STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

INITIAL STATEMENT OF REASONS

Subject Matter of Regulations: Workers' Compensation – Medical Billing and Payment –ICD-10 Delay

California Code of Regulations, Title 8, Article 5.5.0
Section 9792.5.1

INTRODUCTION

This Initial Statement of Reasons ("ISOR") describes the purposes, rationale, and necessity of the proposed amendment to the existing medical treatment billing and payment regulation at title 8, California Code of Regulations §9792.5.1 and the California Division of Workers' Compensation Medical Billing and Payment Guide which is incorporated by reference into the regulation. This Initial Statement of Reasons (ISOR) is issued pursuant to the requirements of the California Administrative Procedure Act (see Government Code section 11340 et seq.).

BACKGROUND TO THE REGULATORY PROCEEDING

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 reasonable maximum amounts set by the administrative directive in the Official Medical Fee Schedule or the amounts set pursuant to a contract.

Labor Code section 4603.2 sets forth procedures and timelines for payment of a medical treatment bill. Labor Code section 4603.4 mandates the Administrative Director to adopt rules to standardize paper billing forms and to establish electronic billing rules. Bills for medical treatment services rendered pursuant to Labor Code section 4600 are required to follow the mandates of these sections. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains "administrative simplification" provisions relating to medical billing, including the requirement for HIPAA-covered entities to use specified code sets. However, HIPAA contains exemptions for workers' compensation.

Labor Code section 4603.4 provides that the electronic billing rules adopted by the Administrative Director shall be consistent with HIPAA "to the extent feasible."

The Acting Administrative Director (hereafter, "Administrative Director") adopted regulations to implement the billing statutes (Labor Code §§4603.2, 4603.4), including two billing guides which are incorporated by reference into the regulations. The *California Division of Workers' Compensation Medical Billing and Payment Guide* (hereafter "Medical Billing and Payment Guide"), first effective on October 15, 2011, contains general business rules for billing and payment that apply to both the paper and electronic billing processes. In addition, the Medical Billing and Payment Guide contains rules that apply only to paper billing, including the specification of standardized paper billing forms. The *California Division of Workers' Compensation Electronic Medical Billing and Payment Companion Guide* (hereafter "Companion Guide"), which applies only to electronic billing and payment, first became effective on October 18, 2012. It adopts the HIPAA-approved electronic transaction standards to the extent feasible and provides technical rules for electronic billing and payment where needed to adapt the national standard HIPAA-approved electronic billing formats for use in California workers' compensation.

The billing regulations, including the Medical Billing and Payment Guide, were amended effective February 12, 2014 to adopt a variety of updates and to implement revised billing and payment procedures necessitated by the passage of Senate Bill 863 (Statutes 2012, Chapter 363). In addition, the February 12, 2014 amendment of the Medical Billing and Payment Guide included the adoption of the International Classification of Diseases – 10th Revision, Clinical Modification (ICD-10-CM) and the International Classification of Diseases – 10th Revision, Procedure Coding System (ICD-10-PCS). The Medical Billing and Payment Guide February 2014 revision adopted the ICD-10-CM diagnosis codes and ICD-10-PCS inpatient procedure codes for mandatory usage for services rendered on or after October 1, 2014, to coincide with the mandatory usage date of ICD-10-CM and ICD-10-PCS for HIPAA-covered entities. In addition, the Medical Billing and Payment Guide adopts and incorporates by reference the 2014 versions of ICD-10-CM and ICD-10-PCS related files and documents posted on the CMS website.

PROBLEM ADDRESSED BY THE PROPOSED RULEMAKING ACTION

Congressional action postponing the October 1, 2014 ICD-10 transition date for HIPAA-covered entities to October 1, 2015 creates a problem that needs to be addressed by the Administrative Director in order to prevent the workers' compensation system from becoming out of sync with the broader health care sector. On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Public Law No. 113-93) was enacted by the United States Congress. Section 212 of Public Law 113-93 delayed the ICD-10 for at least one year, providing, *inter alia*, that the ICD-10 may *not* be adopted by the Secretary of the United States Department of Health and Human Services earlier than October 1, 2015. The Center for Medicare and Medicaid Services (CMS) has issued a public notice indicating that the United States Department of Health and Human Services (HHS) expects to release an interim final rule in the near future that will provide a new

compliance date that will require use of the ICD-10 beginning October 1, 2015 for HIPAA-covered entities. The current Medical Billing and Payment Guide set the ICD-10 compliance date of October 1, 2014 in order to coincide with the HIPAA ICD-10 compliance date. The one-year delay of the HIPAA ICD-10 compliance date means the current workers' compensation regulatory compliance date needs to be changed. The Labor Code section 4603.4 provision stating that the billing rules should be consistent with HIPAA "to the extent feasible" creates a need to amend the regulation. In addition, since covered entities (which include many doctors) are not to use ICD-10 until October 1, 2015, the workers' compensation regulation requiring ICD-10 use by October 1, 2014 would create conflicting obligations for doctors and other covered entities that perform services for workers' compensation patients.

Specific Purpose, Rationale, and Necessity of Each Section of the Proposed Amendments

The specific purpose, rationale, and necessity of each section of the proposed amendments, in accordance with Government Code section 11346.2(b)(1), is provided below.

Section 9792.5.1. Medical Billing and Payment Guide; Electronic Medical Billing and Payment Companion Guide; Various Implementation Guides.

Text of section 9792.5.1, subdivision (a)

Specific Purpose and Rationale for Determination of Necessity:

The text of subdivision (a) is amended to change the reference to the California Division of Workers' Compensation Medical Billing and Payment Guide effective February 12, 2014 from "Version 1.2" to "Version 1.2.1".

It is necessary to change the version number of the Medical Billing and Payment Guide (which is incorporated by reference) in order to alert the public that the guide has undergone a change. Since the change is narrow and affects only the delay of a future obligation to use ICD-10, the effective date of the guide as a whole remains 2/12/2014. The assignment of the "1.2.1" signals that the change is not too great, and is closely related to "1.2".

Subdivision (a) Document Incorporated by Reference: California Division of Workers' Compensation Medical Billing and Payment Guide

Specific Purpose and Rationale for Determination of Necessity: One-year delay of ICD-10

The Medical Billing and Payment Guide, Version 1.2, which is incorporated by reference into subdivision (a), contains provisions in section 3.1.0, 3.1.1, and 3.2.1 which mandate

use of the ICD-10 diagnosis codes and inpatient procedure codes for services rendered / hospital discharges on or after October 1, 2014. The requirement to utilize ICD-10 effective October 1, 2014 was adopted as part of the amendment that became effective for bills submitted on or after February 12, 2014 and was intended to align the ICD-10 effective date with the HIPAA ICD-10 transition date. The specific purpose of this regulatory action is to revise the guide to delay the ICD-10 implementation for one year, until October 1, 2015. This delay is necessary in order to align with the anticipated date for ICD-10 by HIPAA-covered entities. On April 1, 2014 the U.S. Congress passed a law postponing the ICD-10 for at least one year, providing that the ICD-10 could be adopted no sooner than October 1, 2015. The CMS has announced that the ICD-10 transition will be on October 1, 2015, and that prior to that time, the ICD-9 must be used. (See Documents Relied Upon: Center for Medicare and Medicaid Services Web Announcement, and Federal Register excerpt (CMS comments in 2015 proposed inpatient prospective payment system rule.)) It is necessary to delay the workers' compensation ICD-10 adoption in order to avoid conflicting obligations for HIPAA-covered entities/persons (such as physicians) that also participate in workers' compensation. Adopting the October 1, 2015 ICD-10 date also implements the statutory directive in Labor Code section 4603.4 to be consistent with HIPAA "to the extent feasible." The diagnosis and procedure coding standards implement Labor Code section 4600's requirement that the employer provide all necessary and reasonable medical care by establishing uniform codes to describe medical conditions and medical services.

Specific Purpose and Rationale for Determination of Necessity: Cover Page

The purpose of amending the cover page is to change the version number: delete the version number "1.2" and insert the version "1.2.1" so that the version of the Medical Billing and Payment Guide with the October 1, 2015 ICD-10 transition date will have a unique identifier. It is necessary to assign a new version number to alert the public that there is a change in the guide. The use of the "1.2.1" for the revised guide signals that the change is not too great, and is closely related to the current version of the guide, "1.2".

Specific Purpose and Rationale for Determination of Necessity: Table of Contents

The purpose of revising the Table of Contents is to conform to revised headings in Section 3.1.0 and Section 3.1.1. This is necessary to maintain the accuracy of the Table of Contents.

Specific Purpose and Rationale for Determination of Necessity: Introduction: Version Table

The purpose of revising the Introduction is to add a new row to the version table, in order to list Version 1.2.1 and the February 12, 2014 effective date. It is necessary to amend the Version Table, as it provides an important tool for the public to track the history of changes to the guide. This is important for members of the public who are determining the need to make changes to billing or payment processes to comply with obligations that may differ over time.

Specific Purpose and Rationale for Determination of Necessity: Section 3.1.0

The purpose of the amendment to the Section 3.1.0 heading is to provide more specificity regarding the scope of the section. By changing the heading "Use of ICD-9, ICD-10 Codes" to "Use of ICD-9, ICD-10 Codes – Applicable Dates", the reader is better informed of the content. This is necessary to improve the clarity of the section, and also to make the Table of Contents more useful.

The section is also amended by deleting each instance of "2014" and replacing it with "2015" in the Table that sets forth the dates for use of ICD-9 CM volume 1 and 2 (diagnosis) and ICD-9 volume 3 (inpatient procedure codes) versus ICD-10-CM (diagnosis codes) and ICD-10-PCS (inpatient procedure codes.) The purpose of these revisions is to delay the adoption of ICD-10 for one year, and to require continued use of ICD-9 prior to the October 1, 2015 transition. This delay is necessary in order to align with the anticipated date for ICD-10 by HIPAA-covered entities. On April 1, 2014 the U.S. Congress passed a law postponing the ICD-10 for at least one year, providing that the ICD-10 could be adopted no sooner than October 1, 2015. The CMS has announced that the ICD-10 transition will be on October 1, 2015, and that prior to that time, the ICD-9 must be used. (See Documents Relied Upon: Center for Medicare and Medicaid Services Web Announcement, and Federal Register excerpt (CMS comments in 2015 proposed inpatient prospective payment system rule.)) It is necessary to delay the workers' compensation ICD-10 adoption in order to avoid conflicting obligations for HIPAA-covered entities/persons (such as physicians) that also participate in workers' compensation. Adopting the October 1, 2015 ICD-10 date also implements the statutory directive in Labor Code section 4603.4 to be consistent with HIPAA "to the extent feasible."

Specific Purpose and Rationale for Determination of Necessity: Section 3.1.1

The purpose of the amendment to the Section 3.1.1 heading is to provide more specificity regarding the scope of the section. By changing the heading "Use of ICD-9, ICD-10 Codes" to "Use of ICD-9, ICD-10 Codes – Separate Bills Required", the reader is better informed of the content. This is necessary to improve the clarity of the section, and also to make the Table of Contents more useful.

Specific Purpose and Rationale for Determination of Necessity: Section 3.2.1

The purpose of the amendment to the Section 3.2.1 heading is to correct the heading by deleting reference to ICD-9, since ICD-9 is not incorporated into the text of the section. In addition, language is added to the heading to indicate that codes and "related documents" are incorporated by reference, which is necessary to provide more specificity regarding the scope of the section.

The purpose of the deletion of the current subdivision (a) and subdivision (b) and addition of the new subdivision (a) and subdivision (b) is to adopt and incorporate by

reference the 2015 versions of the codes and documents, which are the most recent versions of the ICD-10 codes and documents that align with the expected ICD-10 transition date announced by CMS for HIPAA-covered entities. It is necessary to adopt the revised versions in order to be as consistent with HIPAA as feasible, which implements the mandate of Labor Code section 4603.4.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

The Administrative Director relies on the following documents in proposing the regulation. They are available for public review and comment in the rulemaking file.

- Center for Medicare and Medicaid Services Web Announcement of Expected October 1, 2015 ICD-10 Transition
- Federal Register, Vol. 79, No. 94, May 15, 2014, Department of Health and Human Services, Centers for Medicare & Medicaid Services 42 CFR Parts 405, 412, 413, et al. Proposed Rule: Excerpt [with highlight added] [Cover page, pages 27978, 28130, 28232, 28234]

DOCUMENTS INCORPORATED BY REFERENCE

- California Division of Workers' Compensation Medical Billing and Payment Guide, Version 1.2.1
  - 2015 International Classification of Diseases 10th Revision Clinical Modification (ICD-10-CM), including the following PDF and ZIP files posted on the CMS website (http://www.cms.gov/Medicare/Coding/ICD10/2015-ICD-10-CM-and-GEMs.html):
    - 2015 Code Descriptions in Tabular Order [ZIP, 1MB]
    - 2015 Code Tables and Index, Updated 5/22/14 [ZIP, 16MB]
    - 2015 ICD-10-CM Duplicate Code Numbers [ZIP, 68KB]
    - 2015 Addendum [PDF, 29KB]
    - 2015 General Equivalence Mappings (GEMs) – Diagnosis Codes and Guide [ZIP, 653KB]
  - 2015 International Classification of Diseases 10th Revision Procedure Coding System (ICD-10-PCS), including the following PDF and ZIP files posted on the CMS website (http://www.cms.gov/Medicare/Coding/ICD10/2015-ICD-10-PCS-and-GEMs.html):
    - 2015 Official ICD-10-PCS Coding Guidelines [PDF, 76KB]
    - 2015 Version – What's New [PDF, 41KB]
    - 2015 Code Tables and Index [ZIP, 5MB]
    - 2015 PCS Long and Abbreviated Titles [ZIP, 1MB]
    - 2015 Development of the ICD-10 Procedure Coding System (ICD-10-PCS) [PDF, 226KB]
    - 2015 ICD-10-PCS Reference Manual [ZIP, 724KB]
    - 2015 Addendum [ZIP, 64KB]
    - PCS Slides for 2015 [ZIP, 584KB]
    - 2015 General Equivalence Mappings (GEMs) – Procedure Codes and Guide [ZIP, 752KB]

SPECIFIC TECHNOLOGIES OR EQUIPMENT, SPECIFIC ACTIONS OR PROCEDURES

The proposed amendments do not prescribe specific technologies or equipment, but they do prescribe the use of ICD-10 codes in the future. The ICD-10 diagnosis codes and inpatient procedure codes are national standard codes which will be used by HIPAA-covered entities when adopted by HHS in order to provide standardization and administrative simplification in the health care system. It is necessary to prescribe use of ICD-10 codes in workers' compensation to be consistent with HIPAA and the broader health care system. Diagnosis and procedure coding are not amenable to "performance standards".

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

REGULATION MANDATED BY FEDERAL LAW OR REGULATION

The regulatory action does not adopt a regulation mandated by federal law or regulation. The use of ICD-10 will be mandated by federal regulation for HIPAA-covered entities. HIPAA does not mandate use of ICD-10 for workers' compensation as HIPAA itself contains exemptions for workers' compensation. This regulatory action is based in part upon Labor Code section 4603.4 which states that the billing rules should be consistent with HIPAA "to the extent feasible".

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on business. Although business will be impacted by the amendment to the regulations, the impact will not be adverse. The regulation does not impose any new legal obligation; it merely delays the obligation to transition to ICD-10 by one year. Businesses will have an additional year to prepare for the transition, which is expected to have a positive rather than adverse impact on business.

ECONOMIC IMPACT ASSESSMENT (Government Code § 11346.3(b))

Creation or Elimination of Jobs within the State of California

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on jobs within the State of California. The proposed amendments merely postpone the obligation to use ICD-10 that is already currently in regulation.

Creation of New or Elimination of Existing Businesses Within the State of California, or the Expansion of Business Within the State of California

The Administrative Director has determined that the proposed regulation will not create, eliminate, or expand businesses within the State of California. The proposed amendments merely postpone the obligation to use ICD-10 that is already currently in regulation.

Benefits of the Regulation

The Administrative Director anticipates that there will be many benefits to delaying adoption of the ICD-10 in conformity with the HIPAA deadline, including: further time for providers and payers to develop and test their systems, further time for staff training, the avoidance of parallel but divergent coding system deadlines for workers' compensation and HIPAA-covered entities, avoidance of conflicting obligations for HIPAA-covered entities that also participate in workers' compensation, the opportunity to utilize information technology infrastructure developed to coincide with the HIPAA timeframe. The efficiencies involved in conforming to the HIPAA deadline will allow better use of resources for the provision of medical care to injured workers in California, while minimizing the burden to employers and workers' compensation payers.