

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 – 9789.110

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 modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9789.21	Definitions for Inpatient Hospital Fee Schedule
Section 9789.22	Payment of Inpatient Hospital Services
Section 9789.32	Outpatient Hospital Department and Ambulatory Surgical Center Fee Schedule – Applicability
Section 9789.33	Hospital Outpatient Departments and Ambulatory Surgical Facilities Fee Schedule – Determination of Maximum Reasonable Fee

The proposed modifications are in response to comments received during the public comment period ending on April 2, 2004.

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 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 Saturday, April 24, 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.

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.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations, Section 9789.32 (Outpatient Hospital Department and Ambulatory Surgical Center Fee Schedule – Applicability), and Section 9789.33 (Hospital Outpatient Departments and Ambulatory Surgical Facilities Fee Schedule – Determination of Maximum Reasonable Fee).

ADDITIONAL DOCUMENTS SUPPORTING THE RULEMAKING FILE

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

Suggested Alternatives for the Inpatient Hospital Fee Schedule, prepared by the Division of Workers' Compensation, Commission on Health and Safety and Workers' Compensation with cover letter dated June 19, 2002, and July 9, 2002 attendance sheet.

Report to the Congress, Medicare Payment Policy, prepared by the Medicare Payment Advisory Commission, dated March 2003.

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 23, 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.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9789.21 Definitions for Inpatient Hospital Fee Schedule

Section 9789.21(e) has been modified in response to a comment to specifically exclude “Durable Medical Equipment dispensed for home use” from “costs.”

Modifications to Section 9789.22 Payment of Inpatient Hospital Services

Section 9789.22(c) has been modified as follows: the words “take into account” have been replaced with “include” to clarify that the listed items will not be reimbursed, unless otherwise stated.

Modifications to Section 9789.32 Outpatient Hospital Department and Ambulatory Surgical Center Fee Schedule – Applicability

Section 9789.32(a)(2) stating that a supply, drug, device, blood product and biological is considered an integral part of an emergency room visit or surgical procedure if the item is assigned to the same APC as the emergency room visit or surgical procedure and has a status code indicator “H” has been deleted in response to comment requesting consistency in the regulation. Section 9789(a)(3), now renumbered Section 9789(a)(2), consistently identifies payment of status codes “G”, “H”, and “K”.

Section 9789.32(c)(1) has been amended in response to comment to clarify that the maximum allowable fees for the professional medical services which are performed by physicians and other licensed health care providers shall be paid according to Section 9789.10 and Section 9789.11.

Section 9789.32(c)(3) has been amended in response to comment to clarify that the maximum allowable fee for drugs shall be 100% of the fee prescribed by Medi-Cal pursuant to Labor Code Section 5307.1 subdivision (a), or, where applicable, Section 9789.40.

Section 9789.32(c)(5) has been amended in response to comment to clarify that the maximum allowable fees for non-surgical ancillary services with a status code indicator “X” shall be determined according to Section 9789.10 and 9789.11.

Section 9789.32(h) has been amended in response to comment to clarify the last sentence to provide that the bill shall include the dates of service, the diagnosis and current HCPCS codes and charges for each billed service, including HCPCS codes for any items and services that are packaged into the APC payment for a significant procedure.

Modifications to Section 9789.33 Hospital Outpatient Departments and Ambulatory Surgical Facilities Fee Schedule – Determination of Maximum Reasonable Fee

Section 9789.33(a)(1) has been amended in response to comment to clarify that the payment formula indicated is applicable to CPT codes 99281-99285 and CPT codes 10040-69990 with status code indicators “S”, “T”, “X” or “V”.

Section 9789.33(b)(1)(A) has been amended in response to comment to clarify that the payment formula indicated is applicable to CPT codes 99281-99285 and CPT codes 10040-69990 with status code indicators “S”, “T”, “X” or “V”.

Section 9789.33(b)(1)(E) has been deleted in response to comment of inconsistency and as duplicative.

Section 9789.33(c)(1) has been amended for clarification purposes to indicate that DWC Form 15 “Election for High Cost Outlier,” contained in Section 9789.37 must be filed with the Division of Workers’ Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 8888, San Francisco, CA 94128, and that the form must be post-marked by March 1 of each year.

Section 9789.33(c)(5) has been amended for clarification purposes to indicate that a copy of the Annual Utilization Report of Specialty Clinics may also be obtained upon request to the Division of Workers’ Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 8888, San Francisco, CA 94128.

Section 9789.33(c)(6) has been amended for clarification purposes to indicate that the list of facilities that have elected to be paid under Section 9789.33(b) is available upon request to the Division of Workers’ Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 8888, San Francisco, CA 94128.