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 Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, 5307.1 and 5307.3 proposes to modify the text of the following proposed amendments 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:

Proposed Section 9789.12.1	Physician Fee Schedule: Official Medical Fee Schedule for Physician and Non-Physician Practitioner Services – For Services Rendered On or After January 1, 2014
Proposed Section 9789.12.2	Calculation of the Maximum Reasonable Fee – Services Other than Anesthesia
Proposed Section 9789.12.3	Status Codes C, I, N and R
Proposed Section 9789.12.5	Conversion Factors
Proposed Section 9789.12.8	Status Codes
Proposed Section 9789.12.11	Evaluation and Management: Coding – New Patient; Documentation
Proposed Section 9789.12.14	California Specific Codes
Proposed Section 9789.15.3	Qualified Non-physician Anesthetist Services
Proposed Section 9789.16.2	Surgery – Billing Requirements for Global Surgeries
Proposed Section 9789.18.1	Payment for Anesthesia Services – General Payment Rule
Proposed Section 9789.19	Update Table

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.

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 modification 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 August 19, 2013.** 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 .

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

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 First 15-Day Comment Period on Modified Text:

Deletions from the regulatory text noticed for the initial comment period ending on July 17, 2013, are indicated by strike-through: ~~deleted language.~~

Additions to the regulatory text noticed for the initial comment period ending on July 17, 2013, are indicated by single underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9789.12.1 - Physician Fee Schedule: Official Medical Fee Schedule for Physician and Non-Physician Practitioner Services – For Services Rendered On or After January 1, 2014

Subdivision (b) is amended to clarify that evaluation and management codes are to be used only by physicians (as defined by Labor Code §3209.3), as well as physician assistants and nurse practitioners who are acting within the scope of their practice and are under the direction of a supervising physician.

Modifications to Section 9789.12.2 - Calculation of the Maximum Reasonable Fee - Services Other than Anesthesia

In this section and in many other sections of the regulations the term "provider" is deleted and the term "practitioner" is substituted for consistency and clarity. In addition, where appropriate the phrase "non-physician practitioner" is added for consistency and clarity.

Subdivision (a) The formula for calculating the base maximum reasonable fee for physician and non-physician professional medical provider services is amended to apply the average statewide geographic adjustment factors to the work RVUs, the practice expense RVUs, and to the malpractice RVUs, when the service is provided in a non-facility. The term "work" is added to the "key" describing the non-facility site of service fee calculation formula.

Subdivision (b) The formula for calculating the base maximum reasonable fee for physician and non-physician professional medical provider services is amended to apply the average statewide geographic adjustment factors to the work RVUs, the practice expense RVUs, and to the malpractice RVUs, when the service is provided in a facility. The term "work" is added to the "key" describing the facility site of service fee calculation formula.

Subdivision (e) is added to reference section 9789.19, by date of service, for the average statewide geographic adjustment factors.

Subdivision (e now f) is amended to change the numbering within the subdivision and make a non-substantive edit.

Modifications to Section 9789.12.3 - Status Codes C, I, N and R

Subdivision (b) is amended to clarify that when the OWCP fee schedule lists total RVUs without separately providing RVUs for work, practice expense, or malpractice expense, the average statewide geographic adjustment factor shall be applied.

Subdivision (d)(4) is amended to clarify the payment methodology for procedures with status indicator code I that do not meet the criteria of subdivisions (d)(1), (d)(2), or (d)(3). Payment will be determined according the following hierarchy: 1) use the RVUs listed in the CMS' National Physician Fee Schedule Relative Value File; 2) if there are no RVUs listed in the National Physician Fee Schedule Relative Value File, use the RVUs listed in the federal Office of Workers' Compensation Program (OWCP) fee schedule; 3) if there are no RVUs listed in the National Physician Fee Schedule Relative Value File and no RVUs listed in the OWCP, then the procedure is paid using a different OMFS fee schedule; or 4) if none of the above is applicable, the procedure is payable By Report. This subdivision is amended to clarify that when the OWCP fee schedule lists total RVUs without separately providing RVUs for work, practice expense, or malpractice expense, the average statewide geographic adjustment factor shall be applied.

Modifications to Section 9789.12.5 – Conversion Factors

Subdivision (b) is modified to clarify the application of the four year transition between:
"OMFS Budget Neutral CF": the estimated aggregate maximum allowable amount under the official medical fee schedule for physician services prior to January 1, 2014, and
"120% RBRVS 2012 CF": the maximum allowable amount based on the resource-based relative value scale at 120 percent of the Medicare conversion factor in effect in July 2012. During the transition, the conversion factors shall be adjusted by the cumulative increases in the annual Medicare Economic Index and the Relative Value Adjustment Factor, if any, between 2012 and the transition year. Section 9789.19 is referenced for the MEI (annual increase and cumulative increase) and Relative Value Scale Adjustment Factor, by date of service.

Modifications to Section 9789.12.8 – Status Codes

This section is amended to clarify that for status code I, that procedure codes with status code I are not valid for workers' compensation physician billing except as otherwise provided. The section is amended to include status code R, and specify that these procedures will be paid pursuant to section 9789.12.3.

Modifications to Section 9789.12.11 – Evaluation and Management: Coding – New Patient; Documentation

Subdivision (b) is amended to clarify that the physicians and qualified non-physician practitioners must use either the 1995 documentation guidelines for evaluation and management services or the 1997 documentation guidelines for evaluation and management services, but not a combination of the guidelines for a patient encounter. This subdivision is also amended to clarify that if the physician's or qualified non-physician practitioner's documentation for medically necessary service conforms to either one of the guidelines, the maximum reasonable fee shall be according to the documented level of service.

Modifications to Section 9789.12.14 – California Specific Codes

This section is amended in conformity with section 9789.19 to clarify that the California-specific codes will be updated annually in accordance with the Medicare Economic Index. This application of the MEI was included in the initial and revised modeling done by RAND.

Modifications to Section 97789.15.3 - Qualified Non-physician Anesthetist Services
Subdivision (a) is amended to replace "anesthesia assistants" with "certified anesthesiologist assistants".

Subdivision (b) is deleted as being unnecessary and confusing.

Subdivision (c now b) is amended to change the numbering within the subdivision.

Subdivision (d now c) is amended to change the numbering within the subdivision.

Subdivision (e now d) is amended to change the numbering within the subdivision.

Subdivision (f now e) is amended to change the numbering within the subdivision.

Subdivision (g now f) is amended to change the numbering within the subdivision.

Subdivision (h now g) is amended to change the numbering within the subdivision.

Modifications to Section 9789.16.2 – Surgery – Billing Requirements for Global Surgeries

Subdivision (c) is deleted as being unnecessary and confusing, as the rules relating to Health Professional Shortage Area (HPSA) Payments are covered in section 9789.12.6.

Modifications to Section 9789.18.1 – Payment for Anesthesia Services – General Payment Rule

This section is amended to provide that the statewide anesthesia Geographic Adjustment Factor is applied as part of the formula for determining the payment rate for anesthesia services. In addition, the section is amended to provide that the statewide anesthesia GAF, by date of service, is set forth in section 9789.19.

Modifications to Section 9789.19 – Update Table

This section is amended as follows:

- Introductory language of subdivision (a) is re-ordered, and the applicable date is inserted, to improve clarity.
- California-Specific Codes – Reference to WC006 is deleted, as this code is reserved and not currently used. Maximum reasonable fees were updated with the estimated 2014 MEI.
- CMS' Medicare National Physician Fee Schedule Relative Value File, "GPCI2013" – is deleted because California locality GPCI adjustments will no longer be applied. Instead, statewide Relative Value Unit component geographic adjustment factors (Work GAF, Practice Expense GAF, Malpractice GAF) will be applied.
- Conversion Factors – the 2014 conversion factors are revised to reflect RAND's revised analysis of the data, and the use of statewide RVU components' geographic adjustment factors.
- Listing of Current Procedural Terminology codes not to be used is amended to 1) list CPT codes 27215 – 27218 relating to pelvic fractures and to specify use of G0412-G0415 instead, and 2) list 97014 Electrical stimulation, unattended, and to specify use of G0283 instead, in accordance with Medicare payment rules.
- Medicare Economic Index is added to display the annual MEI, and the cumulative MEI.
- Relative Value Scale Adjustment Factor Adopted by CMS is added to the table.
- Statewide RVU Components' Geographic Adjustment Factors for other than anesthesia (Work, Practice Expense, and Malpractice expense) – are added.
- Statewide GAF for anesthesia is added.
- Statewide GAF (consolidated work, practice expense, malpractice expense) for use with OWCP RVU, where the OWCP lists a single consolidated RVU rather than components (work, PE, malpractice).

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

1. Medicare Payment Advisory Commission, *Report to the Congress: Medicare Payment Policy*, March 2013.
2. Medicare Payment Advisory Commission, *Report to the Congress: Medicare and the Health Care Delivery System*, June 2013.
3. *Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011* (CMS-1503-FC; 75 FR 73170; November 29, 2010)
4. Office of Inspector General, *Musculoskeletal Global Surgery Fees Often Did Not Reflect the Number of Evaluation and Management Services Provided*, A-05-09-0053, May 2012.
5. U.S. Government Accountability Office, *Medicare Physician Payments: Fees Could Better Reflect Efficiencies Achieved When Services are Provided Together*, GAO-09-647, July 31, 2009.
6. Whoriskey, Peter and Keating, Dan, *How a secretive panel uses data that distorts doctors' pay*, Washington Post, July 20, 2013.
7. Wynn, Barbara, Liu, Hangshen, Mulcahy, Andrew, Okeke, Edward, Iyer, Neema, and Painter, Lawrence, *Implementing a RB-RVS Fee Schedule for Physician Services: An Assessment of*

Policy Options for the California Workers' Compensation Program, RAND, WR-993-1-DIR, July 2013, revised working paper.

8. Wynn, Barbara, Liu, Hangshen, Mulcahy, Andrew, Okeke, Edward, Iyer, Neema, and Painter, Lawrence, *Implementing a RB-RVS Fee Schedule for Physician Services: An Assessment of Policy Options for the California Workers' Compensation Program*, RAND, RR-395-DIR, August 2013.