



California Workers' Compensation Institute

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VIA E-MAIL to [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

May 18, 2015

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation, Legal Unit  
Post Office Box 420603  
San Francisco, CA 94142

**RE: 1st Forum Comments – Interpreter Services Fee Schedule**

Dear Ms. Gray:

These forum comments on draft regulations regarding Interpreter service fees are presented on behalf of the members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 74% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Allianz Global Corporate & Specialty, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, 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 are Adventist Health, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., 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 draft Copy Service Fee Schedule regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

## **§9932. Requirements to Perform Interpreter Services as a Provisionally Certified Interpreter for Medical Treatment Appointments and Medical-Legal Exams.**

### **Recommendation**

(a) For interpreters in one of the languages designated pursuant to Government Code section 11435.40, including, but not limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, or Vietnamese, all of the following conditions must be met:

(1) A certified interpreter for medical treatment appointments or medical-legal exams cannot be present, as set forth in subsection (c), to provide services in a language that has been designated pursuant to Government Code section 11435.40; and

(2) The physician determines the interpreter present has sufficient skill to be provisionally qualified to interpret in the required language and notes in the record of the medical evaluation or treatment that a provisionally qualified interpreter is being used as well as the criteria used to determine qualifications; and

### **Discussion**

*The Institute recommends adding “as well as the criteria used to determine qualifications” in order to require documentation of the criteria used to determine that an interpreter deemed to be provisionally qualified meets a sufficient skill level. This would ensure that minimal standards are met to assist the injured employee who is not proficient in a language shared with the evaluating/treating physician.*

## **§9933. Requirements and Restrictions On Performing Interpreter Services As a Non-certified or Non-Provisionally Certified Interpreter for Medical Treatment Appointments.**

### **Recommendation**

~~§9933. Requirements and Restrictions On Performing Interpreter Services As a Non-certified or Non-Provisionally Certified Interpreter for Medical Treatment Appointments.~~

~~(a) A non-certified or non-provisionally certified interpreter for medical treatment appointments shall only be used for medical treatment appointments in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40.~~

~~(b) All of the following are required in order for an individual to perform services as a non-certified or non-provisionally certified interpreter for medical treatment appointments:~~

~~(1) The injured worker needs interpreter services in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40; and~~

~~(2) The physician determines the interpreter present has sufficient skill to interpret in the required language, and notes in the record of the medical evaluation or treatment that a non-certified or non-provisionally certified interpreter for medical treatment appointments is being used.~~

## Discussion

*The Institute recommends striking the language in §9933 as it creates confusion. The language in Government Code §11435.40 states the following: “**The languages designated shall include, but not be limited to, [emphasis added] Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages**”. Since the list of languages is not limited to those named, any language could be included in the list. The requirement defined under §9933 appears to create an arbitrary distinction between languages that would require “provisional certification” and those that would require “non-provisional certification”.*

## **§ 9934. Events Qualifying for Interpreter Services.**

### Recommendation

(7) During those settings which the Administrative Director determines are reasonably necessary to ascertain the validity or extent of injury or issues related to entitlement to benefits. **Interpretation services required for translation of settlement documents shall necessitate the presence of applicant’s attorney to provide adequate answers to any questions that the injured worker may have.**

## Discussion

*The Institute recommends adding language to ensure that services provided by paralegals are not incorrectly billed as interpretation services. The role of the interpreter is to facilitate communication between individuals who do not share a common language. The interpreter’s role does not include the provision of legal advice or legal explanations.*

## **§9936. Notice of Right to Interpreter.**

### Recommendation

(a) The notice of hearing, deposition, medical-legal exam, or other setting shall include a statement explaining the right to have a qualified interpreter present if the injured worker does not proficiently speak or understand the English language **and the medical provider is not proficient in the injured workers’ native language.** Where a party is designated to serve a notice, it shall be the responsibility of that party to include this statement in the notice.

## Discussion

*The Institute recommends adding text that addresses situations where the medical provider and the injured worker are both proficient in a shared language. There is no need to engage the services of an interpreter when both the injured worker and the medical service provider are able to communicate directly in a language other than English.*

## **§9937. Fee Schedule for Interpreters at Hearings and Depositions.**

### Recommendation

**(g) An interpreter may not bill or be paid for services rendered during an interval already billed for services to another person or entity. The billings shall be prorated to avoid payment overlap.**

(h) Interpreter billings shall include the following statement: "I have not violated Labor Code Sections 139.2 and the content of this bill is true and correct to the best of my knowledge. This statement is made under penalty of perjury and is dated this \_\_\_\_\_ of \_\_\_\_\_ at County, California" signed by the interpreter or the authorized representative of the interpreting service.

### Discussion

*The Institute recommends adding language to address situations where services are provided to multiple claimants during the same time interval. Maximum fees are based on defined blocks of time (full-day, half-day, etc.) and an interpreter may be providing services to more than one injured worker during the same block of time.*

*SB 863 added Labor Code section 139.2 to prohibit referrals or cross-referrals between entities with financial interests in one another, including providers of interpreting services. Adding the proposed statement will enforce this new requirement.*

### **§9938. Fee Schedule for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.**

### Recommendation

(b) The fees set forth in this section shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter have been documented and submitted to the claims administrator and the claims administrator has consented to the use of the provisionally certified interpreter with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter.

### Discussion

*The Institute recommends revised language to ensure that the claims administrator has the opportunity to consent to the use of a provisionally certified interpreter. The proposed regulatory language could be construed to mean that the first notification of use of a provisionally certified interpreter could be at the time of billing for the services. This may place the interpreter in the position of providing a service for which the claims administrator did not provide consent, as required under §9932, leading to payment disputes.*

### Recommendation

~~(d) A non-certified or non-provisionally certified interpreter for medical treatment appointments, who meets all the terms and conditions set forth in sections 9930(i) and 9933, who provides interpreter services in a language other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, Vietnamese or other languages included in Government Code section 11435.40, shall be paid an hourly rate of \$33.25 per hour.~~

### Discussion

*The Institute recommends striking the language in §9938(d) based on the same rationale offered in our discussion related to the recommendation for deletion of the language in §9933. If the language is not stricken then a subsection needs to be added with the requirements defined under §9938(b) so that they apply to non-certified or non-provisionally certified interpreter services.*

## §9939. Minimum Time Period Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

### Recommendation

(d) A non-certified or non-provisionally certified interpreter for medical treatment appointments shall only be paid the hourly fee set forth in section 9938(d), and is not entitled to any minimum time period fee.

### Discussion

The Institute recommends striking the language in §9939(d) based on the same rationale offered in our discussion related to the recommendation for deletion of the language in §9933. If a distinction is not needed for interpreters providing services in languages other than Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese then there would be no need to define separate payment rules.

## §9940. Cancellations and Cancellation Fees for Interpreters at Medical Treatment Appointments and Medical-Legal Exams.

### Recommendation

(a) For ~~interpreters, other than non-certified or non-provisionally~~ certified ~~or provisionally certified interpreters~~ for medical treatment appointments, the following cancellation fees shall apply:

### Discussion

The Institute recommends revising the language in order to provide greater clarity. The proposed regulatory language introduces confusion by suggesting that a third category of interpreter service may require reimbursement for late notification of cancellation.

## §9942. Billing Codes.

### Recommendation

The following chart sets forth the billing codes that shall be used to bill for interpreter services.

|       |  |   |
|-------|--|---|
| MTI-5 | <del>Interpretation at a medical treatment appointment by a non-certified, non-provisionally certified interpreter for medical treatment appointments and medical-legal exams.</del> | Languages other than those in Gov. Code section |
|-------|--|---|

### Discussion

The Institute recommends striking the language defining service code “MTI 5”. Government Code §11435.40 does not provide an all-inclusive list of languages and disputes may arise based on the non-limiting language of §11435.40: “**The languages designated shall include, but not be limited to,** [emphasis added] Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages”.

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Stacy L. Jones  
Senior Research Associate

SLJ/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, DWC Administrative Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members