

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

**FINAL STATEMENT OF REASONS AND  
UPDATED INFORMATIVE DIGEST**

**Subject Matter of Regulations: Workers' Compensation –  
Medical-Legal Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 9793, 9795**

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 59, 133, 4627, and 5307.3, has amended Sections 9793 and 9795 of Article 5.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations:

Section 9793	Definitions.
Section 9795	Reasonable Level of Fees for Medical-Legal Expenses, Follow-up, Supplemental and Comprehensive Medical-Legal Evaluations and Medical-Legal Testimony.

**UPDATED INFORMATIVE DIGEST**

The Administrative Director incorporates the Informative Digest prepared in this matter. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**UPDATE OF INITIAL STATEMENT OF REASONS**

The Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. The purposes and rationales for the regulations as set forth in the Initial Statement of Reasons continue to apply. The proposed regulations changes are summarized below.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (March 29, – APRIL 13, 2006)**

**Modifications to Section 9793                      Definitions**

Section 9793 is modified to include a definition for *medical research* in subdivision (a). The following subdivisions are renumbered.

**Specific Purpose of Section 9793 (a):**

The purpose of new Section 9793 (a) is to establish a definition for medical research, which would exclude from consideration of a complexity factor, research or work which is not necessary, is duplicative, or is not deserving of the higher remuneration which would be engendered.

**Necessity:**

It is necessary to define medical research to prevent billing for time spent in less significant study or reading endeavors.

**Modifications to Section 9795**

**Reasonable Level of Fees for Medical-Legal Expenses, Follow-up, Supplemental and Comprehensive Medical-Legal Evaluations, and Medical-Legal Testimony**

Section 9795

(c) In subdivision (c), within the description of the ML 103, a requirement is added that for specification of complexity factor (3), the physician is to excerpt or furnish copies of medical evidence relied upon. The requirements to obtain an additional complexity factor in paragraph (7) are revised, so that the evaluation must involve any of: three or more employers, three or more injuries to the same body system or region, or two or more injuries to two or more separate body systems or regions. Within the description of the ML 104, requirements are added that for specification of complexity factor (3), the physician is to provide a list of citations to the sources reviewed, and to excerpt or furnish copies of medical evidence relied upon.

(f) The dates in subdivision (f) were changed from 2005 to 2006.

**Specific Purpose of changes to Section 9795:**

The purposes of the changes to Section 9795 are: to allow the payer more easily to determine if the extra time spent in research was justified, by requiring the physician who takes advantage of this complexity factor to show what research was done; and to limit complexity factors for consideration of apportionment to discrete situations, since apportionment should now be discussed in most cases, and the general fee level has been increased.

The purpose of the change to Section 9795 (f) is to correct an error in the effective date, since the regulations are being adopted in 2006 instead of 2005.

**Necessity:**

It is necessary to require either the citation or the furnishing of medical research relied upon, to prevent billing for research that may not meet the requirements of the section. It was necessary to make the changes regarding apportionment to prevent most evaluations from automatically qualifying to be ML 104 evaluations.

It was necessary to correct the error regarding the effective date.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 2<sup>nd</sup> 15-DAY COMMENT PERIOD (April 4, – APRIL 19, 2006)**

**Modifications to Section 9795**

**Reasonable Level of Fees for Medical-Legal Expenses, Follow-up, Supplemental and Comprehensive Medical-Legal Evaluations and Medical-Legal Testimony**

Section 9795

(f) The changes of this amendment are made applicable also to supplemental medical-legal reports that are requested on or after the effective date of this amendment.

**Specific Purpose of change to Section 9795:**

The purpose of this change to Section 9795 (a) is to prevent two different fee systems from operating simultaneously – one for medical-legal evaluations commenced after the effective date of the regulations, and a different rate for supplemental medical-legal evaluations where the original evaluation had already occurred.

**Necessity:**

It is necessary to eliminate the confusion which would result from having two different rates applicable to the same type of medical-legal evaluation, depending on whether the evaluation was an original or a supplemental report.

**UPDATE OF MATERIAL RELIED UPON**

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director except that public comments received were taken into consideration when finalizing the regulations.

## **LOCAL MANDATES DETERMINATION**

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- 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. Local agencies in their capacity as employers are required to pay for medical-legal reports in the workers' compensation system. The medical-legal fee schedule is not a new feature.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

## **CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

## **SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The summaries and responses to comments of each organization or individual which were received during the 45 day comment period and the two 15 day comment periods are contained in the rulemaking file and are incorporated by reference herein.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations: December 16, 2005 through January 30, 2006.

First 15-day comment period on modified text: March 29, 2006 through April 13, 2006.

Second 15-day comment period on modified text: April 4, 2006 through April 19, 2006.