STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Workers' Compensation – Official Medical Fee Schedule: Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule

TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9789.30 et seq.

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 59, 133, 4603.5, 5307.1 and 5307.3 proposes to amend text or modify the proposed text of the following sections of 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 – Hospital Outpatient Departments and Ambulatory Surgical Centers:

Section 9789.31	Adoption of Standards [Modify proposed amendments]
Section 9789.32	Applicability [Amend and modify proposed amendments]
Section 9789.33	Determination of Maximum Reasonable Fee [Amend and modify proposed amendments]
Section 9789.39	Federal Regulations and Federal Register Notices [Modify proposed amendments]

IMPORTANT PROCEDURAL NOTES ABOUT THIS RULEMAKING:

1. The Hospital Outpatient Departments and Ambulatory Surgical Centers (HOPD/ASC) 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.

2. The HOPD/ASC Fee Schedule component of the Official Medical Fee Schedule is established by the authority of Labor Code section 5307.1. Subsection (g) provides the Official Medical Fee Schedule – HOPD/ASC Fee Schedule shall be adjusted to conform to any relevant changes in the Medicare payment systems, and the Administrative Director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued shall be published on the Internet Web site of the Division of Workers' Compensation.

This rulemaking proceeding to amend the HOPD/ASC Fee Schedule is being conducted under the Acting 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 sections

5307.1 and 5307.4. However, amendments adjusting the fee schedule regulations to conform to relevant changes in the Medicare payment system for calendar years 2015 and 2016 are being made in accordance with Labor Code section 5307.1 subsection (g), and are not subject to the rulemaking requirements of sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act referenced above.

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 amendments to the regulations to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on September 23**, **2016.** 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 amended text with modifications clearly indicated, 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 initial comment period ending on June 17, 2015:

Deletions from the original codified regulatory text noticed for the initial comment period ending on June 17, 2015, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the initial comment period ending on June 17, 2015, are indicated by single underlining: added language**.**

Proposed Text Noticed for Second 30-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the initial comment period ending on June 17, 2015, are indicated by strike-through underlining: ~~deleted language.~~

Deletions from the original codified regulatory text noticed for the second 30-day comment period ending on July 6, 2016, are indicated by double strike-through: ~~deleted language~~

Additions to the proposed revisions or original codified regulatory text noticed for the second 30-day comment period ending on July 6, 2016, are indicated by double underlining: added language.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the second 30-day comment period ending on July 6, 2016 are indicated by strike-through double-underlining: ~~deleted language~~

Deletions from the original codified regulatory text noticed for the first 15-day comment period ending on September 23, 2016, are indicated by italicized-strikethrough: ~~*deleted language*~~

Additions to the proposed revisions or original codified regulatory text noticed for the first 15-day comment period ending on September 23, 2016, are indicated by wave-underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9789.31 – Adoption of Standards

Subdivision (e) is amended to clarify only specific columns of certain addenda published in Medicare's Ambulatory Surgical Centers Payment System are adopted and incorporated by reference for services rendered on or after the date this amendment is filed with the Secretary of State.

Modifications to Section 9789.32-Applicability

Subdivision (a) is amended to clarify that for dates of service prior to the effective date of this amendment: 1) sections 9789.30-9789.39 shall be applicable to services[1] provided on an outpatient basis; and 2) the proposed text, "and payable under the Medicare (CMS) HOPPS" is deleted to prevent the concern that this language will have a retroactive effect on the regulatory text.

[1] Emergency room visits, surgical procedures, and Facility Only Services when the Facility Only Service is rendered on or after September 1, 2014 but before the effective date of this proposed amendment.

Subdivision (a)(1) is amended to revise the format of the subdivision. In particular, subdivision (a)(1) is now presented as a table as opposed to text narrative.

Subdivision (a)(2) is amended to revise the format of the subdivision. In particular, subdivision (a)(2) is now presented as a table as opposed to text narrative.

The paragraph preceding subdivision 9789.32(b) is deleted because proposed language is added to "new" subdivision (d).

Subdivision (d) is amended to add the following clarifying language, "Hospital Outpatient Departments and ASCs should utilize other applicable parts of the OMFS to determine maximum allowable fees for services or goods not covered by the Hospital Outpatient Departments and Ambulatory Surgical Centers fee schedule (Sections 9789.30 through 9789.39)."

Subdivision (d)(1) is amended to make the language more consistent with other parts of this subdivision. Section (d)(1) is amended to state, "The fees for any physician and non-physician practitioner professional services shall be determined in accordance with the OMFS RBRVS."

Subdivision (d)(4) is amended to delete the following proposed language to prevent the concern that this language will have a retroactive effect on the regulatory text: "For instance, when laboratory tests are not packaged under the OPPS and are listed on the OMFS Pathology and Laboratory fee schedule, they are paid according to the OMFS Pathology and Laboratory fee schedule."

Modifications to Section 9789.33 – Determination of Maximum Reasonable Fee

Subdivision (a)(3) is amended to add the range of dates of service when status indicator codes "J1" and "J2" are applicable. In addition, status indicator code "J2" is added to conform the fee schedule to relevant changes in the Medicare payment system for calendar year 2016, in accordance with Labor Code section 5307.1 subsection (g). This subdivision is amended to state the following, "Procedure codes for drugs and biologicals with status code indicator "K" unless rendered on or after XXX XX, 2016 [Date amendment is filed with the Secretary of State. Date to be inserted by OAL.] and packaged into a procedure with a status indicator code J1 or J2, in which case no additional fee is allowable:

APC payment rate x workers' compensation multiplier pursuant to Section 9789.30(ab), by date of service."

Subdivision (a)(4) is amended to add the range of dates of service when status indicator codes "J1" and "J2" are applicable. In addition, status indicator code "J2" is added to conform the fee schedule to relevant changes in the Medicare payment system for calendar year 2016, in accordance with Labor Code section 5307.1 subsection (g). This subdivision is amended to state the following, "For services rendered on or after March 1, 2009: Procedure codes for blood and blood products with status code indicator "R" unless rendered on or after XXX XX, 2016 [Date amendment is filed with the Secretary of State. Date to be inserted by OAL.] and packaged into a procedure with a status indicator code J1 or J2, in which case no additional fee is allowable:

APC relative weight x adjusted conversion factor x workers' compensation multiplier pursuant to Section 9789.30(ab), by date of service. See section 9789.39(b) for APC relative weight by date of service."

Modification to Section 9789.39 – Federal Regulations and Federal Register Notices by Date of Service

Subdivision (b) is amended for the following categories for dates of service rendered on or after the date this amendment is filed with the Secretary of State:

- APC Payment Rate – is amended to list the most recent July 2016 Addendum B instead of April 2016 version
- APC Relative Weight– is amended to list the most recent July 2016 Addendum B instead of April 2016 version
- The Ambulatory Surgical Centers Payment System Addenda - Addenda AA and EE are amended to adopt and incorporate by reference *only* column A (HCPCS Code) of Addendum AA and column A (HCPCS Code) of Addendum EE. The reason for adopting and incorporating by reference columns A of Addenda AA and of EE is to identify the HCPCS codes which fall within the definition of "Surgical Procedure HCPCS", excluding HCPCS codes listed on CMS' HOPPS Addendum E as an inpatient only procedure.
- Surgical Procedure HCPCS – is amended to adopt and incorporate by reference *only* column A (HCPCS Code) of Addendum AA and column A (HCPCS Code) of Addendum EE. The reason for adopting and incorporating by reference columns A of Addenda AA and of EE is to identify the HCPCS codes which fall within the definition of "Surgical Procedure HCPCS", excluding HCPCS codes listed on CMS' HOPPS Addendum E as an inpatient only procedure. CPT codes 21811 through 21813 are added to the definition of a surgical procedure HCPCS. These codes are not listed on either ASC Addendum AA or EE, but, are payable under the CMS HOPPS.