



California Workers' Compensation Institute  
1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 763-1592

VIA E-MAIL to [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

March 11, 2014

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

**RE: Written Testimony – Outpatient Facility Fee Schedule**

Dear Ms. Gray:

This written testimony on proposed revisions to regulations regarding outpatient facility fees is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (27% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Farmers Insurance Group, Fireman's Fund Insurance Company, The Hartford, Insurance Company of the West, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance Company, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

The Institute supports and recommends adopting the revisions the Acting Administrative Director proposes to the Outpatient Facility section of the Official Medical Fee Schedule (OMFS), with the one technical exception described below. The intended revisions are reasonable, clear and well researched.

The Acting Administrative Director's policy decision to make hospital outpatient facility fee payment according to the OMFS RBRVS technical component (TC) or practice expense RVUs with the OMFS RBRVS multiplier is strongly supported by the Institute because it encourages provision of care in the least costly clinically appropriate setting and "levels the playing field" across hospitals and community-based providers for comparable services. We believe that adopting the HOPPS with no multiplier, for "Facility Only Services" provided to hospital outpatients is adequate and reasonable as well, and will provide neutral cost incentives so that "Facility Only Services" will be provided when medically appropriate.

The decision to eliminate the rarely-used alternative outlier payment methodology and to recalculate the additional percentage for outlier compensation for services after the implementation date are also supported by the Institute. We suggest, however, replacing the proposed initial sentence in subdivisions (a), (b) and (c) of section 9789.33(d) and in the section 9789.37 Election for High Cost Outlier form

from: *"This section (b)/(c)/(d) is repealed as of XXX XX, 2014."*

to: *"This section (b)/(c)/(d) is inapplicable for dates of service on or after XXX XX, 2014."*

The Notice of Proposed Rulemaking and the Initial Statement of Reasons indicate that the subdivisions are intended to continue to apply for dates of service prior to the implementation date. Since the subdivisions are not actually repealed or deleted, it is more accurate to specify they are inapplicable for dates of service on or after the effective date. Revising the language in this way will avoid confusion and misinterpretation.

Finally, the Institute thanks the Division for its work on these regulations and recommends an effective date for the revised regulations that is at least ninety days after they are approved by the Office of Administrative Law and filed with the Secretary of State to allow sufficient time for programming, training and implementation.

Please contact me if additional clarification would be helpful.

Sincerely,

Brenda Ramirez  
Claims & Medical Director

BR/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, DWC Acting Administrative Director  
Jackie Schauer, DIR Counsel  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members