

**California Coalition on Workers' Compensation
California Chamber of Commerce
California Manufacturers & Technology Association
California Restaurant Association
California Hospital Association
California Grocers Association
California Association of Joint Powers Authorities
California State Association of Counties
League of California Cities
Association of California Insurance Companies
Association of California Healthcare Districts
California Professional Association of Specialty Contractors
National Federation of Independent Business
CSAC Excess Insurance Authority
California Self-Insurers Association
ALPHA Fund**

March 18, 2013

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142
dwcrules@dir.ca.gov

RE: Proposed Regulations: Interpreter Certification

Dear Ms. Gray,

The above-listed organizations thank you for the opportunity to provide comments on the draft regulations on Interpreter Certification. Combined, our organizations represent tens of thousands of insured and self-insured public and private California employers and insurance companies.

While there have been several estimates of the savings associated with SB 863 (De Leon, 2012), it is clear that the ultimate impact on employers (large and small, insured and self-insured) will depend largely on the implementation work that takes place over the next several months at the Department of Industrial Relations, the Division of Workers' Compensation (DWC), the Office of Self Insurance Plans, and the Workers' Compensation Appeals Board. The above-listed organizations are dedicated to working collaboratively with regulators throughout the implementation process to ensure that employers across California receive the relief anticipated during the passage of SB 863 (De Leon, 2012).

Our coalition has reviewed the proposed regulations on interpreter certification, and we have several comments and suggestions that we would like to offer. Generally, we would like to observe that the regulations should seek to eliminate the need for lien hearings to determine the

appropriate level of payment for interpreter services. Our specific comments and recommendations below speak directly to this issue.

Thank you once again for the opportunity to provide commentary on the proposed regulations.

Sincerely,



Jeremy Merz
California Chamber of Commerce



Jason Schmelzer
California Coalition on Workers' Compensation

Cc: David Lanier, Chief Deputy Legislative Secretary, Office of Governor Edmund G. Brown
Christine Baker, Director, Department of Industrial Relations
Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation

General Comments and Requested Additions

Market Rate Loophole

The purpose of a fee schedule is to provide a clear, fair, and predictable payment structure that provides for the timely processing of payments and limits the potential for dispute.

Unfortunately, the proposed regulations perpetuate the portions of the interpreter fee schedule that limits predictability and causes disputes.

Specifically, §9795.3(b)(1) and (2) maintain the current ability to force payment above the Superior Court Fee Schedule by allowing interpreters to establish, through nothing more than the selective presentation of payment records, a “market rate”.

A “market rate” exception, if established properly, would identify the usual or typical rate charged in a given market. However, the definition of “market rate” contained in §9795.1(h) does not do anything other than establish a mechanism by which interpreters can game the system and inappropriately inflate their billings. The current definition simply requires an interpreter to demonstrate that, at some point, he or she managed to get paid more than they should have been. They then use that as evidence to demonstrate why other claims payers should follow suit. This does not establish a market rate in any sense. Our coalition directs the attention of DIR to the lien issues that took place for surgery centers and repackaged drugs prior to the adoption of the fee schedules and notes that the market rate as defined will cause all involved to relive those situations.

Our coalition strongly recommends that the market rate loophole be closed and that reimbursement for interpreter services be based on the Federal Fee Schedule adopted by the United States District Courts.

Two Hour Minimum

The proposed regulations maintain the current requirement that employers pay for a minimum of two hours of interpreter services for medical appointments, a medical-legal evaluation, or other such events. Our coalition is strongly opposed to the continuation of this provision, and for good reason.

Specifically,

1. The two hour minimum for interpretation at a medical appointment would result in the interpreter being paid substantially more than the medical professional actually attending to the needs of the injured worker.
2. Interpreters often attend multiple medical appointments for multiple injured workers in the same day and at the same medical office. There is no formula for pro-rating the cost of services when behavior like this occurs. Under these rules an interpreter could be paid multiple times by different claims administrators for the exact same time.
3. The inclusion of a two hour minimum is presumably intended to reimburse an interpreter for the cost of appearing when the appointment is not sufficiently long to justify the effort on the part of an interpreter. However, the rules allow for the payment of documented mileage and travel time to and from the appointment. The cost incurred by the interpreter for simply appearing at the appointment, if appropriately documented, is already reimbursed by the employer.

The two-hour minimum is unreasonable and should be reevaluated by the DWC. The result is inflationary costs for interpreter services in the workers' compensation system.

Our coalition strongly recommends that the DWC revise the regulations to eliminate the requirement that employers pay for a minimum of two hours in some situations. Employers should not be forced to continue providing payment for time that was not spent providing interpreter services to an injured worker.

Elimination of Duplicate Billing

The proposed regulations continue the indefensible practice of allowing an interpreter to be paid by multiple parties for the same time. §9795.3(b)(1) allows for payment to an interpreter for ½ day of service without confirming that the appearance was for a single hearing, as opposed to multiple appearances on multiple cases.

Our coalition strongly recommends that the DWC draft regulations to prevent double-billings by interpreters. Specifically, we believe that interpreters should be required, through documentation mandated in regulations, to disclose situations where they are appearing for multiple appearances so that their cost can be apportioned among the various cases.

Provisional Certification

Our coalition is concerned that the definition of "provisionally certified" contained in §9795.1(e) is confusing and should be split in order to more clearly describe how a provisionally certified interpreter may differ in medical and non-medical situations.

Our coalition strongly recommends the following modifications:

"Provisionally certified" means, for other than medical treatment appointments, an interpreter who is deemed to be qualified to perform services ~~under this article~~, when a certified interpreter cannot be present, (1) by written prior agreement of the parties for any interpreter services provided ~~under this article~~ other than at an appeals board hearing or arbitration, ~~or (2) by the treating physician at a medical treatment appointment, if the injured worker requires interpreting services in a language other than the languages designated pursuant to section 11435.40 of the Government Code.~~

-and-

"Provisionally certified" means, for medical treatment appointments, an interpreter who is deemed to be qualified to perform services ~~under this article~~, when a certified interpreter cannot be present, (1) by agreement of the parties for any services provided ~~under this article other than at an appeals board hearing, or arbitration.~~ ~~or (2) by the treating physician at a medical treatment appointment,~~ and the claims administrator has given written prior consent to the selection of the individual who provides the interpreting service, ~~or if the injured worker requires interpreting services in a language other than the languages designated pursuant to section 11435.40 of the Government Code.~~

Verification Form

Currently there is very little ability for payers to verify that interpreter services were actually provided. The billing and payment process would be more transparent and reliable if there were a verification form signed by the interpreter, physician, and injured worker. The form would need to be filed under the penalty of perjury and contain a declaration against 139.3 violations.

It should include the interpreters starting location, the doctor's address, information about travel time and mileage, and a place to note if the interpreter provided services to more than one injured worker.

Our coalition strongly recommends that the DWC create a Verification of Services Form that provides all of the information necessary for quick and easy processing of payment in accordance with the fee schedule.

Correction

Section 9795.1(a) makes reference to Government Code or section 68562 and note that the correct reference should be 68566. We note that reference was made to 68562 as authority throughout the proposed regulations and note the 68566, is the correct reference.