

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

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

Workers' Compensation – Interpreter Services

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), pursuant to the authority vested in her by Labor Code Sections 133, 5307.3, 5710 and 5811, has adopted regulations on an emergency basis to implement the provisions of Labor Code section 4600(g), 4620(d), 5710(b)(5), 5811 and Government Code sections 11435.30 and 11435.35, as implemented by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013).

The regulations amend Article 5.7 of Chapter 4.5, Subchapter 1 of Title 8, California Code of Regulations, sections 9795.1 and 9795.3 and adopt section 9795.5. The regulations govern interpreter services and certification. The regulations implement, interpret, and make specific Labor Code sections 4600(g), 4620(d), 5710(b)(5), 5811 and Government Code sections 11435.30 and 11435.

The emergency regulations listed below became effective on January 1, 2013, and will remain in effect for a period of 180 days from January 1, 2013. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

PROPOSED REGULATORY ACTION

The Division of Workers' Compensation proposes to amend Article 5.7 of Chapter 4.5, Subchapter 1 of Title 8, California Code of Regulations, sections 9795.1 and 9795.3, and to adopt section 9795.5 relating to interpreter certification:

Amend section 9795.1	Definitions
Amend section 9795.3	Fees for Interpreter Services
Adopt section 9795.5	Interpreter Directories

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: March 19, 2013
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable

accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

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 March 19, 2013**. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

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.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 P.M., on March 19, 2013**.

AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 133, 4600, 5307.3, 5710 and 5811.

Reference is to Labor Code sections 4600, 4620, 4621, 5710 and 5811, Labor Code; and Sections 11435.30, 11435.35, and 68562, Government Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This rulemaking defines “qualified interpreter for purposes of medical treatment appointments,” adds “medical treatment appointments” as an event for which an interpreter is entitled to a fee, and set forth the websites where interpreters who are qualified to interpret at workers’ compensation appeals board hearings and medical treatment appointments can be found.

Labor Code section 4600 requires the employer to provide medical treatment that is reasonably required to cure or relieve an employee from the effects of his or her injury. Labor Code section 4600(g) provides that “if the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments.

Labor Code section 4600(g) also defines a qualified interpreter for the purposes of an examination. It states, “To be a qualified interpreter for purposes of medical treatment appointments, an interpreter... shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code.” Labor Code section 4600(g) also states, “an employer shall not be required to pay for the services of an interpreter who is not certified or is provisionally certified by the person conducting the medical treatment or examination unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.”

Labor Code section 4600(f) allows for interpreters at medical-legal examinations at the request of the employer, administrative director, the appeals board or a Workers’ Compensation Judge.

Labor Code section 4620(d) has been added and states, “if the injured employee cannot effectively communicate with an examining physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during the medical examination... An employer shall not be required to pay for the services of an interpreter who is provisionally certified unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.”

Labor Code section 5710(b)(5) which relates to interpreters at deposition, has been amended. It states, “If the injured employee or any other deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the services of language interpreter certified or deemed certified pursuant to Article 9 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of Section 68566 of the Government Code.”

Labor Code section 5811(b) has been amended to add several provisions concerning interpreter involvement. Labor Code section 5811(b)(1) reaffirms that for WCAB hearings and conferences, any party producing a witness requiring an interpreter is responsible for arranging for the presence of a qualified interpreter.

Labor Code section 5811(b)(2) has been added. It defines a qualified interpreter as someone who is certified, or deemed certified, pursuant to Government Code section 11435.05 (Title 2, Division 3, Part 1, Chapter 4.5, Article 8), or Government Code section 68566.

A new sentence describes the duties of an interpreter. It states, “The duty of an interpreter is to accurately and impartially translate oral communications and transliterate written materials, and not to act as an agent or advocate. An interrupter 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.”

Labor Code section 5811(b)(2) also was amended to add medical appointments to the list of allowable venues for interpreters.

Government Code section 11435.30 and 11435.35 authorize the Administrative Director to maintain an updated list of certified administrative hearing interpreters and certified medical examination interpreters.

The described regulations were adopted as emergency regulations, effective January 1, 2013. This rulemaking would make the regulations permanent. Changes to the text of the regulations that have been made after the adoption of the emergency regulations are shown in italics. These proposed regulations implement, interpret, and make specific the above sections of the Labor Code and Government Code as follows:

Section 9795.1 Definitions

- This section provides definitions for key terms regarding interpreters.
- The definition of “qualified interpreter for purposes of medical treatment appointments” is added to ensure that its meaning, as used in the regulations, will be clear to the regulated public.
- Interpreters “provisionally certified” by “the residing officer at an appeals board hearing, arbitration, at the request of a party or parties” has been deleted from the regulations.
- *“Qualified interpreters” has been deleted.*
- Deleted from the definitions is the term “formal rehabilitation conference,” as the vocational rehabilitation benefit was repealed and these no longer exist.
- *The section has been re-lettered.*

Section 9795.3 Fees for Interpreter Services

- This section was amended to add medical treatment appointments to conform with Labor Code section 5811(b)(2) which was amended to add medical appointments to the list of venues where a qualified interpreter may render services.

Section 9795.5 Interpreter Directories

- *This section has been added to set forth the web sites where interpreters who are certified to interpret at workers’ compensation appeals board hearings are listed. It also provides that the Administrative Director shall maintain a list of qualified interpreters for the purposes of medical treatment appointments. An interpreter who meets the qualifications of section 9795.1 (b) must apply to the Administrative Director to be included on the list through the year and must present evidence of the required documentation. The list shall be reviewed and revised on a yearly basis, and shall be made available on the website www.dir.ca.gov or upon request.*

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the regulations is to explain what criteria must be met for interpreters who interpret at medical appointments. This will benefit (1) injured workers who will be entitled to the services of interpreters who have the appropriate education and training to assist injured workers; (2) interpreters who will be paid for their services; and (3) employers and claims administrators who will be assured that the interpreting services are provided to injured workers. The availability of a list of interpreters will also benefit interpreters by providing a directory for the public to use, and it will help injured workers and claims administrators by providing a tool to help find certified and qualified interpreters.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting 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 Acting Administrative Director has concluded that these are the only regulations that define “qualified interpreter for purposes of medical treatment appointments,” provides “medical treatment appointments” as an event for which an interpreter is entitled to a fee, and set forth the web site where interpreters who are qualified to interpret at workers’ compensation appeals board hearings and medical treatment appointments can be found.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Acting 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 division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, and individuals, the Acting Administrative Director concludes that the adverse economic impact, including the ability of California businesses to compete with business in the other states, will not be significant.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting 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 with 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 the business currently doing business within the State of California.

Benefits of the Proposed Action: The benefits anticipated from the regulations are an injured worker's right to have a qualified interpreter at a medical appointment if the injured worker is not proficient in English. The current regulations have no provision regarding how an interpreter for medical treatments can meet the requirements to be a "qualified interpreter." Without these regulations, there would be no definition of a "qualified interpreter" for the purposes of translating for an injured worker at medical appointments. A claims administrator is not required to pay for the services of a non-certified interpreter. Therefore, these emergency regulations are necessary to prevent significant harm to the health and safety of injured workers who cannot proficiently speak or understand English. Additionally, the regulations will ensure that interpreters who are certified are used in the judicial aspects of the workers' compensation system. Finally, the public will be able to find the names of qualified and certified interpreters listed on the websites provided in the regulations.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

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

The Acting Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from December 4 – 7, 2012 through the Division's Internet website (the "DWC Forum").

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

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. 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, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at 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 Interpreter Certification link.

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, 17th 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.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

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

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Destie Overpeck
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: doverpeck@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

FORMAT OF REGULATORY TEXT.

Text of Emergency Regulations Effective January 1, 2013:

Deletions from the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single underlining, thus: added language.

Additional Proposed Text Noticed for 45-Day Comment Period:

Deletions from the emergency regulatory text noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the original codified regulatory text and emergency regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-day comment period are indicated by double strike-through: ~~~~deleted language~~~~.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Acting Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

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.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Acting Administrative Director's mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, commencing with section 9795.1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.