

**State of California**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF  
PROPOSED REGULATIONS  
(Adoption of Emergency Regulations)**

**Subject Matter of Regulations: Workers' Compensation –  
Official Medical Fee Schedule – Services Rendered After January 1, 2004**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 9789.10 – 9789.111**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 59, 129, 129.5, 133, 5307.1, 5307.3, and 5318 proposes to adopt a new section and to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9789.10	Physician Services Definitions
Section 9789.11	Physician Services – Effective Date, Corrections to Table A Fees, Correction to Acupuncture Fees, General Instructions Effective Dates
Section 9789.20	Payment of Inpatient Hospital Services – Effective Date
Section 9789.32	Outpatient Hospital Department and Ambulatory Surgical Center Fee Schedule – Applicability – Effective Date
Section 9789.33	Hospital Outpatient Departments and Ambulatory Surgical Facilities Fee Schedule – Determination of Maximum Reasonable Fee – Effective Date
Section 9789.111	New Section - Effective Dates of Official Medical Fee Schedule

The proposed modifications are in response to comments received during the public comment period ending on April 2, 2004 and as a result of identification of other corrections needed.

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION  
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations or the material added to the rulemaking file will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Marcela Reyes, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Wednesday, April 28, 2004**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified 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 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Marcela Reyes, at (415) 703-4600 to arrange to inspect the rulemaking file.

## **ADDITION TO THE RULEMAKING FILE OF DOCUMENTS RELIED UPON**

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

An Excel spreadsheet entitled "OMFS – Recalculated Codes – 1.063 Statewide GPCI". This spreadsheet sets forth which codes in the Table A (Section 9789.11 (c)), proposed March 30, 2004, had incorrect fee calculations due to the inadvertent use of 1.06 Geographic Practice Cost Index (GPCI) rather than the intended use of the 1.063 GPCI. Recalculation using 1.063 resulted in the listed codes being under-reimbursed in the Table A proposed on March 30, 2004. This Excel spread sheet was utilized to derive the correction to Table A set forth in the proposed modified text of regulation, which corrects the reimbursement listed in that Table for specified codes.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

### **Proposed Text Noticed for First 15-Day Comment Period on Modified Text (Period ending April 2, 2004):**

Deletions from the amended regulatory text, as proposed on January 12, 2004, are indicated by double strike-through under-line, thus: ~~deleted language~~.

Additions to the amended regulatory text, as proposed on January 12, 2004, are indicated by a double underline, thus: added language.

**Proposed Text Noticed for Second 15-Day Comment Period on Modified Text  
(Period ending April 24, 2004):**

Deletions from the amended regulatory text, as proposed on March 18, 2004, are indicated by italics with double strike-through double under-line, thus: ~~deleted language~~.

Additions to the amended regulatory text, as proposed on March 18, 2004, are indicated by a dotted underline, thus: added language.

**Proposed Text Noticed for 15-Day Comment in this Notice Issued 4/13/2004:**

Deletions are indicated by bold double strike-through in Arial font, thus: ~~**deleted language**~~.  
Additions are indicated by bold double underline Arial font, thus: **added language**.

**SUMMARY OF PROPOSED CHANGES**

**Modifications to Section 9789.10 subdivision (c) Physician Services – Table A –  
Corrections Necessitated by Inadvertent Use of 1.06 GPCI Instead of 1.063 GPCI In  
Calculating the Medicare Rate Used for Comparison**

Section 9789.10 subdivision (c), Table A has been modified to correct some errors in the Table A that was sent for a 15-Day comment period on March 30<sup>th</sup>, ending on April 14, 2004. It has been determined that the calculations used to determine the maximum allowable fee set forth in the modified proposal whose comment period ends April 14<sup>th</sup> contained errors in some codes. These errors were the result of applying a 1.06 Geographic Practice Expense Index (GPCI) instead of a 1.063 GPCI to determine the Medicare rate used in the comparison to the OMFS 2003 fee. As a result of dropping the third decimal place, there were a few codes whose values were affected. This modified proposal for 15-day comment period sets forth the changes to the maximum reimbursable fees by re-calculating using the 1.063, and sets forth the percent reduction calculation. The percent reduction calculation and new maximum allowable fee will be integrated into the final Table A, but are set forth separately here for the convenience to the public. The other items for each of these codes, relative value, conversion factor, descriptor, remain the same as in the Table A proposed for public comment on March 30<sup>th</sup> (with comment ending on April 14, 2004) and will be integrated into the Table A at the time of final adoption so that the public will have one consolidated table of these physician fees.

**Modifications to Section 9789.10 subdivision (c) Physician Services – Table A –  
Corrections to Acupuncture Codes**

This proposal modifies two table entries relating to acupuncture, codes 97802 (cupping) and 97803 (moxibustion in acupuncture). These codes were listed as having only a .4% reduction in fee from the OMFS 2003. These codes should actually have a 5% reduction. In accordance with the statute, the OMFS 2003 codes are reduced by 5%, but the Administrative Director was given discretion to reduce by a different amount so that a code would not go below the Medicare rate. These two codes were erroneously compared to the Medicare codes 97802 and 97803, but in Medicare those code numbers relate to medical nutritional therapy, not acupuncture. There are no Medicare codes or reimbursements for cupping or moxibustion; therefore the 5% reduction to the OMFS 2003 should be applied to establish the new fee. The .4 % reduction was the result of

erroneously comparing the 97802 and 97803 OMFS cupping and acupuncture codes to the nutritional therapy codes.

**Modifications to Various Sections to Clarify the Effective Date of the Changes Made Through this Rulemaking Action – Physician Services Sections 9789.10-9789.11, Inpatient Services Sections 9789.20-9789.24, Outpatient Services Sections 9789.30 - 9789.38**

Changes are proposed to various parts of the Official Medical Fee Schedule regulations to clarify the effective date of the regulations. Specifically, the regulatory text relating to Physician Services, and Outpatient Services are amended to clearly indicate that they will apply prospectively to services rendered on or after July 1, 2004. In relation to Inpatient Hospital Services the regulatory text is modified to make it clear that the new regulations will apply to services where the date of discharge is on or after on or after July 1, 2004. All three of these components of the schedule involve substantive changes, including changes of fee levels that should be given prospective application only.

The other components of the fee schedule, Pharmacy, Section 9789.40, Pathology and Laboratory, Section 9789.50, Durable Medical Equipment, Prosthetics, Orthotics, Supplies, Section 9789.60, and Ambulance Services, Section 9789.70 have not had any substantive changes made during this rulemaking. The effective date for those sections remains as “services rendered after January 1, 2004”. The changes made in this rulemaking merely add clarifying language, which mirrors the provision of the statute, that services not covered by those Medicare schedules, or the Medi-Cal schedule for pharmacy, are paid at no more than the rate set forth in the OMFS in effect on December 31, 2003.

**Addition of New Section 9789.111 to Clarify Effective Date of Official Medical Fee Schedule**

This proposal adds a new Section 9789.111. This is done to provide clarity regarding the effective date of the various portions of the fee schedule. The emergency regulations adopted for physician services, inpatient services, and outpatient services, which are effective for services after January 1, 2004 are intended to remain in effect and apply to services rendered up to June 30, 2004. The new regulations will apply to services rendered on or after July 1, 2004. It is necessary to clarify this as these regulations which change substantive provisions, including calculation of medical fees, should be prospective only. The new Section 9789.111 clarifies that as to the pharmacy, pathology and laboratory, Durable Medical Equipment, Prosthetics, Orthotics, Supplies, and Ambulance services, the rules apply for services rendered after January 1, 2004. These schedules do not need to have a new effective date as the only changes to them insert language to draw attention to the statutory provision that items not covered by those schedules are to be paid under the OMFS in effect on December 31, 2004. As such, they are merely clarifying and can continue to operate for services rendered after January 1, 2004.