

**State of California
Office of Administrative Law**

In re:

Division of Workers Compensation

Regulatory Action:

Title 8, California Code of Regulations

Adopt sections: 9795.1.5, 9795.1.6, 9795.5

Amend sections: 9795.1, 9795.3

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

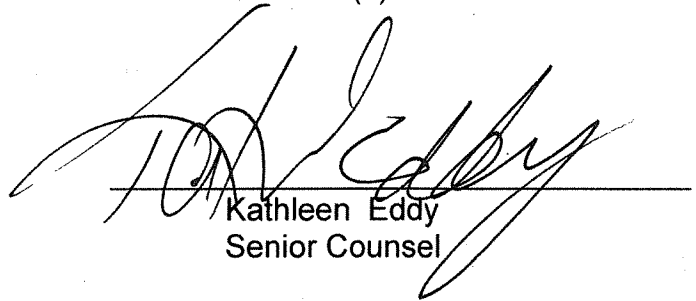
**Government Code Section 11349.1 and
11349.6(d)**

OAL File No. 2013-0701-02 C

This Certification of Compliance adopts requirements for certified, provisionally certified and certified for medical treatment appointments or medical legal exams interpreters in compliance with Chapter 363, Statutes of 2012.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: 8/13/2013



**Kathleen Eddy
Senior Counsel**

**For: DEBRA M. CORNEZ
Director**

**Original: Destie Overpeck
Copy: Destie Overpeck**

NOTICE PUBLICATION/REGULATIONS SUBMISSION



(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2013-0701-02C	EMERGENCY NUMBER
NOTICE		REGULATIONS	

ENDORSED FILED
IN THE OFFICE OF
2013 AUG 13 PM 3:53
Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

2013 JUL -1 PM 1:54
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
Division of Workers' Compensation

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Destie Overpeck	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Workers' Compensation - Interpreter certification	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) OAL File No. 2012-1219-05 E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 9795.1.5, 9795.1.6; 9795.5
AMEND 9795.1; 9795.3
REPEAL
TITLE(S) 8

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <u>October 1, 2013</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Destie Overpeck	TELEPHONE NUMBER [REDACTED]	FAX NUMBER (Optional) 510-286-0687	E-MAIL ADDRESS (Optional) doverpeck@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Destie Overpeck</i>	DATE 6/28/13
TYPED NAME AND TITLE OF SIGNATORY Destie Overpeck, Acting Administrative Director	

For use by Office of Administrative Law (OAL) only

per agency request

§9795.1. Definitions.

As used in this article:

~~(a) "Certified" means an interpreter who is certified in accordance with subdivision (e) of Sections 11513, 11435.30 and/or 11435.35 of the Government Code or Section 68562 of the Government Code.~~

~~(b)(c)(b)(a)~~ "Claims Administrator" means the person or entity responsible for the payment of compensation for any of the following: a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) or for the Subsequent Injuries Benefits Trust Fund (SIBTF), or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, ~~or~~ joint powers authority, the Self-Insurers' Security Fund, or the California Insurance Guarantee Association (CIGA) .

~~(c)(d)(c)(b)~~ "Full day" means services performed which exceed one-half day, up to 8 hours.

~~(d)(e)(d)(c)~~ "One-half day" means:

- (1) When appearing at any Workers' Compensation Appeals Board hearing, ~~(or)~~ daytime arbitration ~~or formal rehabilitation conference~~, all or any part of a morning or afternoon session.
- (2) When appearing at a deposition, all or any part of 3.5 hours.
- (3) When appearing at an evening arbitration, all or any part of 3 hours.

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

~~(b)(f) "Qualified interpreter for purposes of medical treatment appointments" means an interpreter who has a documented and demonstrated proficiency in both English and the other language; a fundamental knowledge in both languages of health care terminology and concepts relevant to health care delivery systems; and education and training in interpreting ethics, conduct and confidentiality, which may include the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Healthcare. Evidence of these criteria shall be established by a certificate of completion of a~~

~~Medical or Healthcare Interpreter Certification Program issued by a California educational or vocational institution.~~

~~(f)~~ "Qualified interpreter" means an interpreter who is certified or provisionally certified.

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

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

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

§ 9795.1.5 Interpreters for hearings, depositions or arbitrations

(a) To qualify to be paid for interpreter services at a hearing, deposition or arbitration, the interpreter shall be

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

(2) provisionally certified, which means deemed qualified to perform interpreter services when a certified interpreter cannot be present, either:

(A) by agreement of the parties, or

(B) based on a finding by the workers' compensation administrative law judge conducting a hearing that the interpreter is qualified to interpret at the hearing, or by the arbitrator conducting the arbitration that the interpreter is qualified to interpret at the arbitration. The finding of the judge or arbitrator and the basis for the finding shall be set forth in the record of proceedings.

Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35, 11435.55, 11513 and 68562, Government Code.

§ 9795.1.6 Interpreters for medical treatment appointments or medical legal exams

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

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

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

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

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

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

Authority cited: Sections 133, 5307.3, 5710 and 5811, Labor Code. Reference: Sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35, 11435.40, 11435.55, 11513 and 68562, Government Code.

§ 9795.3. Fees for Interpreter Services

(a) Fees for services performed by a certified, or provisionally certified, or ~~qualified~~ interpreter,

upon request of an ~~where the~~ employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:

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

~~(2) A medical treatment appointments;~~

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

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

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

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

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

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

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

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

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

(b) The following fees for interpreter services provided by a qualified or certified or provisionally certified interpreter shall be presumed to be reasonable:

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

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

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

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

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

(c) Unless notified of a cancellation at least 24 hours prior to the time the service is to be provided, the interpreter shall be paid no less than the minimum fee.

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

(e) The fees set forth in subdivision (b) shall be presumed reasonable for services provided by

provisionally certified interpreters only if efforts to obtain a certified interpreter are documented and submitted to the claims administrator with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter.

(f) It is the responsibility of the party producing a witness requiring an interpreter to arrange for the presence of the interpreter.

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

9795.5 Interpreter Directories

~~a. Interpreters certified in accordance with sections 9795.1.5 (a)(1) and 9795.1.6 (a)(1) and who are qualified to interpret at workers' compensation appeals board hearings~~ are listed at the following websites: <http://jobs.spb.ca.gov/InterpreterListing/> and <http://www.courts.ca.gov/programs-interpreters.htm>.

~~b. The Administrative Director shall maintain a list of qualified Certified interpreters for the purposes of medical treatment appointments and medical legal exams. An interpreter who meets the qualifications of section 9795.1.6(a)(2) (b) must apply to the Administrative Director to be included on the list through the year and must present a copy of the Certification Commission for Healthcare Interpreters credential indicating that the interpreter passed the exam and specifying the language evidence of the required documentation. The list shall be reviewed and revised no less than annually, and shall be made available on the website www.dir.ca.gov or upon request, 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>.~~

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

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