

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

NOTICE OF MODIFICATION OF TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Home Health Care Services Fee Schedule

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 9789.90-9789.93**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation ("DWC"), pursuant to the authority vested in him by Labor Code sections 133, 4603.5, 5307.1, 5307.3 and 5307.8, proposes to adopt the proposed regulations described below to implement the provisions of Labor Code section 5307.8, of Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). Labor Code section 5307.8 mandates this Home Health Care Services Fee Schedule for home health care services and provides that the schedule shall set forth fees and requirements for service providers and set forth maximum service hours and fees. The proposed Home Health Care Services Fee Schedule sets forth a methodology for payment and maximum allowable rates for payment for the full range of home health care services that may be required by injured workers.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Division 1, Chapter 4.5, Subchapter 1, Article 5.3, of Title 8, California Code of Regulations, sections 9789.90-9789.93.

Adopt Section 9789.90	Home Health Care - Definitions
Adopt Section 9789.91	Home Health Care - Eligibility for Services & Payment.
Adopt Section 9789.92	Home Health Care – Payment Methodology & Billing Rules.
Adopt Section 9789.93	Table A

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications.

Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.

Written comments should be addressed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on June 8, 2016. Written comments may be submitted via 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.

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently 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. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

All language was new and was therefore presented in plain text, thus: added language.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text was indicated by underlining, thus: added language. Deletions are indicated by strikeout, thus: ~~deleted language~~.

SUMMARY OF PROPOSED CHANGES

1. Section 9789.90

In subdivision (a), the definition of “CMS” was replaced with the definition for “HCPCS,” as the fee schedule now uses HCPCS coding rather than relying as heavily on coding from CMS as did the prior draft.

In subdivision (b), the definition of “home care organization” was modified to reference the Medical Treatment Utilization Schedule (MTUS) and the code citation was added for the Home Care Services Consumer Protection Act of 2013.

In subdivision (c), the definition was reorganized into two numbered subcomponents ((c)(1) and (2)).

In subdivision (d), clarifying language regarding home health care services under the Medical Treatment Utilization Schedule (MTUS) was added.

A subdivision (e) was added, providing a definition of the Medical Treatment Utilization Schedule (MTUS).

Prior subdivisions (e) and (f), defining “IHSS” and “Medicare,” were deleted as unnecessary.

Reference was updated to include Labor Code section 5307.27 and Health & Safety Code sections 1796.10-1796.63.

2. Section 9789.91

The language in subdivision (a) was simplified. The language in subdivision (b) was replaced with language that had been contained in subdivision (d). Subdivision (c) was deleted as unnecessary, in response to stakeholder comments. In new subdivision (d), a subdivision (1) was added to clarify that, generally, an employer or its claims administrator shall not be liable for home health care services provided by family caregivers or individuals who are not employed by a home care organization or a home health care agency, except as provided in subdivision (d)(2).

In subdivision (d)(2), the word “unregistered” was deleted from the discussion of caregivers who do not work for a home health care agency or home care organization because the term “unregistered” is not defined elsewhere in the regulations and therefore may cause confusion. In addition, the language in subdivision (d) was changed to provide that, in cases where a claims administrator and an injured worker agree that the injured worker may receive care from a provider who does not work for a home health care agency or home care organization, that payment for those services will be made to the injured worker, rather than the provider, so that an employment relationship is not established or presumed between the claims administrator and the provider. Therefore, it will be incumbent upon such providers to have an appropriate employment agreement in place directly with the injured worker. Finally, a provision has been added to subdivision (d)(2) allowing a claims administrator and an individual provider not

employed by a home care organization or a home health care agency to waive the billing and payment rules referenced in section 9789.92(c).

3. Section 9789.92

In subdivision (a), clarifying language was added that in the event that the state and local minimum wages are different, the Maximum Allowable Amount (MAA) payable under the home health care services fee schedule shall be no less than the then-current state or local minimum wage, whichever is higher. In addition, the last sentence, stating that the California workers' compensation home health care fee schedule operates on a fee for service basis, was deleted in response to stakeholder comments and lack of necessity.

Subdivision (b)(1) was amended to provide that, except in the case of per diem or hourly billing codes, home health care services will be billed in fifteen (15)-minute increments, with one unit of time being equal to fifteen (15) minutes. The portion of subdivision (b)(1) providing examples of different services that can be provided during an initial four unit (one-hour) visit was deleted as unnecessary and confusing. A new subdivision (b)(2) was added to provide an eight unit (two-hour) minimum for billing codes G0156 and S5125. Prior subdivision (b)(2) was renumbered (b)(3). A new subdivision (b)(4) was added stating that time spent by a home health care services provider traveling to or from an injured worker's home may not be billed under the home health care services fee schedule. Prior subdivision (b)(3) was deleted and replaced with subdivision (c), which provides that home health care services shall be billed and paid for under the timeframes and rules set forth in Labor Code sections 4603.2 and 4603.3, and the rules for medical treatment billing and payment set forth in Article 5.5.0, sections 9792.5.0 through 9792.5.15, of Title 8 of the California Code of Regulations. Prior subdivision (e) has been renumbered as subdivision (d) and minor clarifying changes were made.

Reference was added to Labor Code sections 4603.2 and 4603.3.

4. Section 9789.93

Rates in this section were updated based on the Geographic Adjustment Factor (GAF) currently utilized in the January 1, 2016 version of the California Workers' Compensation Official Medical Fee Schedule (OMFS) for Physician Services, set forth in sections 9789.12.1-9789.19, of Title 8 of the California Code of Regulations. In addition, the following codes were deleted as unnecessary: IHSS200, S9122 and S9470, either because they were redundant, confusing, or do not contain relative value unit (RVU) information from CMS or OWCP upon which a rate can be calculated. In addition, the following codes were changed from codes for 15-minute increments to hourly codes by OWCP in 2015, and we have now adjusted those rates accordingly: S9123, S9124 and T1001. A note was added to the two codes relating to "attendant" care, S5125 and S5126, that "attendant" for purposes of this fee schedule, includes personal care and domestic care services, as set forth in the "Home Health Care Services" topic of the MTUS. Finally, the

following codes were added to provide for a more robust code set: G0159, G0160, G0161, G0162, G0163 and G0164.