

**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:
Hospital Outpatient Departments and Ambulatory Surgical Centers**

**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 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 – Hospital Outpatient Departments and Ambulatory Surgical Centers:

Amended Section 9789.30	Definitions
Amended Section 9789.31	Adoption of Standards
Amended Section 9789.32	Applicability
Amended Section 9789.33	Determination of Maximum Reasonable Fee
Amended Section 9789.37	Election for High Cost Outlier
Amended Section 9789.39	Federal Regulations and Federal Register Notices

NOTICE IS HEREBY GIVEN that additional documents relied upon by the Division in proposing the regulations have been added to the rulemaking file and are available for public inspection and comment.

IMPORTANT PROCEDURAL NOTES ABOUT THIS RULEMAKING:

The Hospital Outpatient Departments and Ambulatory Surgical Centers 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 Hospital Outpatient Departments and Ambulatory Surgical Centers 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.

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 Apr. 28, 2014**. 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 initial comment period ending on March 11, 2014:

Deletions from the original codified regulatory text noticed for the initial comment period ending on March 11, 2014, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the initial comment period ending on March 11, 2014, are indicated by single underlining: added language.

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

Deletions from the proposed revisions noticed for the initial comment period ending on March 11, 2014, are indicated by strike-through underlining: ~~deleted language~~.

Deletions from the original codified regulatory text noticed for the first 15-day comment period ending on April 28, 2014, are indicated by double strike-through: ~~deleted language~~

Additions to the proposed revisions or original codified regulatory text noticed for the first 15-day comment period ending on April 28, 2014, are indicated by double underlining: added language.

SUMMARY OF PROPOSED CHANGES

General modification –The proposed text references to dates of service on or after “XXX XX, 2014”, is amended to state “September 1, 2014”, in anticipation of allowing a sixty to ninety day implementation period.

Modifications to Section 9789.32-Applicability

Subdivision (a) is amended to conform to changes made in Medicare’s hospital outpatient prospective payment system and HCPCS coding. The following codes were added to the definition of an emergency room visit: CPT codes 99291 and 99292, and HCPCS codes G0380-G0384, G0390. G0413 is added to the definition of surgical procedure codes. This subdivision was also amended to refer to section 9789.39(b) for the HCPCS codes included in the definition of emergency room visits and surgical procedures by date of service.

Subdivision (c)(1)(B)(ii) is amended to include a formula for calculating the base facility fee, when the facility fee for Other Services is determined based solely on the non-facility practice expense relative value units applicable under the OMFS RBRVS.

Modifications to Section 9789.33 – Determination of Maximum Reasonable Fee

Subdivision (a) is amended to delete reference to applicable procedure codes for emergency room visits and surgical procedures, since these codes are now listed in section 9789.39 by date of service.

Subdivisions (b), (c), and (d) are amended to state these subsections are inapplicable for dates of service on or after September 1, 2014.

Modification to Section 9789.37 – Election for High Cost Outlier

This section is amended to state DWC Form 15 (Election for High Cost Outlier) is inapplicable for dates of service on or after September 1, 2014.

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

The title to section 9789.39 is amended to rename the section from “Federal Regulations and Federal Register Notices” to “Update Table”.

Subdivision (b) is amended to add emergency room visit and surgery procedure HCPCS codes by date of service, and add “Update factors” to the subsection title.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

1. Vogt WB and Romley JA, *California Ambulatory Surgery Centers: A Comparative Statistical and Regulatory Description*, RAND, TR-757-CAHF, 2009
2. *Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Hospital Value-Based Purchasing Program; Organ Procurement Organizations; Quality Improvement Organizations; Electronic Health Records (EHR) Incentive Program; Provider Reimbursement Determinations and Appeals*, CMS-1601-FC, Federal Register, Vol. 78, No. 237, page 74826, December 10, 2013