



California Workers' Compensation Institute

1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 251-9485

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VIA E-MAIL to dwcrules@dir.ca.gov

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

**RE: Outpatient Facility Fee Schedule – 1st Forum Comments on Draft
Modifications to Proposed Outpatient Facility Fee Schedule Regulations**

Dear Ms. Gray:

This 1st Forum comment on modifications to proposed changes to the Outpatient Facility Fee Schedule (OFFS) allowances for Ambulatory Surgical Centers (ASCs) regulations is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 84% of California's workers' compensation premium, and self-insured employers with \$36B of annual payroll (20% of the state's total annual self-insured payroll).

As the Division stated in its DWC Newslines 10-24:

“When the Official Medical Fee Schedule was enacted in 2004, Medicare’s ASC fee schedule was outdated. Therefore, DWC decided to adopt the same fee schedule for ASCs as outpatient hospitals, which is 120% of the Medicare rate for outpatient surgery. In 2008, Medicare updated its rates for ASC services, and DWC is now considering basing its ASC fee schedule on the Medical ASC fee schedule. This proposal is part of DWC’s 12-point plan to monitor and help control medical costs in California’s workers’ compensation system.”

The Institute recommends that the Division move forward with its 12-point plan commitment to revise the Official Medical Fee Schedule (OMFS) by setting maximum reasonable reimbursement for ambulatory surgery center (ASC) facility fees at 120% of the Medicare allowance for ASCs as outlined by Barbara Wynn of RAND in her presentation at the stakeholder meeting held on May 27, 2010:

OMFS Allowances for Ambulatory Surgery Facility Fees:

<http://www.cwci.org/document.php?file=1347.pdf>

The Legislature limits fees by requiring in Labor Code section 5307.1 that "estimated aggregate fees do not exceed 120 percent of the estimated aggregate fees paid for the same class of services in the relevant Medicare payment system." The latest draft amendments would lower maximum facility fees for ASCs from 122% to 102% of the Medicare allowance for outpatient hospital facilities. Even though this would reduce maximum ASC facility fees by 16.4%, it would still cause the expected aggregate fees to exceed the statutory limit.

For consistency, the Institute recommends the Division apply the same benchmark for ASC services that applies to other OMFS services. Maximum fees for inpatient and outpatient hospital facilities, laboratory services, pathology services, durable medical equipment, prosthetics, orthotics, supplies, and ambulance services are set at 120% of the Medicare allowances. The Institute recommends that the Division adopt maximum reasonable facility fees for ASCs at the same 20% premium over the Medicare ASC allowances.

In its latest analysis, MedPAC has found no shortage of ASCs willing to accept reimbursement at Medicare rates¹, and none is expected in the workers' compensation venue if maximum reasonable fees for ASCs exceed Medicare's by 20%. Predictably, as with every proposed fee schedule revision, those with direct financial interests in these services have warned that they will no longer provide services to injured employees if fee schedule maxima are reduced to 120% of Medicare's. The threatened access problems have not materialized in the case of other California workers' compensation fee schedule reductions, and we do not expect them to do so when maximum fees for ASCs are set 20% higher than Medicare's.

Please contact me for further clarification or if I can be of any other assistance.

Sincerely,

Brenda Ramirez
Claims and Medical Director

BR/me

cc: Carrie Nevans, DWC Acting Administrative Director
Destie Overpeck, DWC Chief Legal Counsel
CWCI Regular members
CWCI Associate Members
CWCI Claims Committee
CWCI Medical Care Committee
CWCI OMFS Committee

¹ Report to the Congress, Medicare Payment Policy, March 2010, MedPAC

Medicare Payment Policy: <http://www.cwci.org/document.php?file=1346.pdf>