



California Workers' Compensation Institute

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VIA E-MAIL – DWCForums@dir.ca.gov

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Re: Forum Comment: Proposed Interpreter Fee Schedule Regulations

Dear Ms. Gray:

On behalf of its members, California Workers' Compensation Institute offers these Forum comments on proposed Interpreter Fee Schedule regulations. The Institute members include insurers writing 83% of California's workers' compensation premium, and self-insured employers with \$65B of annual payroll (30% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Torrance, Contra Costa County Risk Management, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the proposed regulation are indicated by underscore and ~~strikeout~~. Comments and discussion by the Institute are identified by *italicized text*.

Priority Consideration:

- As a primary recommendation, the Institute urges the DWC to consider simply charging the employer with the duty of selecting and arranging all necessary interpretation services. Indeed, the employer is already arranging for the interpreter in most situations — even in the case of medical treatment appointments. Keeping the obligation for all interpreting services with the employer would greatly simplify and streamline the process, not to mention these regulations. It would also avoid many problems that are likely to arise with non-English speaking injured workers (especially if unrepresented) being tasked with either interpreter selection or selection and arrangement.

General Considerations:

- If designation of the employer as the responsible party for all selection and scheduling of interpreters is not an option, the Institute suggests a two-track system (represented and unrepresented). While a less-optimal solution than the employer-only obligation for interpreting services outlined above, implementation of a two-track system would be less problematic than the complexity of the currently proposed process. For example, tasking an unrepresented non-English speaking injured worker with the administrative burden of selecting a qualified interpreter, and then timely communicating that selection to the employer, is a situation ripe for confusion -- one where there will likely be increased cancellations of hearings and medical appointments, duplicative interpreter arrangements, and even potential abuse.
- Our members are concerned about the availability of certified interpreters, especially for medical appointments. For certain populations of injured workers and/or certain industries where the need for interpreters is great, the proposed requirements for establishing that a certified interpreter cannot be present may prove to be overly burdensome.
- Exotic languages are not addressed. Definitions, fees, and procedures for exotic languages need to be identified.
- Recommend that “Additional Time Slot” fees and codes be made available only for Hearings and medical treatment appointments, and not medical-legal evaluations.
- In the case of computation of fees for multiple hearings, appointments, and exams, it is recommended that the regulations be written in a way so as to discourage over-scheduling. Possible options:
 - Cap the number of interpreter appearances per each half-day / full day;
 - Cap the fees an interpreter can receive for any given work day;
 - Provide a sliding scale of fees for each additional hearing/appointment in the same time slot (*e.g.*: 75%, 50%, 25%);
 - Require identification of the “time period” for purposes of listing multiple interpretations;
 - Reduce amount payable in the case of cancelled interpretations, where other services are provided in the same time slot.

Specific Recommendations:

Recommendation:

§34. Appointment Notification and Cancellation.

(c) The QME shall state in the notification whether a Certified Interpreter as described in Labor Code section 5811 and subject to the provisions of California Code of Regulations, title 8, sections 9930(b) and 9934 is required, and, if so, the language to be used. The employer shall select and arrange for the presence of the interpreter as provided in California Code of Regulations, title 8, section 9931(d) and pay the **allowable fees-cost** of the interpreter as provided for in section 5811 of the Labor Code. **The employer is not obligated to arrange for an interpreter when it disputes the reasonableness and necessity of the QME evaluation and issues a written objection to the QME and employee or his/her agent, if represented, at least 48 hours in advance of the evaluation.**

Discussion:

Labor Code section 5811(b)(2) refers to interpreter “fees” and limits the employer’s obligation to pay interpreter fees to those that are “reasonably, actually, and necessarily incurred..., provided they are in accordance with the fee schedule adopted by the administrative director.” Changing “cost” to “allowable fees” maintains regulatory consistency with the plain language of the statute.

The addition of the sentence at the end of §34 is recommended to avoid frictional costs in the event that the employer objects to the evaluation itself. When the employer disputes the reasonableness and necessity of a QME evaluation, the employer should not have the burden of arranging for an interpreter, or the obligation of paying for the medical-legal expense of that interpreter.

Recommendation:

§9930. Definitions

(b) “**Certified interpreter for medical treatment appointments and medical-legal evaluation**” is an individual selected to interpret at a medical treatment appointment or a medical-legal evaluation in one of **the** following **the** languages: Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese, American Sign Language, Eastern Armenian, Western Armenian, Khmer, Korean, Mandarin, Punjabi, or Russian, or other languages authorized or designated pursuant to Government Code sections 11435.40, 11435.35, and 68562; and meets one of the following requirements:

- (1) Is a certified interpreter for hearings and depositions under subdivision (a) of this section; or
- (2) Is **listed as a** certified **as a** medical interpreter by the California Department of Human Resources as appears on the State Personnel Board website at <http://jobs.spb.ca.gov/InterpreterListing>; or

Discussion:

Recommended changes to 9930(b) are to correct syntax and provide clarity.

Recommendation:

§9931 Selection and Arrangement for Presence of Interpreter.

Interpreters, when required, shall be selected as set forth in this section.

Discussion

Additional language added for clarity.

Recommendation:

§9931(b)

Hearings: If represented, the The injured worker shall select and arrange for the presence of an interpreter. If unrepresented, the employer shall select and arrange for the presence of the interpreter.

Discussion

The additional language is required for implementation of the alternative two-track system.

Recommendation:

§9931(e)

(1) If the injured worker is not a covered employee, as defined in section 9767.1(a)(2), in a Medical Provider Network (MPN), and the injured worker is represented, the injured worker shall select and arrange for the presence of the interpreter; if the injured worker is not represented, the employer shall select and arrange for the presence of the interpreter.

Discussion

The additional language is required for implementation of the alternative two-track system.

Recommendation:

§9931(e)

(2) If the injured worker is a covered employee in an MPN that does not include an ancillary interpreter provider service and the injured worker is represented, the injured worker shall select and arrange for the presence of a certified interpreter in the required language, who is available at reasonable times and within a reasonable geographic area; if the injured worker is not represented, the employer shall select and arrange for the presence of the interpreter.

Discussion

The additional language is required for implementation of the alternative two-track system.

Recommendation:

§9931(e)

(3) If the injured worker is a covered employee in an MPN that includes an ancillary interpreter provider service that offers certified interpreting services in the language required, and there are certified interpreters in that language available at reasonable times and within a reasonable geographic area, and the injured worker is represented, the injured worker must select and utilize an individual interpreter or interpreter service from the ancillary service provider list. If individual interpreters are listed by the interpreter provider service, the injured worker shall choose which certified interpreter to use. All interpreters provided through an MPN ancillary interpreting service must be certified as defined in section 9930(b). In the case of the represented covered employee, the The employer shall arrange for the presence of the employee-

selected interpreter at the medical treatment appointment; if the covered employee is unrepresented, the employer shall select and arrange for the MPN-based interpreter.

Discussion

The additional language is required for implementation of the alternative two-track system.

Recommendation:

§9931(e)

(4) If the injured worker is a covered employee in an MPN that includes an ancillary interpreter provider service that does not have certified interpreters available in the required language, at reasonable times and within a reasonable geographic area, and the injured worker is represented, the injured worker shall select and arrange for the presence of a certified interpreter in the required language outside the MPN, who is available at reasonable times and within a reasonable geographic area; if the injured worker is not represented, the employer shall select and arrange for the certified interpreter.

Discussion

The additional language is required for implementation of the alternative two-track system.

Recommendation:

§9931

(f)Employee Obligation to Notify Employer of Interpreter Selection and Scheduling. Where-If the represented injured worker is responsible for selecting but not arranging for the interpreter, the injured worker or his/her agent, if represented, as delineated in this section, the represented injured worker or his/her agent, if represented, shall promptly select the interpreter and notify the employer by email or fax transmission; within two business days of the selection, so the employer has sufficient time to arrange for the presence of the interpreter. If the event is set to occur within the next two business days, the injured worker or his/her agent represented injured worker shall notify the employer of the selection of the interpreter, via fax transmission on the same day the arrangement for the event was made. Where it is the represented injured worker's responsibility to select and arrange for an interpreter, the injured worker through his/her agent shall notify the employer by email or fax transmission of the interpreter selection and scheduled arrangement within two business days of the selection.

(g)Employer Obligation to Notify Injured Worker of Interpreter Selection. If the employer is responsible for selecting the interpreter, the employer shall notify the injured worker or his/her agent, if represented, at least two business days prior to the time for the interpretation medical-legal evaluation, employer-noticed deposition or, in the case of an unrepresented injured, the medical treatment appointment necessitating an interpreter, that a qualified interpreter has been selected and will be present at the event; this notification shall be by telephone (with voice mail message if no answer), e-mail, mail, or text message fax transmission. If the medical treatment appointment is scheduled to occur within two business days of the employer becoming aware that an interpreter is needed, the employer shall immediately contact the employee, in a manner listed above, that a qualified interpreter has been selected and will be present at the event.

Discussion

The additional language is required for implementation of the alternative two-track system.

The problem of duplicative interpreter scheduling largely arises from a lack of communication. Therefore, it is recommended that this section be modified to require that the employee (or agent of employee) be required to provide notification of the selection of an interpreter, as well the actual scheduling of an interpreter when applicable. This requirement can also avoid potential abuses from interpreters who may seek to be selected based solely on their ready availability at hearings and provider offices.

It is recommended that “text” be deleted as a service option. While the Institute applauds the Division’s efforts to modernize the process, inclusion of text notifications would require that each party maintain mobile devices for this purpose; it also ignores the potential costs associated with text messaging, and does not consider the possibility of misdirected messages where one party’s mobile device is lost or replaced.

The option for notification by mail should be reinstated as the common standard. The Institute believes that it is especially important to include fax as an option given the listed time constraints. Claims administrators are accustomed to looking at faxes on a priority basis, since RFAs are often received via facsimile, and typically arrange for backup for their incoming faxes when they are absent from the office.

The proposed language regarding the obligation to notify is confusing. While subsection (g) defines the employer’s obligation when an interpreter has been selected by the employer, it also includes the employer’s obligation even when it has not selected the interpreter. The use of the word “selection” in the heading of (g) is confusing in this context. We believe that the Division’s intent in (g) is to address the obligation to notify the employee of the scheduling of an interpreter -- regardless of whether it is treatment or a medical-legal appointment, and regardless of who made the selection of the interpreter. The process should be reconciled between subsections e, f, and g.

Recommendation:

§9931

(h)(1) If the party responsible for selecting the interpreter is unable to arrange for the presence of a qualified interpreter, or if the represented employee or employer fails to provide the notice required by subdivision (f) or (g), respectively, the other party may arrange for a qualified interpreter to be present and that interpreter shall be used.

(i) **Employer Fee Obligation for Non-Compliance with Notice Requirement.** If the employer was is responsible for selecting the interpreter and fails to comply with the notice requirement of subdivision (g), and two interpreters are present at scheduled and appear for the event, one selected by the employer and one selected by the injured worker, hearing officer, or medical provider, as provided in subdivision (h), the interpreter provided by the represented injured worker, hearing officer or medical provider shall be used and the employer shall be obligated to pay for both interpreters for the full time of the interpretation, subject to the additional rates provided for under section 9936(c).

Discussion

The additional language is required for implementation of the alternative two-track system. Other additions are made for purposes of clarity.

Reference to fee obligation in the case of selection of an interpreter by a hearing officer and medical provider should be deleted from this section as its inclusion conflates two separate issues.

- *One issue is where two interpreters are scheduled and appear due to the employer's failure to provide the notice required in (g), in which case the employer is obligated to pay for both interpreters.*
- *The other issue is when no interpreter has been scheduled by either party, and the alternate selection procedure discussed in (h)(2) applies in which a hearing officer or medical provider chooses an interpreter.*

Recommendation:

§9932

(e) If the party initially responsible for selecting the certified interpreter is unable arrange for a certified interpreter, after exhausting the requirements of this section, **the party may select a provisionally certified interpreter; if a provisionally certified interpreter is not available,** the alternative selection process of section 9931(h) shall apply. If the employer is the party initially responsible and fails to comply with the notice requirements of section 9931(g), the provisions of section 9931(i) also apply.

Discussion:

As currently drafted, if a certified interpreter is not available the employer is relegated to the Alternative Selection Process under 9931(h) and loses all opportunity to select the interpreter. The Institute presumes that the Division intends for the option of a provisionally certified interpreter to be selected by the employer after compliance with the required efforts to obtain a certified interpreter.

As noted in our General Considerations above, while the Institute supports the Division's preference for certified interpreters, we are concerned about the requirement of documentation for efforts to secure a certified interpreter. For certain populations of injured workers and/or certain industries where the need for interpreters is great, the proposed requirements for establishing that a certified interpreter cannot be present may prove to be overly burdensome.

Recommendation:

§9934.

(b) Provisionally certified interpreters shall not be used for interpretation in the certified languages set forth in section 9930(b), unless the employer has given prior **written** consent to use the interpreter in addition to the requirements of subdivision (a).

Discussion:

Recommend adding "written" before "consent" to minimize unnecessary conflicts.

Recommendation:

§9936

(a)(4) Cancellation fees. Unless the party responsible for providing for the interpreter notifies the interpreter 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 one-half day fee as set forth in section 9937. It shall be the obligation of the injured worker to make every reasonable attempt to notify the

employer in sufficient time of any need to cancel the services of an interpreter. **If the injured worker fails to appear at an event for which an interpreter has been arranged, payment of the interpreter fees shall be allowed as a credit against the employee's recovery.**

(b)(4) Interpretations **performed** at second or successive medical treatment appointments or medical-legal evaluations that overlap with the first interpretation time period, but are not completed during the first interpretation time period, are considered separate, billable, time periods, to which the interpreter is entitled to bill an additional one-hour or two-hour fee, respectively.

(b)(6) Cancellation fees. Unless the party responsible for providing for an interpreter at a medical treatment appointment or the medical-legal evaluation notifies the interpreter of a cancellation at least 24 hours prior to the time the service is to be provided, the interpreter shall be entitled to be paid no less than the equivalent of one hour of compensation for each cancelled medical treatment appointment and no less than the equivalent of two hours of compensation for each cancelled medical-legal exam. **If the injured worker fails to appear at an event for which an interpreter has been arranged, payment of the interpreter fees shall be allowed as a credit against the employee's recovery.**

Discussion:

The Institute recommends the addition of language in §9936(a)(4) and (b)(6) allowing costs for interpreter services that are cancelled due to the injured worker's failure to appear, in order to avoid employer liability for services that are not actually rendered.

Additional language is suggested in (b)(4) for purposes of clarity.

§9938. Interpreter Billing Requirements for Payment.

(12) A declaration by the interpreter stating: "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, **and that I have not violated Labor Code section 3215.**" The declaration shall be signed and dated by the interpreter and indicate the county and state in which it was signed.

Discussion:

The additional requirement for interpreters to verify that no improper consideration has been paid or received can be an important facet of the Division's ongoing anti-fraud effort.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Denise Niber
Claims and Medical Director

DN/pm

cc: Andre Schoorl, Acting DIR Director
George Parisotto, DWC Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members