

**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:
Physician Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9789.12.1, et seq.**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 59, 133, 4603.5, 5307.1 and 5307.3 proposes to modify the text of the following proposed amendment 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 – Physician Fee Schedule:

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| Section 9789.12.2 | Calculation of the Maximum Reasonable Fee – Services Other than Anesthesia |
| Section 9789.16.1 | Surgery – Global Fee |
| Section 9789.18.1 | Payment for Anesthesia Services – General Payment Rule |
| Section 9789.19 | Update Table |
| Section 9789.19.1 | Table A |

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

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 Section 5307.4.

The Physician Fee Schedule component of the Official Medical Fee Schedule is established by the authority of Labor Code section 5307.1. Subdivision (g) provides the Official Medical Fee Schedule –

Physician Fee Schedule shall be adjusted to conform to any relevant changes in the Medicare payment systems, and 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. The OMFS Physician Fee Schedule is regularly adjusted by Administrative Director Order on a monthly and quarterly basis to conform to relevant changes in the Medicare Physician Fee Schedule payment system. The changes to the regulations adopted by Administrative Order, subsequent to the start of the rulemaking, are indicated in the regulatory text by underline italics and ~~strike through underline italics~~.

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.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed modifications 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 September 14, 2018**. 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: dwcrules@dir.ca.gov.

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 30-Day Comment Period:

Deletions from the regulatory text noticed for the initial comment period ending on April 17, 2018, are indicated by strike-through: ~~deleted language~~.

Additions to the regulatory text noticed for the initial comment period ending on April 17, 2018, are indicated by single underlining: added language.

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

Additions to the proposed revisions or original codified regulatory text noticed for the first 15-day comment period ending on September 14, 2018, are indicated by double underlining: added language.

Deletions to the proposed revisions to the regulatory text noticed for the first 15-day comment period ending on September 14, 2018, are indicated by underline strike-through: ~~underline strike through~~.

Text Adopted by Administrative Director Order Subsequent to the Start of Rulemaking:

Regulatory text adopted by Administrative Director order, subsequent to the start of the rulemaking, are indicated by underline italics: *adopted language by Administrative Director order*.

Deletions to the regulatory text by Administrative Director order, subsequent to the start of the rulemaking, are indicated by strike-through underline italics: ~~*strike through underline italics*~~.

SUMMARY OF PROPOSED CHANGES

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.

Modifications to Section 9789.16.1 – Surgery – Global Fee

Subdivision (a)(5) is modified to clarify “000” is located in the “Global Days” column of the National Physician Fee Schedule Relative Value File.

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.

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:

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| <p><u>CCI Edits:</u> <u>Medically Unlikely Edits</u></p> | <p><u>For services rendered on or after January 1, 2019:</u> <u>“Practitioner Services MUE Table - Effective 1/1/19,”</u> <u>Excluding all codes listed with Practitioner Services MUE Value of “0” (zero).</u></p> <p><u>Copies</u> Excerpt of the MUE Tables are posted on the DWC website: http://www.dir.ca.gov/dwc/OMFS9904.htm</p> <p><u>CMS</u> posts only the most recent version of the Practitioner Services MUE Table on the web at: http://www.cms.gov/Medicare/Coding/NationalCorrectCodingInitEd/MUE.html</p> |
| <p><u>CCI Edits:</u> <u>National Correct Coding Initiative Policy Manual for Medicare Services</u></p> | <p><u>“NCCI Policy Manual for Medicare Services - Effective January 1, 2019 [ZIP, XXXKB]”</u></p> <p><u>Access</u> Copy of the 2019 Manual is posted on the <u>DWC CMS</u> website: http://www.dir.ca.gov/dwc/OMFS9904.htm#7 https://www.cms.gov/Medicare/Coding/NationalCorrectCodingInitEd/index.html</p> |
| <p><u>CCI Edits:</u> <u>Physician CCI Edits</u> <u>(Practitioner Procedure to Procedure (PTP) Edits)</u></p> | <p><u>For services rendered on or after January 1, 2019:</u> <u>Practitioner PTP Edits vxx.x effective January 1, 2019 (XXX,XXX records)</u> <u>XXXXX-XXXXX</u> <u>Practitioner PTP Edits vxx.xx effective January 1, 2019 (XXX,XXX records)</u> <u>XXXXX-XXXXX</u> <u>Practitioner PTP Edits Vxx.x effective January 1, 2019 (XXX,XXX records)</u> <u>XXXXX-XXXXX</u> <u>Practitioner PTP Edits vxx.x effective January 1, 2019 (XXX,XXX records) :</u> <u>XXXXX-XXXXX</u></p> <p><u>Access the Physician CCI Practitioner PTP Edits on the CMS website:</u> http://www.cms.gov/Medicare/Coding/NationalCorrectCodingInitEd/NCCI-Coding-Edits.html</p> <p><u>Note: the Physician CCI Practitioner PTP Edits excel file maintained by CMS contains effective date and deletion date (if any) for each column 1/column 2 pair. Therefore, the most recent file is the only file posted on the CMS website, and covers all time periods.</u></p> |
| <p><u>Conversion Factors adjusted for MEI and Relative Value Scale adjustment factor</u></p> | <p><u>Anesthesia Conversion Factor: See section 9789.19.1, Table A, for anesthesia conversion factors by locality \$XX.XXXX</u></p> <p><u>Other Services Conversion Factor: \$XX.XXXX</u></p> |
| <p><u>Geographic Practice Cost</u></p> | <p><u>For services rendered on or after January 1, 2019:</u></p> |

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| <p><u>Index (GPCI) by locality (Other than anesthesia services)</u></p> | <p>RVU19A</p> <ul style="list-style-type: none"> • <u>GPCI2019 Addendum E – Column B (“Locality Number”), column C (“Locality Name”), column D (“PW GPCI”), column E (“PE GPCI”), and column F (“MP GPCI”) for the State of California (“CA”)</u> • <u>19LOCCO – Column B (“Locality Number”), column C (“State”), column D (“Fee Schedule Area”), and column E (“Counties”) for the State of California (“CA”)</u> <p><u>Access the Relative Value File on the CMS website:</u> https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files.html</p> <p><u>Also, see Zip Code mapping files listed below.</u></p> |
| <p><u>Geographic Practice Cost Index (GPCIs) by locality and anesthesia shares (Anesthesia)</u></p> | <p><u>For services rendered on or after January 1, 2019:</u></p> <p><u>2019 Anesthesia Conversion Factors [ZIP, XXKB] (These factors have been incorporated into the conversion factors listed on section 9789.19.1, Table A)</u></p> <ul style="list-style-type: none"> • <u>Locality-Adjusted Anesthesia Conversion Factors as a result of the CY 2019 Final Rule, excluding column G labeled, “National Anes CF of XX.XXXX”</u> • <u>Anesthesia Shares</u> <p>RVU19A (County to locality index)</p> <ul style="list-style-type: none"> • <u>19LOCCO – Column B (“Locality Number”), column C (“State”), column D (“Fee Schedule Area”), and column E (“Counties”) for the State of California (“CA”)</u> <p><u>Access the Anesthesia Conversion Factors File on the CMS website:</u> https://www.cms.gov/Center/Provider-Type/Anesthesiologists-Center.html</p> <p><u>Access the Relative Value File on the CMS website:</u> https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files.html</p> <p><u>Also, see Zip Code mapping files listed below.</u></p> |
| <p><u>Geographic Practice Cost Index (GPCI) locality mapping</u></p> | <p><u>For services rendered on or after January 1, 2019:</u></p> <p><u>Zip Code to Carrier Locality File – XX/XX/2019 [ZIP, XMB], Column A (“STATE”), column B (“ZIP CODE”), and</u></p> |

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| <u>Zip Code files mapping zip codes to GPCI locality (for “other than anesthesia services” and anesthesia services)</u> | <u>column D (“LOCALITY”) for the State of California (“CA”)</u> <u>Zip Codes requiring + 4 extension – XX/XX/2019 [ZIP, XKB], for the State of California (“CA”)</u> <u>The Zip Code files can be accessed on the CMS website:</u> <u>https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FeeScheduleGenInfo/index.html</u> |
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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 (Work 0.783; Practice Expense 0.156; and Malpractice 0.061) that are applied to the Work GPCI, Practice Expense GPCI, and Malpractice GPCI to derive the Adjusted Anesthesia Conversion Factors by locality.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

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