

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Interpreter Services**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9795.1, 9795.3 and 9795.5**

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|------------------------|-------------------------------|
| Amended section 9795.1 | Definitions |
| Amended section 9795.3 | Fees for Interpreter Services |
| Adopt section 9795.5 | Interpreter Directories |

BACKGROUND TO REGULATORY PROCEEDING

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the Division of Workers’ Compensation’s (DWC) proposed amendments to the existing interpreter services regulations which became effective as an emergency regulations on January 1, 2013 and adoption of an additional regulation entitled Interpreter Directories. This ISOR fulfills the requirements of California’s Administrative Procedure Act. (See Government Code section 11340 et seq.)

Senate Bill (SB) 863 was signed into law by Governor Brown on September 18, 2012 to become effective January 1, 2013. SB 863 amends the Labor Code to state that that an injured worker who cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language is entitled to the services of a qualified interpreter during medical treatment appointments. A qualified interpreter is distinguished from a certified interpreter and is required to meet any requirements set forth in regulations adopted by the Administrative Director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. That section requires the Department of Managed Health Care (DMHC) to develop regulations to ensure that group health providers advise their limited-English proficient enrollees of the availability of interpreter services, ensure access to interpretation services, and ensure quality and timeliness of oral interpretation services, with consideration given to standards established by California or nationally recognized accrediting or professional organizations.

The DMHC requires each group plan to develop proficiency standards that must include three components:

- 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 (CHIA) or the National Council on Interpreting in Healthcare.

SB 863 further states 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.

Without these regulations, there would be no provision regarding how an interpreter for medical treatments could meet the requirements to be a “qualified interpreter” for the purposes of translating for an injured worker at medical appointments. These regulations are also required to include medical treatment appointments as an event for which an interpreter is entitled to a fee for services. A claims administrator is not required to pay for the services of an interpreter who is not certified or qualified. Therefore, these regulations are necessary to prevent significant harm to the health and safety of injured workers who cannot proficiently speak or understand English.

Additionally, SB 863 authorized the Administrative Director to maintain a list of certified administrative hearing interpreters and certified medical examination interpreters, which will be implemented by the proposed regulation and will assist the public by providing a directory of the interpreters. Certification of court interpreters is currently handled by the Administrative Office of the Courts (AOC) and administered by the California Courts Interpreter Program (CIP). Although California Department of Human Resources (CALHR) no longer administers testing to certify administrative hearing and medical interpreters, it continues to maintain and publish the list of all certified administrative and medical examination interpreters. These regulations also provide the web site for the list of certified and qualified interpreters.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on business. Interpreters who lack certification by AOC or CALHR will no longer be eligible to act as interpreters in workers' compensation hearings or medical legal examinations according to the provisions of SB 863. However, qualified interpreters who do not need to be certified, will be required for medical treatment appointments where patients require language assistance. These regulations define "qualified interpreter for purposes of medical treatment appointments." Non-certified interpreters who meet basic standards but can no longer get assignments at workers' compensation hearing will have ample opportunities to take assignments in medical treatment settings. The regulations clarify when an injured worker is entitled to an interpreter at medical appointments and sets forth the criteria for interpreters to be qualified for purposes of medical treatment appointments. The criteria are met by a certificate of completion of a Medical or Healthcare Interpreting Certification Program issued by a California educational or vocational institute. There are many programs offered that meet this requirement. For any languages not certified by CIP or under Government Code section 11435.30 or 11435.35, an interpreter is "provisionally certified" and may provide interpreting services to eligible employees. Additionally, an interpreter does not need to be certified if the claims administrator consents to the selection of the individual in advance.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Gov. Code section 11346.2(b)(7))

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for workers' compensation interpreters.

SUMMARY OF PROPOSED CHANGES

Section 9795.1 – Definitions

Specific Purpose of Section:

The purpose of this section is to define the key terms regarding interpreters.

Necessity:

It is necessary to define each of the key terms to ensure that the content and meaning of the regulations are clearly understood by the workers' compensation community. 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. “Provisionally certified” by “the residing officer at an appeals board hearing, arbitration, at the request of a party or parties” must be deleted because the Labor Code does not allow for provisionally certified interpreters at hearings. However, the Labor Code allow for “provisionally certified” interpreters 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, and therefore it is necessary to add this phrase to the definition. Subdivision (f), “qualified interpreter,” is deleted because the definition was duplicative and confusing. It is also necessary to remove reference to “rehabilitation conferences,” as the vocational rehabilitation benefit was repealed and there are no rehabilitation conferences.

Section 9795.3 – Fees for Interpreter Services

Specific Purpose of Section:

The purpose of adding “medical treatment appointments” to subdivision (a) and “qualified” to subdivision (b) is provide that interpreters will be paid for their services for translating at medical treatment appointments because Labor Code section 5811(b)(2) added medical appointments to the list of events where a qualified interpreter may render services. Reference to “rehabilitation conferences” is removed because rehabilitation conferences are no longer held as the vocational rehabilitation benefit was repealed.

Necessity:

It is necessary to include “medical treatment appointment” in Section 9795.3 so that injured workers who are not proficient in English will be able to have interpreters at medical treatment appointments and to ensure that interpreter will be paid for their services. These regulations are necessary to prevent significant harm to the health and safety of injured workers who cannot proficiently speak or understand English. It is also necessary to remove reference to “rehabilitation conferences,” as the vocational rehabilitation benefit was repealed and there are no rehabilitation conferences.

Section 9795.5 – Interpreter Directories

Specific Purpose of Section:

The purpose of this subdivision (a) is to set forth the websites where certified interpreters who are qualified to interpret at workers’ compensation appeals board hearings are listed. In compliance with Government Code section 11435.35, the purpose of subdivision (b) is to maintain a list of qualified interpreters for the purposes of medical treatment appointments, inform interpreters how to apply to be on the list, and publish the directory so that the public may search for a qualified interpreter for the purposes of medical treatment appointments.

Necessity:

This section is necessary to inform the public where they may find a searchable database of certified interpreters and qualified interpreter for purposes of medical treatment appointments.

ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on jobs within the State of California. Interpreters who lack certification by AOC or CALHR will no longer be eligible to act as interpreters in workers' compensation hearings or medical legal examinations according to the provisions of SB 863. However, qualified interpreters who do not need to be certified, will be required for medical treatment appointments where patients require language assistance. These regulations define "qualified interpreter for purposes of medical treatment appointments." Non-certified interpreters who meet basic standards but can no longer get assignments at workers' compensation hearing will have ample opportunities to take assignments in medical treatment settings. The regulations clarify when an injured worker is entitled to an interpreter at medical appointments and sets forth the criteria for interpreters to be qualified for purposes of medical treatment appointments. The criteria are met by a certificate of completion of a Medical or Healthcare Interpreting Certification Program issued by a California educational or vocational institute. There are many programs offered that meet this requirement. For any languages not certified by CIP or under Government Code section 11435.30 or 11435.35, an interpreter is "provisionally certified" and may provide interpreting services to eligible employees. Additionally, an interpreter does not need to be certified if the claims administrator consents to the selection of the individual in advance.

Creation of New or Elimination of Existing Businesses Within the State of California

Businesses will not be created or eliminated. Workers' compensation interpreters generally work free-lance or on-call. Non-certified interpreters who meet basic standards but can no longer get assignments at workers' compensation hearings will have ample opportunities to take assignments in medical treatment settings.

Expansion of Business or Elimination of Existing Businesses Within the State of California

Businesses will not be expanded or eliminated. Workers' compensation interpreters generally work free-lance or on-call. Non-certified interpreters who meet basic standards but can no longer get assignments at workers' compensation hearings will have ample opportunities to take assignments in medical treatment settings.

Benefits of the Regulations

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 an interpreter who is not certified or qualified. 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.