

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

***NOTICE OF PROPOSED RULEMAKING
AND INFORMATIVE DIGEST***

Subject Matter of Regulations: Official Medical Fee Schedule – Physician Services

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Administrative Director by Labor Code sections 59, 133, 4603.5, 5307.1, and 5307.3, proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation ("DWC"), proposes to amend Article 5.3 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, Section 9789.11:

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

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date: January 24, 2007
Time: 10:00 a.m. to 5:00 pm or conclusion of business
Place: Junipero Serra State Building, Auditorium
320 West 4th Street
Los Angeles, CA 90013**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication and program access for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

Notice of Rulemaking
Official Medical Fee Schedule Regulation - Physician Services - § 9789.11

(December, 2006)

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 59, 133, 4603.5, 5307.1, and 5307.3.

Reference is to Labor Code Sections 4600, 4603.2, and 5307.1.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

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 5307.1 requires the Administrative Director to adopt an official medical fee schedule that establishes maximum fees paid for medical services under the workers' compensation system.

Existing law, commencing January 1, 2004, required the then existing physician fee schedule, which is a part of the Official Medical Fee Schedule (OMFS), to remain in effect, but that all fees should be reduced by five percent unless the fee for a procedure was already at or below 2003 Medicare fee levels for the procedure.

Existing law, commencing January 1, 2004, provided that after January 1, 2006, the Administrative Director was to adopt and biennially revise the physician fee schedule. This regulatory change is the first revision to the physician fee schedule since January 1, 2006.

This proposed regulatory change implements, interprets, and makes specific Sections 4600, 4603.2, and 5307.1 of the Labor Code as follows:

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

This section sets forth the maximum reasonable fees for physician services.

(c) This subdivision incorporates by Reference different versions of Table A, "OMFS Physician Services Fees for Services," for different periods of time. The Tables A establish the maximum reasonable fees for physician services.

(c)(4) This paragraph of subdivision (c) states that the Table A may be obtained from the Division of Workers Compensation. It is changed to include that Addenda to Table A may also be obtained.

(f) This new subdivision provides that for physician services rendered on or after February 15, 2007, the maximum allowable reimbursement amounts for procedure codes 99201 through 99205 and codes 99211 through 99215 are set forth in the February, 2007 Addendum to Table A, "OMFS Physician Services Fees for Services Rendered on or after February 1, 2007." It also incorporates this addendum by reference.

Addendum to Table A: This new addendum to the Table A actually sets forth the maximum reasonable reimbursement amounts for services rendered on or after February 15, 2007, for procedure codes 99201 through 99205 and codes 99211 through 99215.

Procedure code 99201 is increased to 39.90, a 2.1 percent increase.
Procedure code 99202 is increased to 70.19, a 21.4 percent increase.
Procedure code 99203 is increased to 103.86, a 35.8 percent increase.
Procedure code 99204 is increased to 146.12, a 33.3 percent increase.
Procedure code 99205 is increased to 186.73, a 28.5 percent increase.

Procedure code 99211 is increased to 23.81, a 0.04 percent increase.
Procedure code 99212 is increased to 42.02, a 17.7 percent increase.
Procedure code 99213 is increased to 56.93, a 19.6 percent increase.
Procedure code 99214 is increased to 89.57, a 24.0 percent increase.
Procedure code 99215 is increased to 129.41, a 17.1 percent increase.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

CONSIDERATION OF ALTERNATIVES

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

In addition, this Notice, the Initial Statement of Reasons, and the text of regulation and Table A may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov under the heading "Rulemaking-proposed regulations." Any subsequent changes in regulation text and the Final Statement of Reasons will be available at that Internet site when made.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS, USE OF PHOTOGRAPHY AT HEARING, AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing. In order to ensure unimpeded access for disabled individuals wishing to present comments and to facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room.

Any person may submit written comments on the proposed regulation to the DWC contact person:

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

Written comments may also be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on January 24, 2007. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Due to the inherent risks of non-delivery by facsimile transmission and email transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission or email transmission also be submitted by regular mail.

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 RULEMAKING FILE AND LOCATION WHERE RULEMAKING FILE MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
1515 Clay Street, 17th Floor
Oakland, California 94612

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Rulemaking - proposed regulations" link, then click on the "Division of Workers' Compensation regulations" link and scroll down the list of rulemaking proceedings to find the rulemaking link, "Official medical fee schedule – pharmaceuticals."

CONTACT PERSON:

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

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

The telephone number of the contact person is (510) 286-7100.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: Richard Starkeson, Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: <http://www.dir.ca.gov/DWC> by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulation will appear in Title 8, California Code of Regulations, commencing with section 9789.11.