

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

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Workers' Compensation – Electronic and Standardized Medical Treatment Billing

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9792.5 et seq.**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.4, 4603.5, and 5307.3 proposes to amend section 9792.5 in Article 5.5 and adopt sections Section 9792.5.0 through Section 9792.5.3, in Article 5.5.0 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations, relating to electronic and standardized medical treatment billing.

PROPOSED REGULATORY ACTION

- 1. Proposed Section 9792.5 Payment for Medical Treatment [Amend]**
- 2. Proposed Article 5.5.0 Rules for Medical Treatment Billing and Payment on or after XXXX, 2010 [approximately 90 days after effective date of regulation] [Adopt]**
Proposed Section 9792.5.0 Definitions [Adopt]
- 3. Proposed Section 9792.5.1. Medical Billing and Payment Guide; Medical Billing and Payment Companion Guide; Various Implementation Guides [Adopt]**
- 4. Proposed Section 9792.5.2 – Standardized Medical Treatment Billing Forms/Formats, Billing Rules, Requirements for Completing and Submitting Form CMS 1500, Form CMS 1450 (or UB 04), American Dental Association Form, Version 2006, NCPDP Workers' Compensation / Property & Casualty Claim Form, Payment Requirements [Adopt]**
- 5. Proposed Section 9792.5.3 – Medical Treatment Bill Payment Rules [Adopt]**

PUBLIC HEARING

Public hearings have been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: April 23, 2010
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business
Place: Elihu M. Harris State Building, Auditorium
1515 Clay Street,
Oakland, CA 94612

Date: April 26, 2010
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business
Place: Ronald Reagan State Building – Auditorium
300 South Spring Street
Los Angeles, California 90013

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

ACCESSIBILITY

The State Office Buildings and Auditoriums are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on April 26, 2010**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

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

Written comments may be submitted by 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.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on April 26, 2010**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.4, 4603.5, and 5307.3.

Reference is to Labor Code sections 4600, 4603.2, 4603.4, and 5307.1.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Labor Code section 4600 requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Under existing law, payment for medical treatment shall be no more than the maximum amounts set by the administrative directive in the Official Medical Fee Schedule or the amounts set pursuant to a contract. Prior to reform legislation in 2002, there was no statutory requirement that medical treatment bills be prepared on a standardized form, nor was there a statutory requirement that claims administrators accept

bills in electronic form. Assembly Bill 749 (Statutes 2002, Chapter 6) adopted Labor Code section 4603.4 to require the administrative director adopt regulations to:

- Ensure that medical treatment bills be presented on standardized forms
- Require claims administrators to accept electronic claims for payment
- Ensure confidentiality of medical information submitted on electronic claims for payment

In 2003 the legislature passed SB 228 (Statutes of 2003, Chapter 639), amending Labor Code section 4603.4 to state that the administrative director must adopt regulations by January 1, 2005 and that the regulations must mandate that employers accept electronic claims for payment of medical services on or before July 1, 2006. The amendment also stated that payment for medical treatment provided or authorized by the treating physician shall be paid within 15 working days of electronic receipt of a billing for services at or below the fees set forth in the official medical fee schedule. The statute also provides that if the billing is contested, denied, or incomplete, the payment shall be made in accordance with Labor Code section 4603.2 which sets forth the rules relating to payment of non-electronic medical treatment bills. Labor Code section 4603.2 specifically requires that the employer: 1) notify the provider if a bill is contested, denied or considered incomplete within 30 working days of receipt of the bill and 2) pay the bill, or pay uncontested portions of the bill, within 45 working days of receipt of the bill (or within 60 working days if the employer is a public entity.) SB 228 also amended Labor Code section 4603.2 by changing the payment period for paper medical bills from sixty days to forty five working days, and by changing the increase payable for late bills from 10% to 15%.

Labor Code section 4603.4 specifies that the standards for electronic billing and confidentiality of medical information submitted on electronic claims “shall be consistent with existing standards under the federal Health Insurance Portability and Accountability Act of 1996” “to the extent feasible.” The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191, 110 Stat.1936), is codified at 42 U.S.C. sections 1320d through 1320d-9 and the implementing regulations are codified at 45 CFR sections 160.101 et seq. HIPAA provides that the purpose of the statute is to improve the Medicare program, the Medicaid program and the efficiency and effectiveness of the health care system by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of health information. The HIPAA regulations set forth rules relating to, *inter alia*, compliance and investigation by the Secretary of Health and Human Services, imposition of monetary penalties, electronic transmission standards, security of electronically stored or transmitted protected health information, and privacy standards. The HIPAA statute and regulations do not apply to workers’ compensation. A covered entity under HIPAA includes a variety of health insurers and plans but does not include a workers’ compensation insurer (42 U.S.C. Sections 300gg-91(a), (b), (c)(1)(D), 45 C.F.R. Sections 160.102(a)(1), 160.103). The regulations proposed in this rulemaking action are consistent with HIPAA to the extent feasible, but some HIPAA electronic standards are not relevant for workers’ compensation, for example the standards for enrollment in a health plan, and coordination of benefits. The Division proposes to adopt the HIPAA security standard, with minor revisions for workers’ compensation, to ensure confidentiality of electronic information. The Division has decided to diverge from HIPAA by adopting the current mandatory HIPAA “4010” standards, but has not adopted the HIPAA “5010” standards which were recently adopted for HIPAA, but which are not mandatory under HIPAA until January 12, 2012.

The Administrative Director now proposes to amend and adopt administrative regulations governing electronic and standardized medical treatment billing. These regulations implement, interpret, and make specific sections 4600, 4603.2 and 4603.4 of the Labor Code.

These regulations:

Amend Section 9792.5: to 1) conform to statutory changes to Labor Code section 4603.2 which changed the payment period for paper medical bills from sixty days to forty five working days, and which changed the increase payable for late bills from 10% to 15%; and 2) insert an applicability date for the rule so that it is clear that it is effective for treatment rendered before the effective date of the new billing and payment rules that will be adopted.

Adopt Section 9792.5.0 to establish definitions for parties that will be subject to the new electronic and standardized billing and payment rules, i.e. “claims administrator,” “health care facility,” “physician,” and “third party biller/assignee.”

Adopt Section 9792.5.1 to adopt and incorporate by reference the following documents in their entirety, except as specifically provided:

- The California Division of Workers’ Compensation Medical Billing and Payment Guide, 2010.
- The California Division of Workers’ Compensation Electronic Medical Billing and Payment Companion Guide, 2010.
- The ASC X12N 837 -- Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097.
- Addenda to Health Care Claim: Dental, Version 4010, October 2002, Washington Publishing Company, 004010X097A1.
- The ASC X12N 837 -- Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098.
- Addenda to Health Care Claim: Professional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X098A1.
- The ASC X12N 837 -- Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096.
- Addenda to Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X096A1.
- The Telecommunication Standard Implementation Guide Version 5, Release 1 (Version 5.1), September 1999, National Council for Prescription Drug Programs.
- The Batch Standard Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record, National Council for Prescription Drug Programs.
- The ASC X12N 277: Health Care Claim Acknowledgement Version 4040, February 2004, Washington Publishing Company, 004040X167.
- The ASC X12N 835 -- Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091.
- Addenda to Health Care Claim Payment/Advice, Version 4010, October 2002, Washington Publishing Company, 004010X091A1.
- The ASC X12N 275 -- Additional Information to Support a Health Care Claim or Encounter, Version 4050, June 2004, Washington Publishing Company, 004050X151.
- The ASC X12N 277 Health Care Claim Request for Additional Information, Version 4050, June 2004, Washington Publishing Company, 004050X150.

- The National Uniform Claim Committee 1500 Health Insurance Claim Form Reference Instruction Manual for 08/05 Version, Version 5.0 07/09, including the Form 1500 (08/05), National Uniform Claim Committee.
- The National Uniform Billing Committee Official UB-04 Data Specifications Manual 2010, Version 4.0, July 2009, including the UB 04 form.
- The Manual Claim Forms Reference Implementation Guide Version 1.0, October 2008, National Council of Prescription Drug Programs (NCPDP) Data Specifications Manual including the NCPDP paper WC/PC Universal Claim Form, except pages 13-36 relating to the Universal Claim Form.
- The Current Dental Terminology, Fourth Edition (CDT-4) 2009/2010, including the ADA 2006 Dental Claim Form.

Adopt Section 9792.5.2 to implement the statutory directive to establish standardized billing forms for all medical care providers and facilities; and to specify the date that paper bills must be submitted on standardized forms and in conformity with the coding, standards, and timeframes set forth in the *California Division of Workers' Compensation Medical Billing and Payment Guide*. The section also implements the statutory mandate that medical providers may submit bills electronically by specifying the effective date of electronic billing and requiring adherence to the billing rules of the *California Division of Workers' Compensation Medical Billing and Payment Companion Guide*. The section also provides that third party billers and assignees shall submit bills in the same manner as the original rendering provider and shall conform to the payment guide and companion guide.

Adopt Section 9792.5.3 to require claims administrators to conform to the rules in the *California Division of Workers' Compensation Medical Billing and Payment Guide* and the *California Division of Workers' Compensation Electronic Medical Billing and Payment Companion Guide*, and to specify effective dates of those provisions.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- The Division of Workers' Compensation is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Claims administrators will incur costs to comply with the requirement that they accept electronic medical bills and issue electronic remittance advice. However, it is difficult to estimate the costs as they will vary greatly depending on how the claims

administrator chooses to comply with the regulations (in house or through a clearinghouse), and the current state of readiness of the claims administrator. The benefits of electronic billing for claims administrators are anticipated to far outweigh the costs. The impact of the adoption of standardized paper billing formats is likely to have minimal impact on claims administrators, since these forms are already in widespread use, but will require staff training relating to the use of implementation guides and new implementation instructions. Medical providers will not necessarily incur costs relating to electronic billing since it is optional for the provider to engage in electronic billing. The adoption of standardized paper billing formats is likely to have minimal cost impact on providers as the forms are already in widespread use, but will require staff training relating to the use of implementation guides and new implementation instructions. Both claims administrators and providers may incur minimal costs to comply with the standardized Explanation of Review content requirements and codes. However, any costs are anticipated to be outweighed by more efficient communication and decreased disputes. The estimated impacts are set forth in the Form 399, Economic and Fiscal Impact Statement prepared by the Division, and included in the rulemaking file.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will affect small business, primarily medical providers. Minimal costs may be incurred to comply with the standardized billing form requirements, however these will be offset by more efficient communication and decreased disputes. Electronic billing is optional for the provider, therefore small medical providers will not necessarily incur any costs due to the regulation. It is anticipated that providers that choose to bill electronically will realize financial benefit due to more efficient communication, reduced disputes, and quicker payment of bills. The estimated effect on small business is set forth in the Form 399, Economic and Fiscal Impact Statement prepared by the Division, and included in the rulemaking file.

FISCAL IMPACTS

- Costs or savings to state agencies: These regulations affect the State Compensation Insurance Fund (SCIF), which is the largest workers' compensation insurer in the state. In 2008, SCIF had 22.6% of the workers' compensation market share (p. 49, *2008 California Property and Casualty Market Share Report*, CA Dept. of Insurance, <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0100-market-share/Marketshare2008/upload/IndMktShr2008WP.pdf>). Given an estimated 15.9 million workers' compensation medical bills received by claim administrators in 2008, SCIF's share is estimated at 22.6% of that, or 3.6 million medical bills. Given the estimated cost of processing an electronic medical bill (\$0.85) compared to a paper one (\$1.58), and an estimated prevalence for "pending" bills (\$2.05) of 14% (AHIP Center for Policy and Research, *An Updated Survey of Health Care Claims Receipt and Processing Times*, May 2006, available at: <http://www.ahipresearch.org/pdfs/PromptPayFinalDraft.pdf>), SCIF's annual cost savings as a result of electronic bill processing range from a low of \$1.2 million per year (if 50% of medical bills are received electronically) to a high of \$2.1 million per year (if 95% of medical bills are received electronically). If SCIF elects to implement electronic bill payment and processing in-house, these savings will be

initially offset by start-up costs associated with computer system purchase and development and staff training, and on an ongoing basis by periodic updates and system maintenance.

- Costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed regulations do apply to a local agency or school district in its capacity as an employer required to provide workers' compensation benefits to injured workers.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the text of draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forum.) Additionally, extensive pre-rulemaking advisory committee meetings were held over a period

of more than two years to receive input on the development of the regulations. There were representatives from many segments of the workers' compensation community serving on the advisory committee. (See Rulemaking File, Other Documents: Memorandum of Suzanne Honor, Workers' Compensation Manager, regarding Public Consultation on Development of Electronic and Standardized Medical Billing Regulations / Guides (Govt. Code §11346.45) dated 12/9/2009.)

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below. However, documents subject to copyright may be inspected but not copied.

As of the date of this notice, the rulemaking file consists of the notice; the initial statement of reasons; the proposed text of the regulations; the documents incorporated by reference; the Memorandum of Suzanne Honor Workers' Compensation Manager, regarding public consultation dated 12/9/2009; and a document entitled "Comparison of the Security Rule Proposed for Adoption in the California Division of Workers' Compensation Electronic Medical Billing and Payment Companion Guide (Appendix D Security Rule) to the HIPAA Security rule (Title 45 Subpart C §§164.302-164.316, and Appendix A Matrix);" and the Form 399, Economic and Fiscal Impact Statement. Also included are studies and documents relied upon in drafting the proposed regulations and Form 399, Economic and Fiscal Impact Statement.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the link for the Division of Workers' Compensation homepage, then click on the "Participate in Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Electronic and Standardized Medical Treatment Billing rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday or furlough (which is generally the first, second, and third Friday of each month.). Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Jacqueline Schauer, Industrial Relations Counsel
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: jschauer@dir.ca.gov

The telephone number of the backup contact persons is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov, then click on the link for the Division of Workers' Compensation homepage, then click on the "Participate in Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Electronic and Standardized Medical Treatment Billing rulemaking link.

AUTOMATIC MAILING

A copy of this Notice will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended and adopted will appear in title 8, California Code of Regulations, commencing with section 9792.5.