**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

# **DIVISION OF WORKERS’ COMPENSATION**

## **FINAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Workers’ Compensation –**

**Medical-Legal Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**

**SECTIONS 9793, 9794 & 9795**

**AN IMPORTANT PROCEDURAL NOTE ABOUT THIS RULEMAKING:**

The Medical-Legal Fee Schedule "establish(es) or fix(es) rates, prices, or tariffs" within the meaning of Government Code section 11340.9(g) and is therefore not subject to Chapter 3.5 of the Administrative Procedure Act (commencing at Government Code section 11340) relating to administrative regulations and rulemaking.

This rulemaking proceeding to amend the Medical Legal Fee Schedule is being conducted under the administrative director’s rulemaking power under Labor Code sections 59, 133, 4603.5, 5307.3 and 5307.6. This regulatory proceeding is subject to the procedural requirements of Labor Code sections 5307.6 and 5307.4.

**CONSIDERATION OF RELEVANT MATTER PRESENTED**

After Notice of the Proposed Rulemaking was published pursuant to Labor Code section 5307.4, a public hearing was held on December 14, 2020 at which interested persons could participate through the submission of written data, views, and arguments, including oral presentations. A 40-day comment period was noticed on October 28, 2020 and ended on December 15, 2020 which invited interested persons to participate through the submission of written comments. The Administrative Director has subsequently considered all of the data, views, statements, and arguments presented or submitted.

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him, has amended the following sections of Article 5.3 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations relating to the Medical-Legal Fee Schedule:

**Section 9793 Definitions [amend]**

**Section 9794 Reimbursement of Medical-Legal Expenses [amend]**

**Section 9795 Reasonable Level of Fees for Medical-Legal Expenses, Follow-up, Supplemental and Comprehensive Medical-Legal Evaluations and Medical-Legal Testimony [amend]**

**UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST**

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, unless otherwise noted in the Final Statement of Reasons.

The following sections of the proposed regulations were modified following the public hearing and 40-day comment period (December 15, 2020). The proposed non-substantial regulation changes are summarized below.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND 40 -DAY COMMENT PERIOD NOTICED FOR DECEMBER 15, 2020.**

**Modifications to Section 9793 - Definitions**

**Subdivisions (n)** ismodified to clarify the definition of “received” and “available” as it relates to records that arrive without the required attestation by the parties who send the documents. This modification makes clear the physician’s duty with regard to these records despite language in other regulations or statutes which require review of all records received. This modification makes clear that the language in the other statutes or regulations does not apply since the records are not considered received or available.

**Modifications to Section 9795 - Reasonable Level of Fees for Medical-Legal Expenses, Follow-up, Supplemental and Comprehensive Medical-Legal Evaluations and Medical-Legal Testimony**

**Subdivision (c) - Billing Code ML-202** is modified to clarify any ambiguity that may have existed because there was no clear prohibition against billing for records already reviewed in an ML 202. The modification makes clear that records reviewed as part of the initial comprehensive medical-legal evaluation or as part of any intervening supplemental medical-legal evaluations cannot be billed as part of the follow-up evaluation and reporting.

**Subdivision (c) - Billing Code ML-206** is modified to delete this billing code from the Medical-Legal Fee Schedule. The deletion of ML-206 removes the unreimbursed supplemental report from the Medical-Legal Fee Schedule.

**Subdivision (c) - Billing Code 97**  is modified to allow physicians who are certified as Qualified Medical Evaluators in the specialty of Internal Medicine or who are board certified in Internal Medicine to use the Toxicology billing modifier when a Toxicology evaluation is the primary focus of the medical-legal evaluation.

**Subdivision (c) - Billing Code 98**  is modified to allow physicians who are certified as Qualified Medical Evaluators in the specialty of Internal Medicine or who are board certified in Internal Medicine to use the Oncology billing modifier when an Oncology evaluation is the primary focus of the medical-legal evaluation

**UPDATE OF MATERIAL RELIED UPON**

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director.

**LOCAL MANDATES DETERMINATION**

* Local Mandate: None. The proposed amendments 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. The proposed amendments do not apply to any local agency or school district.
* Other nondiscretionary costs/savings imposed upon local agencies: None.

**CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment period. The Administrative Director has now determined that no additional 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.