Section	Issue	Comment	Response	Commenter
9789.32(c)(1)	Applying the OMFS RBRVS (physician fee schedule) for determining payment for any hospital outpatient services	Commenter 1 is strongly in favor of the DWC more holistically adopting the CMS HOPPS for hospital billing and reimbursement and abandoning altogether the present practice of applying the OMFS RBRVS (physician fee schedule) to *any* hospital outpatient services. Commenter 1 stated in his oral testimony, that it was his understanding that DWC is required to follow the relevant rules and payment guidelines of the applicable Medicare payment system and, therefore, wholly abandon the OMFS RBRVS as applicable to physicians.	The DWC acknowledges and appreciates commenter's suggestions and comments. DWC agrees that adopting the CMS Hospital Prospective Payment System (HOPPS) as the basis for payment of facility fees for all services rendered to hospital department outpatients is a better alternative. The DWC proposes to amend the Hospital Outpatient Departments fee schedule regulations to adopt facility fee payment methods based on the CMS HOPPS for all services rendered to hospital department outpatients that are payable under the CMS HOPPS.	1.1 (Clayton)
9789.32(c)(1)(B)(iii)	Application of the OMFS RBRVS (physician fee schedule)	The proposed amendment adding section	DWC acknowledges and appreciates the concerns raised by Commenter 1.	1.2 (Clayton)

	for determining payment for certain services rendered to hospital department outpatients	9789.32(c)(1)(B)(iii) does not go far enough to eliminate the systemic confusion that is created by imposing a fee schedule designed (by CMS) for physicians on to hospitals. Commenter 1 requests the DWC not limit the applicability of the amendments by service date, but rather allow the clarification to affect resolution of all service dates impacted by the problem. Commenter 1 points out the following concerns (non-exhaustive): 1. Without additional specificity insofar as *who* must "use the OMFS RBRVS code," confusion and disputes will persist with minimal abatement. Specifically, it is not clear as to whether the hospital provider must bill with the OMFS RBRVS code, or if the claims administrator must translate the hospital	The DWC proposes to amend the Hospital Outpatient Departments fee schedule regulations to adopt facility fee payment methods based on the CMS HOPPS, for all services rendered to hospital department outpatients that are payable under the CMS HOPPS. If amended as proposed, commenter's concerns will be alleviated.	

		billed CMS HOPPS code to an OMFS RBRVS code for reimbursement purposes. The crosswalk will not be a 1:1 transition and will require more effort to properly translate the hospital's CMS HOPPS code to the appropriate OMFS RBRVS code. 2. Many private contracts between hospitals and PPO networks, accessed by employers and claims administrators, require the hospitals to bill in accordance with the CMS guidelines. CMS requires hospitals to bill with CMS HOPPS codes and does not prescribe the use of Physician codes. Many of the same contracts set payment rates at the OMFS allowable, which, in combination, brings the parties back to the current problem. 3. If hospitals bill with the comparable OMFS		

		RBRVS code, many services, as billed, will fail the definition of "Other Services" [section 9789.30(s)] in that the OMFS RBRVS codes are very often <u>not</u> "payable under the CMS hospital outpatient prospective payment system". 4. In many cases, the corresponding OMFS RBRVS code will result in nonpayment, even though the hospitals are routinely paid for said services under CMS HOPPS. Reimbursement rules for CMS's RBRVS, as adopted by the DWC, were not designed to apply to hospital billings. More specifically, RBRVS PC/TC Indicators and Status Codes both drive reimbursement of the billed code in consideration that a physician, and not a hospital, is billing the		

		code. For example, a. RBRVS PC/TC Indicator 5: Incident To Codes – would not allow payment for services provided to hospital inpatients or patients in a hospital outpatient department, when the CMS HOPPS may allow payment. b. RBRVS Status Code B: Bundled Code – will not allow the billing physician to receive separate reimbursement for this code, because the Physician is being compensated for the service under another code on her bill. However, CMS HOPPS may provide reimbursement to hospitals for the service, regardless of other billed codes. c. RBRVS cap status Code C: Carrier priced code – all RVU's are "0.00" which will yield a $0.00 allowable, when the CMS HOPPS may		

		allow payment. d. RBRVS Status Code X: Statutory Exclusion – represents an item or service that is not in the statutory definition of "physician services" for fee schedule payment purposes. No RVUs or payment amounts are shown for these codes, which yield a $0.00 allowable, when the CMS HOPPS may allow payment. 5. There is another fundamental gap in the current schism of applying a hybrid of CMS HOPPS and CMS RBRVS payment systems to hospital outpatient bills, and that is those items (supplies, drugs, devices, etc.) that map to a CMS HOPPS Status Indicator N that are not rendered in conjunction with an emergency room visit, surgical procedure, or Facility Only Service. There are many CMS		

		HOPPS services and procedures payable per APC under *that* reimbursement system which are *not* payable per APC under the HOPD/ASC OMFS. Section 9789.32(c) does not address those items that are assigned a CMS HOPPS Status Indicator of "N". Commenter 1 strongly encourages the DWC to abandon the OMFS RBRVS in its entirety and instead adopt more holistically the CMS HOPPS. If this is impossible at present time, Commenter 1 recommends DWC to: 1. Require hospitals to bill using CMS HOPPS codes and require claims administrators to translate those CMS HOPPS codes to the materially equivalent OMFS RBRVS codes; 2. Require claims administrators to translate in a detailed and transparent manner,		

		the CMS HOPPS codes to appropriate OMFS RBRVS codes; 3. Not limit the applicability of the adopted solution by date of service, if at all permitted; and 4. Solve via utilization of the APC methodology the specific PC/TC indicator, Status Code, and "unpackaged" Status Indicator N issues addressed by commenter.		
9789.32(c)(1)(B)(iii)	Application of the OMFS RBRVS (physician fee schedule) for determining payment for certain services rendered to hospital department outpatients	Commenter 2 acknowledges the DWC's clarification of the payment method for "Other Services", but a concern is that without guidance from the DWC it may be difficult for the claims administrators and others in the industry to be aware of the Medicare coding changes that would cause "comparable" Other Services to be described by different HCPCS codes under	DWC acknowledges and appreciates the concerns raised by Commenter 2. The DWC proposes to amend the Hospital Outpatient Departments fee schedule regulations to adopt facility fee payment methods based on the CMS HOPPS, for all services rendered to hospital department outpatients that are payable under the CMS HOPPS. If amended as proposed, commenter's concerns will be	2.1 (Stryd)

		CMS HOPPS and OMFS RBRVS. Commenter 2 recommends the DWC publish updated list of codes to support the review of "Other Services" that have differing codes under CMS HOPPS and OMFS RBRVS.	alleviated.	
9789.32(c)(1)(B)(iii)	Application of the OMFS RBRVS (physician fee schedule) for determining payment for certain services rendered to hospital department outpatients	Commenter 3 recommends adding language to ensure that facility providers bill the appropriate code rather than requiring the payer to assign a comparable code found under the "OMFS RBRVS" schedule. Using the example provided in the Initial Statement of Reasons – code G0463 could represent either new patient or established patient services of varying intensity. Inadequate coding at the time of billing will result in disallowance if a code is not reassigned or	DWC acknowledges and appreciates the concerns raised by Commenter 3. The DWC proposes to amend the Hospital Outpatient Departments fee schedule regulations to adopt facility fee payment methods based on the CMS HOPPS, for all services rendered to hospital department outpatients that are payable under the CMS HOPPS. If amended as proposed, commenter's concerns will be alleviated.	3.1 (Jones)

		payment disputes if the wrong code is assigned by the payer.		
9789.32(c)(1)(B)(iii)	Application of the OMFS RBRVS (physician fee schedule) for determining payment for certain services rendered to hospital department outpatients	Commenter 4 stated his support of the proposed amendments to section 9789.32, to amend the fee schedule as being necessary to make more specific that payment method for "Other Services". Commenter states Medicare changes to HCPCS codes have affected California ambulatory surgery centers as well (denied payment for certain HCPCS codes).	DWC acknowledges and appreciates the concerns raised by Commenter 4. The DWC proposes to amend the Hospital Outpatient Departments fee schedule regulations to adopt facility fee payment methods based on the CMS HOPPS, for all services rendered to hospital department outpatients that are payable under the CMS HOPPS. The proposed amendments also broaden the definition of surgical services which will align better with Medicare's list of surgical services. If amended as proposed, commenter's concerns will be alleviated.	4.1 (Davis)
9789.30	Geographic wage adjustment conversion factor	Commenter 4 requests the DWC to adopt the same hospital outpatient PPS geographic-adjusted conversion factor utilized by Medicare.	Not within the scope of this rulemaking. However, in response, the conversion factor used by the OMFS is updated by the hospital	4.2 (Davis)

			market basket only, in accordance with Labor code section 5307.1. In recent years, because adjustment is made to the relative weights, the conversion factors for CMS and the OMFS are fairly close. The CMS 2014 conversion factor was 72.672 vs. OMFS conversion factor of 72.53. The market basket increase in 2015 is 2.9% while the CMS update factor is 2.2%. Finally, the market basket increase in 2016 is 2.4% while the CMS update factor is 1.7%.	