

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

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations:  
Workers' Compensation – Medical Billing and Payment –ICD-10 Delay**

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), pursuant to the authority vested in her by Labor Code Sections by Labor Code sections 59, 133, 4603.4, 4603.5, and 5307.3, proposes to amend section 9792.5.1, including the Division of Workers' Compensation Medical Billing and Payment Guide, a document incorporated by reference into section 9792.5.1 subdivision (a), in Article 5.5.0 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations.

**PROPOSED REGULATORY ACTION**

The Administrative Director proposes to modify existing regulations, by amending Article 5.5.0 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations relating to billing and payment of medical treatment in the workers' compensation system:

Amend section 9792.5.1.      Medical Billing and Payment Guide; Electronic Medical Billing and Payment Companion Guide; Various Implementation Guides [and amend the document incorporated by reference into section 9792.5.1 subdivision (a): California Division of Workers' Compensation Medical Billing and Payment Guide, Version 1.2]

**PUBLIC HEARING**

The Administrative Director has not scheduled a public hearing on this proposed action. However, the Administrative Director will hold a hearing if she receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any written request to hold a public hearing must be directed to the contact person at the address, and by one of the methods, specified for written comments.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 P.M., on September 8, 2014**. The Division of Workers' Compensation will consider only comments received at the Division by that time.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Ms. Gray must receive all written comments no later than **5:00 P.M., on September 8, 2014**.

### **AUTHORITY AND REFERENCE**

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.4, 4603.5, and 5307.3.

Reference is to Labor Code sections 4600, 4603.2, 4603.4 and 5307.1.

### **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Labor Code section 4600 requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Under existing law, payment for medical treatment shall be no more than reasonable maximum amounts set by the administrative directive in the Official Medical Fee Schedule or the amounts set pursuant to a contract.

Labor Code section 4603.2 sets forth procedures and timelines for payment of a medical treatment bill. Labor Code section 4603.4 mandates the Administrative Director to adopt rules to standardize paper billing forms and to establish electronic billing rules. Bills for medical treatment services rendered pursuant to Labor Code section 4600 are required to follow the mandates of these sections. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains "administrative simplification" provisions relating to medical billing, including the requirement for HIPAA-covered entities to use specified code sets. However, HIPAA contains exemptions for workers' compensation. Labor Code section 4603.4 provides that the electronic billing rules adopted by the Administrative Director shall be consistent with HIPAA "to the extent feasible."

The Administrative Director adopted regulations to implement the billing statutes (Labor Code §§4603.2, 4603.4), including two billing guides which are incorporated by reference into the regulations. The *California Division of Workers' Compensation Medical Billing and Payment Guide* (hereafter

“Medical Billing and Payment Guide”), first effective on October 15, 2011, contains general business rules for billing and payment that apply to both the paper and electronic billing processes. In addition, the Medical Billing and Payment Guide contains rules that apply only to paper billing, including the specification of standardized paper billing forms. The *California Division of Workers’ Compensation Electronic Medical Billing and Payment Companion Guide* (hereafter “Companion Guide”), which applies only to electronic billing and payment, first became effective on October 18, 2012. It adopts the HIPAA-approved electronic transaction standards to the extent feasible and provides technical rules for electronic billing and payment where needed to adapt the national standard HIPAA-approved electronic billing formats for use in California workers’ compensation.

The billing regulations, including the Medical Billing and Payment Guide, were amended effective February 12, 2014 to adopt a variety of updates and to implement revised billing and payment procedures necessitated by the passage of Senate Bill 863 (Statutes 2012, Chapter 363). In addition, the February 12, 2014 amendment of the Medical Billing and Payment Guide included the adoption of the International Classification of Diseases – 10<sup>th</sup> Revision, Clinical Modification (ICD-10-CM) and the International Classification of Diseases – 10<sup>th</sup> Revision, Procedure Coding System (ICD-10-PCS). The Medical Billing and Payment Guide, Version 1.2 (Feb. 2014 revision) adopted the ICD-10-CM diagnosis codes and ICD-10-PCS inpatient procedure codes for mandatory usage for services rendered on or after October 1, 2014. The October 1, 2014 date for transition from ICD-9 to ICD-20 was chosen in order to coincide with the mandatory usage date of ICD-10-CM and ICD-10-PCS for HIPAA-covered entities.

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Public Law No. 113-93) was enacted by the United States Congress. Section 212 of Public Law 113-93 delayed the ICD-10 for at least one year, providing, inter alia, that the ICD-10 may *not* be adopted by the Secretary of the United States Department of Health and Human Services earlier than October 1, 2015. The Centers for Medicare and Medicaid Services (CMS) has issued a public notice indicating that the United States Department of Health and Human Services (HHS) expects to release an interim final rule in the near future that will provide a new compliance date that will require use of the ICD-10 beginning October 1, 2015 for HIPAA-covered entities. In light of the passage of PAMA and the notice by the HHS that it intends to adopt October 1, 2015 as the date for mandatory ICD-10 HIPAA usage, the Administrative Director is issuing this Notice of Proposed Rulemaking. The Administrative Director proposes to amend the Medical Billing and Payment Guide to postpone the date for mandatory usage of ICD-10-CM and ICD-10-PCS usage for one year, changing the compliance date from October 1, 2014 to October 1, 2015. In addition, the proposed regulations adopt and incorporate by reference the 2015 versions of the ICD-10-CM and ICD-10-PCS files and documents posted on the CMS website in place of the 2014 versions of the files and documents.

The proposed regulation implements, interprets, and makes specific the above sections of the Labor Code as follows:

**Section 9792.5.1 Medical Billing and Payment Guide; Electronic Medical Billing and Payment Companion Guide; Various Implementation Guides.**

- Based on Labor Code sections 4603.2 and 4603.4, section 9792.5.1 is amended to revise subdivision (a)(3) to change the version number of the California Division of Workers’ Compensation Medical Billing and Payment Guide, effective for services on or after February 12, 2014, from “Version 1.2” to “Version 1.2.1”,
  - Medical Billing and Payment Guide, Version 1.2.1 (which is incorporated by reference) is

amended based on Labor Code sections 4603.2 and 4603.4 as follows.

- The cover page is amended to change the version number: delete the version number “1.2” and insert the version “1.2.1”.
- The Table of Contents is revised to conform to revised headings in Section 3.1.0 and Section 3.1.1.
- The introduction page is revised to add a new row to the version table, to list Version 1.2.1 and the February 12, 2014 effective date.
- Section 3.1.0 Use of ICD-9, ICD-10 Codes is revised to add the phrase “Applicable Dates” to the heading. The section is further revised to replace each occurrence of the date “October 1, 2014” with the date “October 1, 2015” as the compliance date for switching from the ICD-9-CM volume 1 and 2 to ICD-10-CM (diagnosis codes) and as the compliance date for switching from ICD-9-CM volume 3 to ICD-10-PCS (inpatient procedure codes).
- Section 3.1.1 Use of ICD-9, ICD-10 Codes is revised to add the phrase “Separate Bills Required” to the heading.
- Section 3.2.1 Incorporation by Reference of ICD-9, ICD-10 Codes is revised to delete the phrase “ICD-9” from the heading and add the phrase “and Related Documents” to conform to the content of the section. In the introductory language, the date is changed from October 1, 2014 to October 1, 2015. The proposal deletes subdivision (a) that incorporates by reference 2014 versions of ICD-10-CM files and documents and adopts a new subdivision (a) incorporating by reference 2015 ICD-10-CM files and documents. The proposal deletes subdivision (b) that incorporates by reference 2014 versions of ICD-10-PCS files and documents and adopts a new subdivision (b) incorporating by reference 2015 ICD-10-PCS files and documents.

**Objective and Anticipated Benefits of the Proposed Regulations:**

The broad objective of the proposed regulation is to delay the mandatory use of the ICD-10-CM and ICD-10-PCS for one year, until October 1, 2015, in order to be consistent with the expected ICD-10 compliance date for HIPAA-covered entities. Maintaining the current regulatory date of October 1, 2014 for use of ICD-10 would render the workers’ compensation system out of sync with the medical diagnosis and inpatient procedure coding system that will be used by all HIPAA-covered entities.

The Administrative Director anticipates that there will be many benefits to adopting the ICD-10 in conformity with the HIPAA deadline, including: further time for providers and payers to develop and test their systems, further time for staff training, the avoidance of parallel but divergent coding system deadlines for workers’ compensation and HIPAA-covered entities, avoidance of conflicting obligations for HIPAA-covered entities that also participate in workers’ compensation, the opportunity to utilize information technology infrastructure developed to coincide with the HIPAA timeframe. The efficiencies involved in conforming to the HIPAA deadline will allow better use of resources for the provision of medical care to injured workers in California, while minimizing the burden to employers and workers’ compensation payers.

## **Determination Regarding Inconsistency/Incompatibility with Existing State Regulations:**

The Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Administrative Director has concluded that this is the only regulation that governs the use of ICD-9 and ICD-10 coding for workers' compensation medical billing and payment processing.

### **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The mandate to transition to ICD-10 is already established in regulation; this proposed regulatory amendment delays the implementation date but does not impose any new burdens.
- Statewide adverse economic impact directly affecting businesses and individuals: The regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Significant effect on housing costs: None.

### **Results of the Economic Impact Analysis/Assessment**

The Administrative Director concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses with the State of California, and (5) unlikely that the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The proposed regulation will be beneficial as it will allow medical providers and workers' compensation payers additional time to prepare for the ICD-9 to ICD-10 transition. There will be increased efficiency for workers' compensation by transitioning at the same time as the general health industry and HIPAA-covered entities. In addition, ICD-9 will no longer be maintained / updated once ICD-10 has been implemented by HHS. Therefore, staying with ICD-9 is not a tenable option.

Small Business Determination: The Administrative Director has determined that the proposed regulation affects small business.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed rulemaking action may be directed to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)  
Telephone: (510) 286-7100

The backup contact person for these inquiries is:

Jacqueline Schauer  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [jschauer@dir.ca.gov](mailto:jschauer@dir.ca.gov)  
Telephone: (510) 286-7100

Please direct requests for copies of the proposed text (the "express terms") of the regulations (including

the proposed Medical Billing and Payment Guide incorporated by reference), the Initial Statement of Reasons, the modified text of the regulations, and any information upon which the rulemaking is based to the contact person at the above address. Requests to be added to the mailing list for rulemaking notices may also be directed to the contact person.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS,  
TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND  
DOCUMENTS SUPPORTING THE RULEMAKING FILE**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. Proposed amendments to the text and the document incorporated by reference are indicated in underline (additions) and strikeout (deletions). The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, the Fiscal and Economic Impact Statement (Form STD 399), the documents relied upon, and the documents incorporated by reference.

The documents relied upon in drafting the proposed regulation include the following:

- Center for Medicare and Medicaid Services Web Announcement of Expected October 1, 2015 ICD-10 Transition
- Federal Register, Vol. 79, No. 94, May 15, 2014, Department of Health and Human Services, Centers for Medicare & Medicaid Services 42 CFR Parts 405, 412, 413, et al. Proposed Rule: Excerpt [with highlight added] [Cover page, pages 27978, 28130, 28232, 28234]

The documents incorporated by reference include the following:

- The California Division of Workers' Compensation Medical Billing and Payment Guide Version 1.2.1
  - 2015 International Classification of Diseases 10th Revision Clinical Modification (ICD-10-CM), including the following PDF and ZIP files posted on the CMS website (<http://www.cms.gov/Medicare/Coding/ICD10/2015-ICD-10-CM-and-GEMs.html>):
    - 2015 Code Descriptions in Tabular Order [ZIP, 1MB]
    - 2015 Code Tables and Index, Updated 5/22/14 [ZIP, 16MB]
    - 2015 ICD-10-CM Duplicate Code Numbers [ZIP, 68KB]
    - 2015 Addendum [PDF, 29KB]
    - 2015 General Equivalence Mappings (GEMs) – Diagnosis Codes and Guide [ZIP, 653KB]
  - 2015 International Classification of Diseases 10th Revision Procedure Coding System (ICD-10-PCS), including the following PDF and ZIP files posted on the CMS website (<http://www.cms.gov/Medicare/Coding/ICD10/2015-ICD-10-PCS-and-GEMs.html>):
    - 2015 Official ICD-10-PCS Coding Guidelines [PDF, 76KB]
    - 2015 Version – What's New [PDF, 41KB]

- 2015 Code Tables and Index [ZIP, 5MB]
- 2015 PCS Long and Abbreviated Titles [ZIP, 1MB]
- 2015 Development of the ICD-10 Procedure Coding System (ICD-10-PCS) [PDF, 226KB]
- 2015 ICD-10-PCS Reference Manual [ZIP, 724KB]
- 2015 Addendum [ZIP, 64KB]
- PCS Slides for 2015 [ZIP, 584KB]
- 2015 General Equivalence Mappings (GEMs) – Procedure Codes and Guide [ZIP, 752KB]

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18<sup>th</sup> Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Administrative Director may adopt the proposed regulations substantially as described in this notice. If the Administrative Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted. The Notice of Modification of Proposed Rulemaking will be sent to persons who have submitted a comment and to persons who have requested notification of modifications to the proposal. Please send requests for copies of any modified regulations to the contact person at the address indicated above.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, proposed text of the regulation in underline and strikeout, including the proposed Division of Workers' Compensation Medical Billing and Payment Guide, Version 1.2.1 to be incorporated by reference, may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Medical Treatment Billing and Payment – ICD-10 Delay link.

## **AUTOMATIC MAILING**

A copy of this Notice will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, section 9792.5.1 and in the California Division of Workers' Compensation Medical Billing and Payment Guide, Version 1.2.1, a document incorporated by reference into subdivision (a) of section 9792.5.1. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov) .

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