

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

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Official Medical Fee Schedule  
Physician Fee Schedule  
Services rendered on or after January 1, 2014**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 9789.12.1 through 9789.19**

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|-------------------------|---|
| Amend section 9789.12.2 | Calculation of the Maximum Reasonable Fee - Services Other than Anesthesia      |
| Amend section 9789.12.3 | Status Codes C, I, N and R  |
| Amend section 9789.12.4 | “By Report” - Reimbursement for Unlisted Procedures / Procedures Lacking RBRVUs |
| Amend section 9789.12.8 | Status Codes  |
| Amend section 9789.19   | Update Table  |

**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.

This Initial Statement of Reasons and the accompanying Notice of Rulemaking are 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.

## **BACKGROUND TO REGULATORY PROCEEDING**

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Labor Code section 4600 requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Under existing law, payment for medical treatment shall be no more than the maximum amounts set by the Administrative Directive in the Official Medical Fee Schedule (OMFS) or the amounts set pursuant to a contract. (Labor Code sections 5307.1, 5307.11.)

In September of 2012, the California legislature passed Senate Bill 863 (Statutes of 2012, Chapter 363), a sweeping reform bill that, among other things, amended Labor Code section 5307.1. The legislation directs the Administrative Director to “adopt and review periodically an official medical fee schedule based on the resource-based relative value scale for physician services and nonphysician practitioner services,” provided:

- Liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration shall be determined in accordance with Labor Code section 4600
- The fee schedule is updated annually to reflect changes in procedure codes, relative weights and the adjustment factors in subdivision (g) (the Medicare Economic Index and any relative value scale adjustment factor)
- The maximum reasonable fees paid shall not exceed 120% of the estimated annualized aggregate fee prescribed in the Medicare physician fee schedule as it appeared on 7/1/2012 (before application of the Medicare Economic Index and any relative value scale adjustment factor)
- Any service provided to injured workers that is not covered under Medicare shall be included at its rate of payment established by the administrative director.
- There is a 4-year transition between the estimated aggregate maximum allowable under the OMFS physician schedule prior to 1/1/2014 and the maximum allowable based on 120% of the Medicare conversion factors
- The physician fee schedule includes ground rules that differ from Medicare payment ground rules, including, as appropriate, payment of consultation codes and payment of evaluation and management services provided during a global period of surgery.

In June of 2013 the Acting Administrative Director commenced a rulemaking action to adopt a new physician fee schedule based upon the Resource Based Relative Value Scale (RBRVS). After considering public comments received during a public hearing and two written comment periods, the Acting Administrative Director adopted regulations to establish a new physician fee schedule based upon the RBRVS. The regulations were filed with the Secretary of State for publication in the California Code of Regulations on September 24, 2013. The regulations are effective for services rendered on or after January 1, 2014.

The objective of the rulemaking action is to amend the RBRVS-based fee schedule for physician and nonphysician services to eliminate use of the federal Office of Workers' Compensation Program (OWCP) relative value units. The amendments also make minor clarifying revisions to the regulations. Eliminating use of OWCP is beneficial because the structure of the OWCP data file results in erroneous fee calculations for certain procedures.

#### **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

None.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED (if applicable)**

No specific technologies or equipment are required by these proposed regulations.

#### **FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

The acting administrative director has determined that these proposed amendments to the regulations will not have a significant adverse impact on business.

The Division of Workers' Compensation is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Claims administrators may incur costs to adjust their payment system to eliminate use of the OWCP. However, there will be offsetting benefits by reducing the complexity and avoiding erroneous fee calculations that may result from application of the OWCP data file.

#### **SUMMARY OF PROPOSED CHANGES**

##### **Proposed Section 9789.12.2 Calculation of the Maximum Reasonable Fee - Services Other than Anesthesia**

###### Specific Purpose:

The amendment deletes a duplicative heading in subdivision (b), facility site of service.

###### Necessity:

This amendment is necessary to improve clarity and eliminate redundancy.

Consideration of Alternatives: At this time, the acting administrative director has not identified any more effective nor any equally effective yet less burdensome alternative to the proposed amendment.

### **Proposed section 9789.12.3 Status Codes C, I, N and R**

#### Specific Purpose:

The amendment eliminates use of the OWCP as a method of calculating fees and directs payment to be made “By Report”. Conforming changes are made to subdivision numbering.

#### Necessity:

Eliminating use of OWCP is necessary because the structure of the OWCP data file results in erroneous fee calculations for certain procedures. The current regulation utilizes OWCP relative value units for fee calculation where the Medicare relative value file lacks RVUs for a procedure. The Division has become aware that for certain procedure codes the OWCP data file does not provide true relative values that conform with the RBRVS. Using OWCP values that are not synchronized with the RBRVS would result in erroneous fee calculations using the payment methodology set forth in the regulations. For the large majority of procedures, the conversion factor listed in OWCP is \$48.52, and the listed relative value units are multiplied to produce a fee which is consistent with the payment methodology used in the RBRVS. However, for certain procedures, the OWCP data file uses a payment amount as the “relative value” and uses a multiplier of 1.25 as the conversion factor. As a result of the use of a 1.25 multiplier, the data appearing in the relative value column is not truly a relative value. For example, use of the erroneous OWCP relative value data in the RBRVS payment methodology can result in a payment that is close to 40 times higher than the OWCP payment amount.

#### Consideration of Alternatives:

At this time, the acting administrative director has not identified any more effective nor any equally effective yet less burdensome alternative to the proposed amendment.

An alternative to the proposal is to include a formula for the procedure codes with a 1.25 conversion factor in the OWCP data file. This formula would adjust the relative value provided by the OWCP data file to be consistent with the payment formula set forth in section 9789.12.2. However, this would add another layer of complexity. In light of the many administrative changes needed to implement the RBRVS-based fee schedule, the acting administrative director has rejected this alternative at this time because the burdens outweigh the potential benefits.

### **Section 9789.12.4 “By Report” - Reimbursement for Unlisted Procedures / Procedures Lacking RBRVUs**

#### Specific Purpose:

The amendment eliminates reference to the OWCP as a method of calculating fees.

Necessity:

This amendment is necessary to conform to section 9789.12.3.

Consideration of Alternatives:

At this time, the acting administrative director has not identified any more effective nor any equally effective yet less burdensome alternative to the proposed amendment.

**Section 9789.12.8 Status Codes**

Specific Purpose:

This section sets forth the Status Code Indicators that are used in the National Physician Fee Schedule Relative Value File, but sets forth different definitions of the status codes where needed for use in the workers' compensation context. The amendment eliminates reference to OWCP for status codes "C" and "N".

Necessity:

This amendment is necessary to conform to section 9789.12.3.

Consideration of Alternatives:

At this time, the acting administrative director has not identified any more effective nor any equally effective yet less burdensome alternative to the proposed amendment.

**Section 9789.19 Update Table**

Specific Purpose:

This section sets forth a table of documents incorporated by reference that are used in physician billing and payment. The amendment eliminates use of OWCP data file, "CPT, HCPCS, ADA & OWCP codes with RVU and conversion factors". The amendment eliminates the table entry for "Statewide GAF (Consolidated Work, Practice Expense, Malpractice Expense, for use with OWCP Consolidated RVU)". The reference to the CMS' Medicare National Physician Fee Schedule Relative Value File was amended to clarify exclusions from the zip file.

Necessity: This amendment is necessary to conform to section 9789.12.3, and to improve clarity regarding the Medicare files that are incorporated into the regulation.

Consideration of Alternatives: At this time, the acting administrative director has not identified any more effective nor any equally effective yet less burdensome alternative to the proposed amendment.