



California Workers' Compensation Institute
1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 251-9485

December 7, 2012

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

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

**RE: 1st Forum Comments on Draft Interpreter Regulations
Sections 9795.1 – 9795.3**

Dear Ms. Gray:

These written comments on draft regulations to implement Senate Bill 863 provisions regarding Draft Interpreter regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$36B of annual payroll (20% of the state's total annual self-insured payroll).

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

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

Introduction

While the division has moved quickly to set in place the statutory requirements for interpreter services during medical treatment appointments, it is somewhat disappointing that a more comprehensive assessment of both interpreter's qualifications and reasonable fees has not been formulated.

Recommended changes are indicated by italicized and highlighted underscore and strikeout.

§9795.1. Definitions

Recommendation

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

§9795.1. Definitions

Recommendation

(**) "English proficiency"

Discussion

The AD should propose some specific standards for determining whether the injured worker, in fact, requires the assistance of an interpreter in order to communicate effectively with the treating physician. Regulatory criteria for the necessity of interpreting services would better manage these resources, avoid disputes, and eliminate unnecessary liens.

Recommendation

The AD should link interpreting services for medical treatment to the standards set out for medical billing. Modifier -93 allows an increased fee when an interpreter is required for medical treatment appointments. Where this modifier is not provided, fees for interpreter services should not apply.

In Guitron v WCAB (2011), en banc opinion, the Board found that the employer must provide interpreter services under Labor Code section 4600, if an injured worker is unable to communicate effectively with the treating physician. The Board also held that the interpreter has the burden of proving that he is qualified and that the services were reasonably required. These regulations would be more effective if they required a signed statement from the interpreter summarizing his qualification and providing sufficient factual information and attesting that the interpreter services were reasonably required.

Recommendation

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

Discussion

The definition of provisionally certified has been deleted so this reference sdl be deleted as well.

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

Sincerely,

Michael McClain
General Counsel

MMc/pm

cc: Destie Overpeck, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members
CWCI Return to Work Group