

**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 September 26, 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 First 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~~.

Proposed Text Noticed for Second 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

Definitions of the following terms were added: “Domestic services,” “home health aide” and “Personal care services” were added to provide additional detail and clarity to the regulations.

2. Section 9789.91

In subdivision (d)(2), the phrase, “Either an employer or its claims administrator” was changed to “A claims administrator,” for clarity and increased accuracy. In addition, the word “insurer” was replaced with “claims administrator” in the first sentence for clarity and consistency within the regulatory text. In addition, the phrase, “and no employment relationship shall be established between the employer or its claims administrator and the provider” was added to the end of the first sentence, for clarification. Lastly, the phrase “by the injured worker’s spouse or other member of the injured worker’s household” was deleted from the last sentence, to provide additional clarification.

3. Section 9789.92

In subdivision (a), language stating 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 was deleted in response to a comment received from the public. DWC will update the rates contained in section 9789.93 periodically in response to changes in prevailing rates, minimum wages and other relevant factors going forward.

4. Section 9789.93 (Table A)

In the note regarding the term “Attendant,” at the bottom of the Table, was edited to become “Attendant care services,” and a caveat was added that, for purposes of this Table A only, “Attendant care services” is for billing purposes only and includes both personal care and domestic services as those terms are defined both in these regulations and the Medical Treatment Utilization Schedule (MTUS).