selected for the deposition is also to be the interpreter for pre-depo attorney preparation and post depo debriefing. Incidentally, if this loophole is not closed then a new Billing Codes need to be added under Rule 9942 to cover pre-depo and post-depo services.

2. Rule 9936:. Believe it or not I have seen graduates of UC Berkeley and Fresno State University with college degrees say that they need an interpreter. Ridiculous. These colleges teach in English, with English text books, and English exams. If a student can graduate from a California college there is no doubt they are proficient in the English language.

Recommendation: A simple clarification should be added saying that a college graduate receiving an AA, BA, BS or higher degree from a California University or junior college is rebuttably presumed not to be in need of an interpreter.

3. Rule 9936: The other day a Vietnamese speaking attorney and his Vietnamese speaking client hired a Vietnamese interpreter to read the Stipulated Settlement Award to the employee at the attorney's office. If this was done at the WCAB that would be ok since the attorney cannot litigate and interpreter simultaneously. But when an interpreter come to that attorney's office there is no need for an interpreter when both the attorney and client speak the same language. We need a quick fix because logically, if gone unchallenged then applicant attorneys can hire an English speaking interpreter when both the attorney and client speak English.

Recommendation: Where applicant attorney and employee proficiently speak the same language, interpreter services are not allowed at applicant attorney's office to go over documents.

Andrew Fischer

Monday, April 27, 2015

What a wonderful regulation, we have a sole interpreter in Northern California who has been over billing for years, and is totally out of control filing liens. I hope this puts him in his place, we will gladly pay the fees as outlined, I think it is a big improvement.
