

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS AND
NOTICE OF ADDITION OF DOCUMENTS TO RULEMAKING FILE**

**Subject Matter of Regulations: Workers' Compensation – Official Medical Fee Schedule:
Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9789.30 et seq.**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, 5307.1 and 5307.3 proposes to modify the text of the following proposed amendments to Article 5.3 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations, relating to the Official Medical Fee Schedule – Hospital Outpatient Departments and Ambulatory Surgical Centers:

Amended Section 9789.30	Definitions
Amended Section 9789.31	Adoption of Standards
Amended Section 9789.32	Applicability
Amended Section 9789.33	Determination of Maximum Reasonable Fee
Amended Section 9789.37	Election for High Cost Outlier
Amended Section 9789.38	Appendix X
Proposed Section 9789.39	Federal Regulations and Federal Register Notices by Date of Service

NOTICE IS HEREBY GIVEN that additional documents relied upon by the Division in proposing the regulations have been added to the rulemaking file and are available for public inspection and comment.

IMPORTANT PROCEDURAL NOTES ABOUT THIS RULEMAKING:

1. The Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule component of the Official Medical 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 Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule is being conducted under the Acting Administrative Director's rulemaking power under Labor Code sections 133, 4603.5, 5307.1 and 5307.3. This regulatory proceeding is subject to the procedural requirements of Labor Code sections 5307.1 and 5307.4.

This Notice is being prepared to comply with the procedural requirements of Labor Code section 5307.4 and for the convenience of the regulated public to assist the regulated public in analyzing and commenting on this non-APA rulemaking proceeding.

2. The Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule component of the Official Medical Fee Schedule is established by the authority of Labor Code section 5307.1. Subsection (g) provides the Official Medical Fee Schedule - Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule shall be adjusted to conform to any relevant changes in the Medicare payment systems no later than 60 days after the effective date of those changes. The Administrative Director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued shall be published on the Internet Web site of the Division of Workers' Compensation.

Subsequent to the Notice of Proposed Rulemaking and the public hearing held on January 25, 2011, the Administrative Director issued three orders adjusting the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule to conform to changes in the Medicare payment system. The Administrative Director issued orders covering services rendered on or after September 15, 2011, March 1, 2012, and September 1, 2012. The regulations adjusted by Administrative Director order may be found at: <http://www.dir.ca.gov/dwc/OMFS9904.htm>. The regulations adjusted by Administrative Director orders are indicated in the regulation text by either double underlining (added language) or double strike-through (~~deleted language~~).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed modification to the regulation or to the added documents, to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on Nov. 7, 2012**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time.

Submit written comments prior to the close of the public comment period to:

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

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwrules@dir.ca.gov.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated, added documents relied upon, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for initial comment period ending on January 25, 2011:

Deletions from the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by single underlining: added language.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the initial comment period ending on January 25, 2011, are indicated by strike-through underlining: ~~deleted language~~

Regulatory text that was deleted for the initial comment period ending on January 25, 2011, but is reinstated for this 15-day comment period, are indicated by italics: *reinstated language*.

Additions to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double strike-through: ~~~~deleted language~~~~.

Deletions of text codified by Administrative Director order subsequent to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double strike-through: ~~~~deleted language~~~~.

Additions of text codified by Administrative Director order subsequent to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modification to Heading

The heading is corrected to refer to “services” on or after January 1, 2004, instead of “discharges” on or after January 1, 2004.

Modifications to Section 9789.30 - Definitions

The Administrative Director’s orders updating the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule pursuant to Labor Code section 5307.1(g)(2) are now organized and referenced in section 9789.39, and therefore are deleted from this section. Specifically, references to the federal regulation, federal register, and payment impact file in the Administrative Director’s orders covering services rendered on or after September 15, 2011, March 1, 2012, and September 1, 2012, are organized and moved to section 9789.39, and deleted from this section.

Subdivision (a) is amended to move references to adjusted conversion factor as specified in the Federal Register covering services rendered on or after September 15, 2011 and March 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (e) is amended to move references to APC payment rate as specified in the Federal Register covering services rendered on or after September 15, 2011, March 1, 2012, and September 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (f) is amended to move references to APC relative weight as specified in the Federal Register covering services rendered on or after September 15, 2011, March 1, 2012, and September 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (q) is amended to move references to market basket inflation factor as specified in the Federal Register covering services rendered on or after September 15, 2011 and March 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (w) is amended to move references to wage index as specified in the Federal Register covering services rendered on or after September 15, 2011 and March 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (x) is amended to state that for services rendered before January 1, 2013, the workers’ compensation multiplier means 120% Medicare multiplier, or 122% multiplier that includes an extra 2% reimbursement for high cost outlier cases. For services rendered in hospital outpatient departments on or after January 1, 2013, the workers’ compensation multiplier means the 120% Medicare multiplier or the 122% multiplier that includes an extra 2% reimbursement for high cost outlier cases. For services rendered in ambulatory surgical centers on or after January 1, 2013, the workers’ compensation multiplier will be 80% Medicare multiplier, or 82% multiplier that includes an extra 2% for high cost outlier cases.

Modifications to Section 9789.31 – Adoption of Standards

Subdivision (a) is amended to move references to certain addenda specified in the federal register covering services rendered on or after September 15, 2011, March 1, 2012, and September 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (b) is amended to move references to certain tables specified in the federal register covering services rendered on or after September 15, 2011 and March 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (c) is amended to delete references to Hospital Inpatient Prospective Payment Systems (IPPS) “Payment Impact File” covering services rendered on or after September 15, 2011 and March 1, 2012.

Subdivision (d) is amended to delete references to the American Medical Associations’ “Current Procedural Terminology” covering services rendered on or after September 15, 2011 and March 1, 2012.

Subdivision (e) is amended to delete references to CMS’ Alphanumeric “Healthcare Common Procedure Coding System (HCPCS)” covering services rendered on or after September 15, 2011 and March 1, 2012.

Modification to Section 9789.32 – Applicability

Subdivision (c)(3) is amended to state, “[t]he maximum allowable fee for drugs not otherwise covered by a Medicare fee schedule payment for facility services shall be determined pursuant to Labor Code Section 5307.1, or, where applicable, Section 9789.40”.

Subdivision (h) is amended to state, “[h]ospital outpatient departments and ambulatory surgical centers billing for facility fees and other services under this Section shall be submitted in accordance with the e-billing regulations beginning with Section 9792.5.0 or the standardized paper billing regulations beginning with Section 9792.5.2”.

Modifications to Section 9789.33 – Determination of Maximum Reasonable Fee

Subdivision (a)(1) is amended to add effective dates of service, to change the workers’ compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863, and to move references to the unadjusted conversion factor to Section 9789.39(b), and are deleted from this section.

Subdivision (a)(1)(A) is amended to add effective dates of service, and to change the workers’ compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (a)(1)(B) is amended to add effective dates of service, and to clarify the workers’ compensation multiplier is 1.22 for listed hospital outpatient departments.

Subdivision (a)(2) is amended to add effective dates of service, and to change the workers’ compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (a)(4) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (a)(5) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (a)(6) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.82 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(1)(A) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.80 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(1)(B) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.80 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(1)(D) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.80 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(1)(E) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.80 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(1)(F) is amended to add effective dates of service, and to change the workers' compensation multiplier for ambulatory surgical centers to 0.80 for services rendered on or after January 1, 2013 as required by SB 863.

Subdivision (b)(2) is amended to move references to the outlier threshold specified in the federal register covering services rendered on or after September 15, 2011 and March 1, 2012, to section 9789.39(b), and are deleted from this section.

Subdivision (b)(3) is amended to add effective dates of service.

Modification to Section 9789.37 – Election for High Cost Outlier

This section is amended to add a revision date to DWC Form 15.

Modifications to Section 9789.38 – Appendix X

The first paragraph of this section is amended to correct a citation. The language now refers to “Sections 9789.30 through 9789.37” instead of “Sections 9789.30 through 9789.36”.

42 C.F.R. § 419.32 is amended to move amendments to 42 C.F.R. section 419.32 to section 9789.39(a), and are deleted from this section.

42 C.F.R. § 419.43 is amended to move amendments to 42 C.F.R. section 419.43 to section 9789.39(a), and are deleted from this section.

Modifications to Section 9789.39 - Federal Regulations and Federal Register Notices by Date of Service.

This section is added to provide the updates to the federal regulation and federal register references made in the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule updates by Order of the Administrative Director, in order to conform to changes in the Medicare payment system as required by Labor Code section 5307.1(g)(2).

Subdivision (a) is amended to add references to the federal regulations that are referenced in the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule Administrative Director Orders for services rendered on or after September 15, 2011 and March 1, 2012.

Subdivision (b) is amended to add references to the federal register notices that are referenced in the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule Administrative Director Orders for services rendered effective September 15, 2011, March 1, 2012, and September 1, 2012.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

1. Yee, Christine A., *Why Surgeon Owners of Ambulatory Surgical Centers Do More Surgery Than Non-Owners*, Workers' Compensation Research Institute, May 2012
2. Yang, Rui, Fomenko, Olesya, With the assistance of Juxiang Liu, *Hospital Outpatient Cost Index for Workers' Compensation*, Workers' Compensation Research Institute, January 2012
3. *Report to the Congress: Medicare Payment Policy, Chapter 5, Ambulatory Surgical Centers*, Med Pac, March 2012
4. Wynn, Barbara O., Hussey, Peter S., Ruder, Teague, *Policy Options for Addressing Medicare Payment Differentials Across Ambulatory Settings*, RAND, 2011