

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

FINAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation - Official Medical Fee
Schedule: Physician Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9789.12.1 through 9789.19.1**

AN IMPORTANT PROCEDURAL NOTE ABOUT THIS RULEMAKING:

The Physician 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 Physician Fee Schedule is being conducted under the 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.

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 April 17, 2018 at which interested persons could participate through the submission of written data, views, and arguments, including oral presentations. A 15-day comment period was noticed for September 14, 2018 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 Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations, relating to the Physician Fee Schedule component of the Official Medical Fee Schedule:

Section 9789.12.1 Physician Fee Schedule: Official Medical Fee Schedule for
Physician and Non-Physician Practitioner Services – For Services
Rendered On or After January 1, 2014 [amend]

Section 9789.12.2	Calculation of the Maximum Reasonable Fee - Services Other than Anesthesia [amend]
Section 9789.12.6	Health Professional Shortage Area Bonus Payment: Primary Care; Mental Health [amend]
Section 9789.12.8	Status Codes [amend]
Section 9789.12.12	Consultation Services Coding – use of visit codes [amend]
Section 9789.13.2	Physician-Administered Drugs, Biologicals, Vaccines, Blood Products [amend]
Section 9789.16.1	Surgery – Global Fee [amend]
Section 9789.16.7	Surgery – Co-surgeons and Team Surgeons [amend]
Section 9789.18.1	Payment for Anesthesia Services - General Payment Rule [amend]
Section 9789.18.2	Anesthesia - Personally Performed Rate [amend]
Section 9789.18.3	Anesthesia - Medically Directed Rate [amend]
Section 9789.18.11	Anesthesia Claims Modifiers [amend]
Section 9789.19	Update Table [amend]
Section 9789.19.1	Table A [adopt]

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 were circulated for a 15-day comment period (September 14, 2018). The proposed regulation changes are summarized below.

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND WERE CIRCULATED FOR A 15-DAY COMMENT PERIOD NOTICED FOR SEPTEMBER 14, 2018.

Modifications to Section 9789.12.2 - Calculation of the Maximum Reasonable Fee - Services Other than Anesthesia

Subdivisions (a) and (b) are modified to correct a typographical error. The word “effect” is replaced with the word “affect.”

Subdivision (e) is modified to clarify how to determine the GPCI payment locality for dates of services on or after January 1, 2019.

Specific Purpose of Changes: These changes were required to clarify how the GPCI payment locality for services rendered would be determined. These changes also correct typographical errors.

Modifications to Section 9789.16.1 – Surgery – Global Fee

Subdivision (a)(5) is modified to clarify the column label for global surgery days in the National Physician Fee Schedule Relative Value File is “Global Days,” and to make a grammatical correction.

Specific Purpose of Changes: These changes were required to make the regulation more readable and understandable.

Modifications to Section 9789.18.1 – Payment for Anesthesia Services – General Payment Rule

Subdivisions (a) and (b) are modified to correct a typographical error. The word “effect” is replaced with the word “affect.”

Subdivision (b) is modified to clarify how to determine the GPCI payment locality for dates of services on or after January 1, 2019.

Specific Purpose of Changes: These changes were required to clarify how the GPCI payment locality for anesthesia services would be determined. These changes also correct typographical errors.

Modifications to Section 9789.19 Update Table

Subdivision (f) is modified to conform to regulatory text adopted by Administrative Director order subsequent to the start of the rulemaking; and to reference the data and files to be used in determining GPCI payment adjustments and GPCI locality. For purposes of this rulemaking, place-holder information is used in select columns and rows. 2019 CMS payment files, factors, and file names are not available yet, and when available will be adopted and incorporated by reference by Administrative Director Order. Upon adoption, reference to payment files, factors, and file names will be replaced to reflect the 2019 CMS information.

CCI Edits: Medically Unlikely Edits row: This row is modified to conform to current regulations which exclude all codes listed with Practitioner Services MUE Table with a value of “0” (zero); and to post the excerpt of the MUE table on the DWC website.

CCI Edits: National Correct Coding Initiative Policy Manual for Medicare Services row: This row is modified to conform to the current regulations which post the NCCI Policy Manual on the DWC website.

CCI Edits: Physician CCI Edits (Practitioner PTP Edits) row: This row is modified to conform to current regulations which use CMS’ current title for the practitioner PTP data files.

Conversion Factors adjusted for MEI and Relative Value Scale adjustment factor:
This row is modified to indicate a dollar amount will be provided for the Anesthesia Conversion Factor.

Geographic Practice Cost Index (GPCI) by locality (Other than anesthesia services):
This row is modified to clarify what columns are adopted from CMS' Medicare National Physician Fee Schedule Relative Value file GPCI2019 - Addendum E and 19LOCCO file. This row is also modified to reference the CMS' Zip Code mapping files.

Geographic Practice Cost Index (GPCIs) by locality and anesthesia shares (Anesthesia): This row is modified to clarify what columns are adopted from CMS' Medicare National Physician Fee Schedule Relative Value file GPCI2019 - 19LOCCO file. This row is also modified to reference how to access the Anesthesia Conversion Factors File on the CMS website, and makes reference to the CMS' Zip Code mapping files.

Geographic Practice Cost Index (GPCI) locality mapping Zip Code files mapping zip codes to GPCI locality (for "other than anesthesia services" and anesthesia services): This row which is added to subdivision (f) of section 9789.19, adopts certain columns of the CMS' Zip Code to Carrier Locality File and CMS' Zip Codes requiring + 4 extension – XX/XX/2019 [ZIP, XKB], for the State of California ("CA").

Specific Purpose of Changes: These changes were required to conform to regulatory text adopted by Administrative Director order subsequent to the start of the rulemaking; and to reference the data and files to be used in determining GPCI payment adjustments and GPCI locality.

Modifications to Section 9789.19.1 Table A 2018 - For Anesthesia Services rendered on or after January 1, 2019

The footnote of Table A is modified to add the 2018 Medicare Anesthesia Shares that are applied to the Work GPCI, Practice Expense GPCI, and Malpractice GPCI to derive the Adjusted Anesthesia Conversion Factors by locality.

Specific Purpose of Changes: These changes were required to provide the Medicare Anesthesia Shares that were used to derive the Adjusted Anesthesia Conversion Factors by locality.

UPDATE OF MATERIAL RELIED UPON

The following additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director and added to rulemaking file after close of the initial 30-day comment period. They were identified in the Notice of Modification to Text of Proposed Regulations and Notice of Addition of Documents to Rulemaking File for the 15-day comment period noticed for September 14, 2018. These additional documents were available for 15 day public review and comment.

Additional documents relied upon by the Administrative Director and added to the rulemaking file and made available for public inspection and comment during the 15-day comment period noticed for September 14, 2018

1. Medicare Claims Processing Manual Chapter 12
2. Medicare Claims Processing Manual Chapter 13
3. Medicare RBRVS 2018 – The Physician’s Guide, Sherry L. Smith, Editor and Samantha L. Ashley and Michael J. Morrow, Managing Editors, American Medical Association

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 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.