



California Workers' Compensation Institute
1111 Broadway Suite 2350, Oakland, California 94607, (510) 251-9470

January 24, 2007

VIA E-MAIL TO: dwcrules@hq.dir.ca.gov

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

RE: Official Medical Fee Schedule – Physician Evaluation and Management Fees

Dear Ms. Gray:

This written testimony on proposed changes to the maximum reasonable fees for certain evaluation and management services in the Physician's Section of the Official Medical Fee Schedule regulations is presented on behalf of California Workers' Compensation Institute's members. Institute members include insurers writing 87% of California's workers' compensation premium, and self-insured employers with \$30B of annual payroll, 20% of the state's total annual self-insured payroll.

Recommended modifications are indicated by underline and ~~strikethrough~~.

Section 9789.11. Physician Services Rendered on or after July 1, 2004.

Recommendation – 9789.11

Revise the entire physician's portion of the Official Medical Fee Schedule instead of only 10 evaluation and management codes. If the Administrative Director cannot revise the entire schedule at this time but decides to proceed with changes to the evaluation and management section of the schedule, the following modification to proposed changes to section 9789.11 are recommended:

- “(f) For physician services rendered on or after February 15, 2007, the maximum allowable reimbursement amounts for procedure codes 99201 through ~~99205~~ and ~~99211 through 99215~~ 99499 are set forth in the February, 2007 Addendum

to Table A, “OMFS Physician Services Fees for Services Rendered on or after February 15, 2007.” The February, 2007 Addendum to Table A, “OMFS Physician Services Fees for Services Rendered on or after February 15, 2007,” which sets forth individual procedure codes with the corresponding maximum reimbursable fees, is incorporated by reference.

Discussion

Additional Time and Reporting

The Initial Statement of Reasons for the proposed regulation states that increased reimbursement for the ten evaluation and management (E&M) office visit services is necessary because *“the adoption by the legislature of the American Medical Association’s Guides to the Evaluation of Permanent Impairment and of utilization review procedures substantially increased the time required to be expended by treating physicians in the workers’ compensation system.”* Mechanisms that separately reimburse additional time, if any, are already in place and in use. They include the prolonged service codes and modifier-21. The Statement of Reasons also refers to *“added reporting requirements of recent regulation.”* We note that required reports (except for the Doctor’s First Report) are separately reimbursed under Special Service Section codes in the Official Medical Fee Schedule (OMFS). The California Workers’ Compensation Institute therefore does not agree that changes to E&M allowances are necessary to address the issues described in the Statement of Reasons. The OMFS already contains sufficient flexibility to address added workload or complexity. Any additional increase in discrete service codes would be redundant and would tend to defeat the structure of the fee schedule.

RBRVS

The Institute supports the Administrative Director’s decision to make the physician’s portion of the Official Medical Fee Schedule a resource-based relative value scale (RBRVS) schedule. That policy decision ensures maximum reasonable fees for services in the schedule will be based on the physician’s work (time and skill required), practice expenses (staff time and overhead costs), and malpractice expenses. Such a schedule will remove financial incentives for under or over utilization of services that exist when some services are under or over valued in relation to others.

There is also value in the ease of administration of an RBRVS schedule, as an RBRVS schedule for workers’ compensation would parallel the reimbursement system already used by Medicare. This would allow workers’ compensation claims administrators to transfer review and payment tools from the Medicare system, and make it easier for physicians who are already organized to bill under Medicare to understand the mandates of the workers’ compensation system. Unlike the present schedule that uses CPT codes more than ten years out of date, an RBRVS schedule would allow medical providers to bill with current CPT codes the way they do in all other venues.

In contrast to the physician’s portion of the current OMFS, which bases reimbursement values on historical charges, an RBRVS schedule such as the one used by Medicare would assign lower relative values for some classes of services, such as surgical procedures, and higher relative values for others, particularly evaluation and management services. Thus,

under an RBRVS schedule, costs that are expected to rise for evaluation and management services would be offset by lower costs in other classes of services such as surgery. For this reason CWCI recommends revising the whole schedule at one time so that California employers do not bear the burden of increases without offsets.

If the Administrative Director cannot or does not revise the entire physician portion of the OMFS to an RBRVS schedule at this time, but instead decides to move forward with changes to the E&M section of the fee schedule, CWCI recommends revising the entire E&M section, not just a portion of it as proposed.

Current OMFS maximum allowances for some E&M services, including the most frequently used codes, are as much as 26.3% below maximum Medicare allowances. Others, however, are as much as 153% above the Medicare rates. Therefore, adopting Medicare's RBRVS-based rates for just some of the codes in the E&M section would compound the inconsistencies within the E&M section and increase costs without providing any offsetting reductions in the higher cost E&M services. On the other hand, if the state were to adopt Medicare rates for all E&M services, maximum allowances for the 10 E&M services would still be raised as proposed, and the entire E&M section would be internally consistent. Furthermore, the Institute's analysis shows that revising the 10 E&M codes as the DWC proposes will result in a \$78.7M increase in annual costs, whereas revising the entire E&M section will result in a \$68.6M increase in annual costs. As currently written, the proposed fee schedule changes will cost 14.7% more than the CWCI alternative recommendation.

**Recommendation – February 2007 Addendum to Table A,
“OMFS Physician Services Fees for Services Rendered on or after February 15, 2007.”**

If the administrative director decides to move forward with changes to the E&M section of the fee schedule, replace the proposed Table A with the recommended Table A attached to this document.

Discussion

The recommended Table A includes all E&M CPT codes – including the ten in the Table A proposed by The Division -- along with maximum reasonable allowances from the 2006 Ventura County Medicare schedule. The Institute recommends using the Medicare schedule for Ventura County because it provides average values closest to the California weighted average values calculated in the attached report. The Fee Schedule Analysis report detailing the methodology for the calculations and data relied upon is attached.

Conclusion

The modification CWCI proposes will not only increase the maximum fees for the 10 E&M services as proposed, it will also add consistency and fairness to the E&M fee schedule section, and at a cost that will be less burdensome for California employers. If adopted, it will be a significant step towards the goal of converting to an RBRVS physician schedule.

Thank you for your consideration. Please contact me for further clarification or if I can be of any other assistance.

Sincerely,

Brenda Ramirez
Claims and Medical Director

BR: pm

Attachments: Table A
Fee Schedule Analysis Report

cc: Carrie Nevans, DWC Deputy Administrative Director
Ann Searcy, DWC Medical Director
Destie Overpeck, DWC Chief Counsel
Richard Starkeson, DWC Counsel
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Associate Members