

**Title 8, California Code of Regulations**  
**Chapter 4.5, Division of Workers' Compensation**  
**Subchapter 1**  
**Administrative Director-Administrative Rules**  
**Article 5.3**  
**Official Medical Fee Schedule-Hospital Outpatient Departments and**  
**Ambulatory Surgical Centers**  
**Services on or after January 1, 2004**

**Section 9789.30. Definitions.**

(a) "Adjusted Conversion Factor" is determined as follows: unadjusted conversion factor x (1-labor-related share + (labor-related share x wage index)). For each update, the unadjusted conversion factor for the preceding period is adjusted by the rate of change in the market basket inflation factor. The market basket inflation factor and labor-related share are specified in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the unadjusted conversion factor, market basket inflation factor, and labor-related share by date of service.

For services rendered on or after February 15, 2006, in accordance with Section 411 of Pub. L. 108-173 and the final rule published in the Federal Register of November 10, 2005 (CMS-1501-FC, 70 FR 68516) at page 68556, the "Adjusted Conversion Factor" for a rural Sole Community Hospital (SCH) includes an adjustment factor of 1.071, which document is incorporated by reference and will be made available upon request to the Administrative Director.

(b) "Ambulatory Payment Classifications (APC)" means the Centers for Medicare & Medicaid Services' (CMS) list of ambulatory payment classifications of hospital outpatient services.

(c) "Ambulatory Surgical Center (ASC)" means any surgical clinic as defined in the California Health and Safety Code Section 1204, subdivision (b)(1), any ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. SEC. 1395 et seq.) of the federal Social Security Act, or any surgical clinic accredited by an accrediting agency as approved by the Licensing Division of the Medical Board of California pursuant to Health and Safety Code Sections 1248.15 and 1248.4 to use anesthesia, except local anesthesia or peripheral nerve blocks, or both, in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

(d) "Annual Utilization Report of Specialty Clinics" means the Annual Utilization Report of Clinics that is filed by February 15 of each year with the Office of Statewide Health Planning and Development by the ASCs as required by Section 127285 and Section 1216 of the Health and Safety Code.

(e) "APC Payment Rate" means CMS' hospital outpatient prospective payment system rate. The APC payment rate is specified in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference to the APC payment rate by date of service.

(f) "APC Relative Weight" means CMS' APC relative weight as set forth in CMS' hospital outpatient prospective payment system. The APC relative weight is specified in the Federal

Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference to the APC relative weight by date of service.

(g) "CMS" means the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services.

(h) "Cost to Charge Ratio for ASC" means the ratio of the facility's total operating costs to total gross charges during the preceding calendar year.

(i) "Cost to Charge Ratio for Hospital Outpatient Department" means the hospital cost-to-charge used by the Medicare fiscal intermediary to determine high cost outlier payments.

(j) "HCPCS" means CMS' Healthcare Common Procedure Coding System, which describes products, supplies, procedures and health professional services and includes, the American Medical Associations (AMA's) Physician "Current Procedural Terminology", Fourth Edition (CPT-4) codes, alphanumeric codes, and related modifiers.

(k) "HCPCS Level I Codes" are the AMA's CPT-4 codes and modifiers for professional services and procedures.

(l) "HCPCS Level II Codes" are national alphanumeric codes and modifiers maintained by CMS for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT-4.

(m) "Health facility" means any facility as defined in Section 1250 of the Health and Safety Code.

(n) "Hospital Outpatient Department" means any hospital outpatient department of a health facility as defined in the California Health and Safety Code Section 1250 and any hospital outpatient department that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. SEC. 1395 et seq.) of the federal Social Security Act.

(o) "Hospital Outpatient Department Services" means services furnished by any health facility as defined in the California Health and Safety Code Section 1250 and any hospital that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. SEC. 1395 et seq.) of the federal Social Security Act to a patient who has not been admitted as an inpatient but who is registered as an outpatient in the records of the hospital.

(p) "Labor-related Share" means the portion of the payment rate that is attributable to labor and labor-related cost determined by CMS, pursuant to Section 1833(t)(2)(D) of the Social Security Act and as specified in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference that references the labor-related share by date of service.

(q) "Market Basket Inflation Factor" means the market basket percentage change determined by CMS as set forth in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference to the market basket inflation factor by date of service.

(r) "Outlier Threshold" means the Medicare outlier threshold used in determining high cost outlier payments.

(s) "Outpatient Prospective Payment System (OPPS)" means Medicare's payment system for outpatient services at hospitals. These outpatient services are classified according to a list of ambulatory payment classifications (APCs).

(t) "Price adjustment" means any and all price reductions, offsets, discounts, rebates, adjustments, and or refunds which accrue to or are factored into the final net cost to the hospital outpatient department or ambulatory surgical center.

(u) "Total Gross Charges" means the facility's total usual and customary charges to patients and third-party payers before reductions for contractual allowances, bad debts, courtesy allowances and charity care.

(v) "Total Operating Costs" means the direct cost incurred in providing care to patients. Included in operating cost are: salaries and wages, rent or mortgage, employee benefits, supplies, equipment purchase and maintenance, professional fees, advertising, overhead, etc. It does not include start up costs.

(w) "Wage Index" means CMS' wage index for urban, rural and hospitals that are reclassified as described in CMS' Hospital Outpatient Prospective Payment System (HOPPS) and wage index values as specified in the Hospital Inpatient Prospective Payment Systems set forth in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference that contains description of the wage index and wage index values by date of service.

(x) For services rendered before January 1, 2013, "Workers' Compensation Multiplier" means the 120% Medicare multiplier required by Labor Code Section 5307.1, or the 122% multiplier that includes an extra 2% reimbursement for high cost outlier cases.

For services rendered in hospital outpatient departments on or after January 1, 2013, Workers' Compensation Multiplier means the 120% Medicare multiplier or the 122% multiplier that includes an extra 2% reimbursement for high cost outlier cases. For services rendered in ambulatory surgical centers on or after January 1, 2013, the Workers' Compensation Multiplier will be 80% Medicare multiplier, or the 82% multiplier that includes an extra 2% reimbursement for high cost outlier cases.

Authority: Sections 133, 4603.5, 5307.1, 5307.3, Labor Code.

Reference: Sections 4600, 4603.2, and 5307.1, Labor Code.

### **Section 9789.31. Adoption of Standards.**

(a) The Administrative Director incorporates by reference, the Centers for Medicare and Medicaid Services' (CMS) Hospital Outpatient Prospective Payment System (HOPPS) certain addenda published in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the adopted payment system addenda by date of service.

(b) For services rendered on or after July 15, 2005, the Administrative Director incorporates by reference, the Centers for Medicare and Medicaid Services' (CMS) Hospital Inpatient Prospective Payment Systems (IPPS) certain tables published in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the adopted payment system tables by date of service.

(c) For services rendered on or after July 15, 2005, the Administrative Director incorporates by reference, the Hospital Inpatient Prospective Payment Systems (IPPS) "Payment Impact File" published by the federal Centers for Medicare & Medicaid Services (CMS) in effect for the year that includes the date of service, which document is found at <http://www.cms.hhs.gov/AcuteInpatientPPS/>.

(d) The Administrative Director incorporates by reference the American Medical Associations' "Current Procedural Terminology," 4th Edition, annual revision in effect for the year that includes the date of service. Copies of the Current Procedural Terminology may be purchased from the American Medical Association:

Order Department  
American Medical Association  
P.O. Box 930876  
Atlanta, GA 31193-0876

Or over the internet at: [www.amapress.com](http://www.amapress.com)

Or through the American Medical Association's toll free order line: (800) 621-8335.

(e) The Administrative Director incorporates by reference CMS' Alphanumeric "Healthcare Common Procedure Coding System (HCPCS)" annual revision in effect for the year that includes the date of service. Copies of the Healthcare Common Procedure Coding System (HCPCS) may be purchased from the American Medical Association:

Order Department  
American Medical Association  
P.O. Box 930876  
Atlanta, GA 31193-0876

Or over the internet at: [www.amapress.com](http://www.amapress.com)

Or through the American Medical Association's toll free order line: (800) 621-8335.

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code.

Reference: Sections 4600, 4603.2, and 5307.1, Labor Code

### **Section 9789.32. Applicability.**

(a) Sections 9789.30 through 9789.39 shall be applicable to the maximum allowable fees for emergency room visits and surgical procedures rendered on or after July 1, 2004. For purposes of this section, emergency room visits shall be defined by CPT codes 99281-99285 and surgical procedures shall be defined by CPT codes 10021-69990. A facility fee is payable only for the specified emergency room and surgical codes and for supplies, drugs, devices, blood products and biologicals that are an integral part of the emergency room visit or surgical procedure. A supply, drug, device, blood product and biological is considered an integral part of an emergency room visit or surgical procedure if:

(1) the item has a status code N and is packaged into the APC payment for the emergency room visit or surgical procedure (in which case no additional fee is allowable) or,

For services rendered on or after March 1, 2008: the item has a status code N or Q and is packaged into the APC payment for the emergency room visit or surgical procedure (in which case no additional fee is allowable) or,

For services rendered on or after March 1, 2009: the item has a status code N, Q1, Q2, or Q3 and is packaged into the APC payment for the emergency room visit or surgical procedure (in which case no additional fee is allowable) or,

(2) the item is furnished in conjunction with an emergency room visit or surgical procedure and has been assigned Status Code G, H or K.

For services rendered on or after March 1, 2009: the item is furnished in conjunction with an emergency room visit or surgical procedure and has been assigned status code G, H, K, R, or U.

Payment for other services furnished in conjunction with a surgical procedure or emergency room visit shall be in accordance with subdivision (c) of this Section.

(b) Sections 9789.30 through 9789.39 apply to any hospital outpatient department as defined in Section 9789.30(n) and any ASC as defined in Section 9789.30(c).

(c) The maximum allowable fees for services, drugs and supplies furnished by hospitals and ambulatory surgical centers that do not meet the requirements in (a) for a facility fee payment and are not bundled in the APC payment rate for a surgical service or emergency room visit will be determined as follows:

(1) The maximum allowable fees for 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.

(2) The maximum allowable fees for organ acquisition costs and corneal tissue acquisition costs shall be based on the documented paid cost of procuring the organ or tissue.

(3) The maximum allowable fee for drugs not otherwise covered by a Medicare fee schedule payment for facility services shall be determined pursuant to Labor Code Section 5307.1, or, where applicable, Section 9789.40.

(4) The maximum allowable fee for clinical diagnostic tests shall be determined according to Section 9789.50.

(5) The maximum allowable fees for non-surgical ancillary services with a status code indicator "X" shall be determined according to Section 9789.10 and Section 9789.11.

(6) The maximum allowable fee for durable medical equipment, prosthetics and orthotics shall be determined according to Section 9789.60.

(7) The maximum allowable fee for ambulance service shall be determined according to Section 9789.70.

(d) Only hospitals may charge or collect a facility fee for emergency room visits. Only hospital outpatient departments and ambulatory surgical centers as defined in Section 9789.30(n) and Section 9789.30(c) may charge or collect a facility fee for surgical services provided on an outpatient basis.

(e) Hospital outpatient departments and ambulatory surgical centers shall not be reimbursed for procedures on the inpatient only list, referenced in Section 9789.31(a), Addendum E, except that pre-authorized services rendered are payable at the pre-negotiated fee arrangement. The pre-authorization must be provided by an authorized agent of the claims administrator to the provider. The fee agreement and pre-authorization must be memorialized in writing prior to performing the medical services.

(f) Critical access hospitals and hospitals that are excluded from acute PPS are exempt from this fee schedule.

(g) Out of state hospital outpatient departments and ambulatory surgical centers are exempt from this fee schedule.

(h) Hospital outpatient departments and ambulatory surgical centers billing for facility fees and other services under this Section shall be submitted in accordance with the e-billing regulations beginning with Section 9792.5.0 or the standardized paper billing regulations beginning with Section 9792.5.2.

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code  
Reference: Sections 4600, 4603.2, and 5307.1, Labor Code

### **Section 9789.33. Determination of Maximum Reasonable Fee.**

(a) For Services rendered on or after July 1, 2004, the maximum allowable payment for outpatient facility fees for hospital emergency room services or for surgical services performed at a hospital outpatient department or at an ambulatory surgical center shall be determined based on the following. In accordance with Section 9789.30(x), an extra 2% reimbursement shall be used in lieu of an additional payment for high cost outlier cases.

(1) For services rendered before March 1, 2008, use: CTP codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X" or "V":

For services rendered on or after March 1, 2008, use: CPT codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X", "V", or "Q". Status code indicator "Q" must qualify for separate payment.

For services rendered on or after March 1, 2009, use: CPT codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X", "V", "Q1", "Q2", or "Q3". Status code indicators "Q1", "Q2", and "Q3" must qualify for separate payment.

For services rendered before January 1, 2013: APC relative weight x adjusted conversion factor x 1.22 workers' compensation multiplier, pursuant to Section 9789.30(x). See Section 9789.39(b) for the APC relative weight by date of service.

For services rendered on or after January 1, 2013: APC relative weight x adjusted conversion factor x 1.22 workers' compensation multiplier for hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(A) Table A in Section 9789.34 contains an "adjusted conversion factor" which incorporates the standard conversion factor, wage index and inflation factor. The maximum payment rate for ASCs and non-listed hospitals can be determined as follows:

For services rendered before January 1, 2013: APC relative weight x adjusted conversion factor x 1.22, workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC relative weight x adjusted conversion factor x 1.22 workers' compensation multiplier for non-listed hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(B) For services rendered before February 15, 2006, Table B in Section 9789.35 contains an "adjusted conversion factor" which incorporates the standard conversion factor, wage index and inflation factor.

For services rendered on or after February 15, 2006, Table B in Section 9789.35 contains an "adjusted conversion factor" which incorporates the standard conversion factor, wage index, rural

SCH adjustment factor, and inflation factor, as described in CMS' 2006 Hospital Outpatient Prospective Payment System final rule of November 10, 2005, published in the Federal Register (CMS-1501-FC, 70 FR 68516), at page 68556.

The maximum payment rate for the listed hospital outpatient departments can be determined as follows:

APC relative weight x adjusted conversion factor x 1.22 workers' compensation multiplier pursuant to Section 9789.30(x)

(2) Procedure codes for drugs and biologicals with status code indicator "G":

For services rendered before January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier pursuant to Section 9789.30(x)

For services rendered on or after January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier for hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(3) Procedure codes for devices with status code indicator "H":

Documented paid cost, plus an additional 10% of the hospital outpatient department's or ASC's documented paid cost, net of immediate and anticipated price adjustments based upon the hospital outpatient department's or ASC's prior calendar year's usage for comparable devices, not to exceed a maximum of \$ 250.00, plus any sales tax and/or shipping and handling charges actually paid.

(4) Procedure codes for drugs and biologicals with status code indicator "K":

For services rendered before January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier for hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(5) For services rendered on or after March 1, 2009: Procedure codes for blood and blood products with status code indicator "R":

For services rendered before January 1, 2013: APC payment x 1.22 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier for hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(6) For services rendered on or after March 1, 2009: Procedure codes for brachytherapy services with status code indicator "U":

Documented paid cost, plus an additional 10% of the hospital outpatient department's or ASC's documented paid cost, net of immediate and anticipated price adjustments based upon the hospital outpatient department's or ASC's prior calendar year's usage for comparable devices, not to exceed a maximum of \$ 250.00, plus any sales tax and/or shipping and handling charges actually paid.

For services rendered on or after April 15, 2010 and before January 1, 2013: Procedure codes for brachytherapy services with status code indicator "U":

APC payment x 1.22 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.22 workers' compensation multiplier for hospital outpatient departments and 0.82 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(b) Alternative payment methodology. In lieu of the maximum allowable fees set forth under (a), the maximum allowable fees for a facility meeting the requirements in subdivisions (c)(1) through (c)(5) will be determined as follows:

(1) Standard payment:

(A) For services rendered before March 1, 2008, CPT codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X" or "V":

For services rendered on or after March 1, 2008, use: CPT codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X", "V", or "Q". Status code indicator "Q" must qualify for separate payment.

For services rendered on or after March 1, 2009, use: CPT codes 99281-99285 and CPT codes 10021-69990 with status code indicators "S", "T", "X", "V", "Q1", "Q2", or "Q3". Status code indicators "Q1", "Q2", and "Q3" must qualify for separate payment.

For services rendered before January 1, 2013: APC relative weight x adjusted conversion factor x 1.20 workers' compensation multiplier, pursuant to Section 9789.30(x). See Section 9789.39(b) for the APC relative weight by date of service.

For services rendered on or after January 1, 2013: APC relative weight x adjusted conversion factor x 1.20 workers' compensation multiplier for hospital outpatient departments and 0.80 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

For services rendered on or after February 15, 2006, by rural SCH hospitals, use: APC relative weight x adjusted conversion factor x 1.071x 1.20 workers' compensation multiplier, pursuant to Section 9789.30(x). See Section 9789.39(b) for the APC relative weight by date of service.

(B) Procedure codes for drugs and biologicals with status code indicator "G":

For services rendered before January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier for hospital outpatient departments and 0.80 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(C) Procedure codes for devices with status code indicator "H":

Documented paid cost, plus an additional 10% of the hospital outpatient department's or ASC's documented paid cost, net of immediate and anticipated price adjustments based upon the hospital outpatient department's or ASC's prior calendar year's usage for comparable devices, not to exceed a maximum of \$ 250.00, plus any sales tax and/or shipping and handling charges actually paid.

(D) Procedure codes for drugs and biologicals with status code indicator "K"

For services rendered before January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier pursuant to Section 9789.30(x).



For services rendered on or after January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier for hospital outpatient departments and 0.80 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(E) For services rendered on or after March 1, 2009: Procedure codes for blood and blood products with status code indicator "R":

For services rendered before January 1, 2013: APC payment x 1.20 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier for hospital outpatient departments and 0.80 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(F) For services rendered on or after March 1, 2009: Procedure codes for brachytherapy services with status code indicator "U":

Documented paid cost, plus an additional 10% of the hospital outpatient department's or ASC's documented paid cost, net of immediate and anticipated price adjustments based upon the hospital outpatient department's or ASC's prior calendar year's usage for comparable devices, not to exceed a maximum of \$ 250.00, plus any sales tax and/or shipping and handling charges actually paid.

For services rendered on or after April 15, 2010 and before January 1, 2013: Procedure codes for brachytherapy services with status code indicator "U":

APC payment x 1.20 workers' compensation multiplier pursuant to Section 9789.30(x).

For services rendered on or after January 1, 2013: APC payment rate x 1.20 workers' compensation multiplier for hospital outpatient departments and 0.80 workers' compensation multiplier for ambulatory surgical centers, pursuant to Section 9789.30(x).

(2) Additional payment for high cost outlier case:

$[(\text{Facility charges} \times \text{cost-to-charge ratio}) - (\text{standard payment} \times 2.6)] \times .50$

For services rendered on or after July 15, 2005, if  $(\text{Facility charges} \times \text{cost-to-charge ratio}) > (\text{standard payment} + \text{outlier threshold})$ , additional payment =  $[(\text{Facility charges} \times \text{cost-to-charge ratio}) - (\text{standard payment} \times 1.75)] \times .50$

For services rendered on or after July 15, 2005, the outlier threshold is specified in the Federal Register notices announcing revisions in the Medicare payment rates. See Section 9789.39(b) for the Federal Register reference that defines the outlier threshold by date of service.

(3) For services rendered before March 1, 2009: In determining the additional payment, the facility's charges and payment for devices with status code indicator "H" shall be excluded from the computation.

For services rendered on or after March 1, 2009: In determining the additional payment, the facility's charges and payment for devices with status code indicator "H" and for brachytherapy services with status code indicator "U" shall be excluded from the computation.

For services rendered on or after April 15, 2010: In determining the additional payment, the facility's charges and payment for devices with status code indicator "H" shall be excluded from the computation.

(c) The following requirements shall be met for election of the alternative payment methodology:

(1) A facility seeking to be paid for high cost outlier cases under subdivision 9789.33(b) must file a written election using DWC Form 15 "Election for High Cost Outlier," contained in Section 9789.37 with the Division of Workers' Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 71010, Oakland, CA 94612. The form must be post-marked by March 1 of each year and shall be effective for one year commencing with services furnished on or after April 1 of the year in which the election is made.

(2) The maximum allowable fees applicable to a facility that does not file a timely election satisfying the requirements set forth in this subdivision and Section 9789.37 shall be determined under subdivision (a).

(3) The maximum allowable fees applicable to a hospital that does not participate under the Medicare program shall be determined under subdivision (a).

(4) The cost-to-charge ratio applicable to a hospital participating in the Medicare program shall be the hospital's cost-to-charge ratio used by the Medicare fiscal intermediary to determine high cost outlier payments under 42 C.F.R. § 419.43(d), which is incorporated by reference, as contained in Section 9789.38 Appendix X. The cost-to-charge ratio being used by the intermediary for services furnished on February 15 of the year the election is filed shall be included on the hospital's election form.

(5) The cost-to-charge ratio applicable to an ambulatory surgery center shall be the ratio of the facility's total operating costs to total gross charges during the preceding calendar year. Total Operating Costs are the direct costs incurred in providing care to patients. Included in operating cost are: salaries and wages, rent or mortgage, employee benefits, supplies, equipment purchase and maintenance, professional fees, advertising, overhead, etc. It does not include start up costs. Total gross charges are defined as the facility's total usual and customary charges to all patients and third-party party payers before reductions for contractual allowances, bad debts, courtesy allowances and charity care. The facility's election form, as contained in Section 9789.37 shall include a completed Annual Utilization Report of Specialty Clinics filed with Office of Statewide Health Planning and Development (OSHDP) for the preceding calendar year, which is incorporated by reference. The facility's election form shall further include the facility's total operating costs during the preceding calendar year, the facility's total gross charges during the preceding calendar year, and a certification under penalty of perjury signed by the Chief Executive Officer and a Certified Public Accountant, as to the accuracy of the information. Upon request from the Administrative Director, an independent audit may be conducted at the expense of the ASC. (Note: While ASCs may not typically file Annual Utilization Report of Specialty Clinics with OSHDP, any ASC applying for the alternative payment methodology must file the equivalent, subject to the Division of Workers' Compensation's audit.) A copy of the Annual Utilization Report of Specialty Clinics may be obtained at OSHDP's website at <http://www.oshpd.ca.gov/HID/HID/clinic/util/index.htm#Forms> or upon request to the Division of Workers' Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 71010, Oakland, CA 94612.

(6) Before April 1 of each year the AD shall post a list of those facilities that have elected to be paid under this paragraph and the facility-specific cost-to-charge ratio that shall be used to determine additional fees allowable for high cost outlier cases. The list shall be posted on the Division of Workers' Compensation website: [http://www.dir.ca.gov/dwc/dwc\\_home\\_page.htm](http://www.dir.ca.gov/dwc/dwc_home_page.htm) or is available upon request to the Division of Workers' Compensation, Medical Unit (Attention: OMFS-Outpatient), P.O. Box 71010, Oakland, CA 94612.

(d) Any ambulatory surgical center that believes its cost-to-charge ratio in connection with its election to participate in the alternative payment methodology for high cost outlier cases under

Section 9789.33(b) was erroneously determined because of error in tabulating data may request the Administrative Director for a re-determination of its cost-to-charge ratio. Such requests shall be in writing, shall state the alleged error, and shall be supported by written documentation. Within 30 days after receiving a complete written request, the Administrative Director shall make a redetermination of the cost-to-charge ratio or reaffirm the published cost-to-charge ratio.

(e) The OPSS rules in 42 C.F.R § 419.44 regarding reimbursement for multiple procedures are incorporated by reference as contained in Section 9789.38 Appendix X.

(f) The OPSS rules in 42 C.F.R. §§ 419.62, 419.64, and 419.66 regarding transitional pass-through payments for innovative medical devices, drugs and biologicals shall be incorporated by reference, as contained in Section 9789.38 Appendix X, except that payment for these items shall be in accordance with subdivisions (a) or (b) as applicable.

(g) The payment determined under subdivisions (a) and (b) include reimbursement for all of the included cost items specified in 42 CFR §419.2(b)(1)-(12), which is incorporated by reference, as contained in Section 9789.38 Appendix X.

(h) The maximum allowable fee shall be determined without regard to the cost items specified in 42 C.F.R. § 419.2(c)(1), (2), (3), (4), and (6), as contained in Section 9789.38 Appendix X. Cost item set forth at 42 C.F.R. § 419.2(c)(5), as contained in Section 9789.38 Appendix X, is payable pursuant to Section 9789.32(c)(1). Cost items set forth at 42 C.F.R. § 419.2(c)(7) and (8), as contained in Section 9789.38 Appendix X, are payable pursuant to Section 9789.32(c)(2).

(i) The maximum allowable fees shall be determined without regard to the provisions in 42 C.F.R. § 419.70.

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code  
Reference: Sections 4600, 4603.2, and 5307.1, Labor Code

#### **Section 9789.34. Table A.**

There are no proposed changes to this section.

#### **Section 9789.35. Table B.**

There are no proposed changes to this section.

#### **Section 9789.36. Update of Rules to Reflect Changes in the Medicare Payment System**

Sections 9789.30 through 9789.39 shall be adjusted to conform to any relevant changes in the Medicare payment schedule, including mid-year changes, no later than 60 days after the effective date of those changes. Updates shall be posted on the Division of Workers' Compensation webpage at [http://www.dir.ca.gov/dwc/dwc\\_home\\_page.htm](http://www.dir.ca.gov/dwc/dwc_home_page.htm) . The annual updates to the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule shall be effective every year on March 1.

Authority: Sections 133, 4603.5, 5307.1 and 5307.3, Labor Code.  
Reference: Sections 4600, 4603.2 and 5307.1, Labor Code.

State of California  
Department of Industrial Relations  
DIVISION OF WORKERS' COMPENSATION

**ELECTION FOR HIGH COST OUTLIER**

Labor Code § 5307.1; Title 8, California Code of Regulations § 9789.37  
For the 12 month period commencing on April 1, 20\_\_\_\_.

This Election is filed with the Administrative Director pursuant to Labor Code Section 5307.1, and Title 8, California Code of Regulations Section 9789.33. A provider who elects to participate in the alternative payment methodology for high cost outlier cases under Section 9789.33, subdivision (b) in lieu of the maximum allowable fees set forth under Section 9789.33 subdivision (a), shall file this form by March 1 of each year providing the requested information to the Administrative Director. The maximum allowable fees applicable to a facility that does not file a timely election satisfying the requirements set forth in Section 9789.33, subdivision (b), shall be determined under subdivision (a).

1. PROVIDER'S NAME: \_\_\_\_\_
2. OSHPD FACILITY NUMBER: \_\_\_\_\_
3. MEDICARE PROVIDER NUMBER: \_\_\_\_\_
4. CONTACT PERSON AND PHONE NUMBER: \_\_\_\_\_

**Hospital Outpatient Department Cost-to-Charge Ratio**

Pursuant to Section 9789.33(c)(4), the cost-to-charge ratio applicable to a hospital outpatient department participating in the Medicare program shall be the hospital's cost-to-charge ratio used by the Medicare fiscal intermediary to determine high cost outlier payments under 42 CFR 419.43(d). List below the cost-to-charge ratio being used by the intermediary for services furnished on February 15 of the year this election is filed:

5. Cost-to-charge ratio \_\_\_\_\_

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Date

**Ambulatory Surgical Center (ASC) Cost-to-Charge Ratio**

Pursuant to Section 9789.33(c)(5), the cost-to-charge ratio applicable to an ambulatory surgery center shall be the ratio of the facility's total operating costs to total gross charges during the preceding calendar year. Total gross charges is defined as the facility's total usual and customary charges to patients and third-party payers before reductions for contractual allowances, bad debts, courtesy allowances and charity care.

6. Provide:

- (a) The facility's total operating costs during the preceding calendar year \_\_\_\_\_
- (b) The facility's total gross charges during the preceding calendar year \_\_\_\_\_
- (c) Provide county where facility is located \_\_\_\_\_

7. Attach completed Annual Utilization Report of Specialty Clinics (OSHPD) which is incorporated by reference, and may be obtained at OSHPD's website at <http://www.oshpd.ca.gov/HID/HID/clinic/util/index.htm#Forms> or is available upon request to the Administrative Director at: Division of Workers' Compensation (Attention: OMFS-Outpatient), P.O. Box 71010, Oakland, CA 94612.

Upon request from the Administrative Director, an independent audit may be conducted at the expense of the ASC.

8. We, the undersigned, declare under penalty of perjury under the laws of the State of California that the foregoing, and attachment(s), are true and correct.

\_\_\_\_\_  
Signature, Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature, Certified Public Accountant

\_\_\_\_\_  
Date

DWC Form 15 (rev. 01/01/2013)

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code  
Reference: Sections 4600, 4603.2, and 5307.1, Labor Code

## **Section 9789.38. Appendix X.**

The federal regulations as incorporated by reference and/or referred to in Sections 9789.30 through 9789.37 are set forth below in numerical order. See Section 9789.39(a), for the Code of Federal Regulations reference for effective date, revisions, and amendments by date of service.

### ***42 C.F.R. § 419.2***

Basis of payment.

(a) Unit of payment. Under the hospital outpatient prospective payment system, predetermined amounts are paid for designated services furnished to Medicare beneficiaries. These services are identified by codes established under the Centers for Medicare & Medicaid Services Common Procedure Coding System (HCPCS). The prospective payment rate for each service or procedure for which payment is allowed under the hospital outpatient prospective payment system is determined according to the methodology described in subpart C of this part. The manner in which the Medicare payment amount and the beneficiary copayment amount for each service or procedure are determined is described in subpart D of this part.

(b) Determination of hospital outpatient prospective payment rates: Included costs. The prospective payment system establishes a national payment rate, standardized for geographic wage differences, that includes operating and capital-related costs that are directly related and integral to performing a procedure or furnishing a service on an outpatient basis. In general, these costs include, but are not limited to

- (1) Use of an operating suite, procedure room, or treatment room;
- (2) Use of recovery room;
- (3) Use of an observation bed;
- (4) Anesthesia, certain drugs, biologicals, and other pharmaceuticals; medical and surgical supplies and equipment; surgical dressings; and devices used for external reduction of fractures and dislocations;
- (5) Supplies and equipment for administering and monitoring anesthesia or sedation;
- (6) Intraocular lenses (IOLs);
- (7) Incidental services such a venipuncture;
- (8) Capital-related costs;
- (9) Implantable items used in connection with diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests;
- (10) Durable medical equipment that is implantable;
- (11) Implantable prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of these devices; and;
- (12) Costs incurred to procure donor tissue other than corneal tissue.

(c) Determination of hospital outpatient prospective payment rates: Excluded costs. The following costs are excluded from the hospital outpatient prospective payment system.

(1) The costs of direct graduate medical education activities as described in §413.86 of this chapter.

(2) The costs of nursing and allied health programs as described in §413.86 of this chapter.

(3) The costs associated with interns and residents not in approved teaching programs as described in §415.202 of this chapter.

(4) The costs of teaching physicians attributable to Part B services for hospitals that elect cost-based reimbursement for teaching physicians under §415.160.

(5) The reasonable costs of anesthesia services furnished to hospital outpatients by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiologists' assistants) employed by the hospital or obtained under arrangements, for hospitals that meet the requirements under §412.113(c) of this chapter.

(6) Bad debts for uncollectible deductibles and coinsurances as described in §413.80(b) of this chapter.

(7) Organ acquisition costs paid under Part B.

(8) Corneal tissue acquisition costs.

#### **42 C.F.R. § 419.32**

Calculation of prospective payment rates for hospital outpatient services.

(a) Conversion factor for 1999. CMS calculates a conversion factor in such a manner that payment for hospital outpatient services furnished in 1999 would have equaled the base expenditure target calculated in § 419.30, taking into account APC group weights and estimated service frequencies and reduced by the amounts that would be payable in 1999 as outlier payments under § 419.43(d) and transitional pass-through payments under § 419.43(e).

(b) Conversion factor for calendar year 2000 and subsequent years. (1) Subject to paragraph (b)(2) of this section, the conversion factor for a calendar year is equal to the conversion factor calculated for the previous year adjusted as follows:

(i) For calendar year 2000, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act reduced by one percentage point.

(ii) For calendar year 2001 --

(A) For services furnished on or after January 1, 2001 and before April 1, 2001, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act reduced by one percentage point; and

(B) For services furnished on or after April 1, 2001 and before January 1, 2002, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act, and increased by a transitional percentage allowance equal to 0.32 percent.

(iii) For the portion of calendar year 2002 that is affected by these rules, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act reduced by one percentage point, without taking into account the transitional percentage allowance referenced in § 419.32(b)(ii)(B).

(iv) For calendar year 2003 and subsequent years, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act.

(2) Beginning in calendar year 2000, CMS may substitute for the hospital inpatient market basket percentage in paragraph (b) of this section a market basket percentage increase that is determined and applied to hospital outpatient services in the same manner that the hospital inpatient market basket percentage increase is determined and applied to inpatient hospital services.

(c) Payment rates. The payment rate for services and procedures for which payment is made under the hospital outpatient prospective payment system is the product of the conversion factor calculated under paragraph (a) or paragraph (b) of this section and the relative weight determined under § 419.31(b).

(d) Budget neutrality.

(1) CMS adjusts the conversion factor as needed to ensure that updates and adjustments under § 419.50(a) are budget neutral.

(2) In determining adjustments for 2004 and 2005, CMS will not take into account any additional expenditures per section 1833(t)(14) of the Act that would not have been made but for enactment of section 621 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

#### **42 C.F.R. § 419.43**

Adjustments to national program payment and beneficiary copayment amounts.

(a) General rule. CMS determines national prospective payment rates for hospital outpatient department services and determines a wage adjustment factor to adjust the portion of the APC payment and national beneficiary copayment amount attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner.

(b) Labor-related portion of payment and copayment rates for hospital outpatient services. CMS determines the portion of hospital outpatient costs attributable to labor and labor-related costs (known as the "labor-related portion" of hospital outpatient costs) in accordance with § 419.31(c)(1).

(c) Wage index factor. CMS uses the hospital inpatient prospective payment system wage index established in accordance with part 412 of this chapter to make the adjustment referred to in paragraph (a) of this section.

(d) Outlier adjustment -- (1) General rule. Subject to paragraph (d)(4) of this section, CMS provides for an additional payment for a hospital outpatient service (or group of services) not excluded under paragraph (f) of this section for which a hospital's charges, adjusted to cost, exceed the following:

(i) A fixed multiple of the sum of --

(A) The applicable Medicare hospital outpatient payment amount determined under § 419.32(c), as adjusted under § 419.43 (other than for adjustments under this paragraph (d) or paragraph (e) of this section); and

(B) Any transitional pass-through payment under paragraph (e) of this section.

(ii) At the option of CMS, a fixed dollar amount.

(2) Amount of adjustment. The amount of the additional payment under paragraph (d)(1) of this section is determined by CMS and approximates the marginal cost of care beyond the applicable cutoff point under paragraph (d)(1) of this section.

(3) Limit on aggregate outlier adjustments -- (i) In general. The total of the additional payments made under this paragraph (d) for covered hospital outpatient department services furnished in a year (as estimated by CMS before the beginning of the year) may not exceed the applicable percentage specified in paragraph (d)(3)(ii) of this section of the total program payments (sum of both the Medicare and beneficiary payments to the hospital) estimated to be made under this part for all hospital outpatient services furnished in that year. If this paragraph is first applied to less than a full year, the limit applies only to the portion of the year.

(ii) Applicable percentage. For purposes of paragraph (d)(3)(i) of this section, the term "applicable percentage" means a percentage specified by CMS up to (but not to exceed) --

(A) For a year (or portion of a year) before 2004, 2.5 percent; and

(B) For 2004 and thereafter, 3.0 percent.

(4) Transitional authority. In applying paragraph (d)(1) of this section for hospital outpatient services furnished before January 1, 2002, CMS may --

(i) Apply paragraph (d)(1) of this section to a bill for these services related to an outpatient encounter (rather than for a specific service or group of services) using hospital outpatient payment amounts and transitional pass-through payments covered under the bill; and

(ii) Use an appropriate cost-to-charge ratio for the hospital or CMHC (as determined by CMS), rather than for specific departments within the hospital.

(e) Budget neutrality. CMS establishes payment under paragraph (d) of this section in a budget-neutral manner excluding services and groups specified in paragraph (f) of this section.

(f) Excluded services and groups. Drugs and biologicals that are paid under a separate APC and devices of brachytherapy, consisting of a seed or seeds (including radioactive source) are excluded from qualification for outlier payments.

#### ***42 C.F.R. § 419.44***

(a) Multiple surgical procedures. When more than one surgical procedure for which payment is made under the hospital outpatient prospective payment system is performed during a single surgical encounter, the Medicare program payment amount and the beneficiary copayment amount are based on --

(1) The full amounts for the procedure with the highest APC payment rate; and

(2) One-half of the full program and the beneficiary payment amounts for all other covered procedures.

(b) Terminated procedures. When a surgical procedure is terminated prior to completion due to extenuating circumstances or circumstances that threaten the well-being of the patient, the Medicare program payment amount and the beneficiary copayment amount are based on --

(1) The full amounts if the procedure is discontinued after the induction of anesthesia or after the procedure is started; or



(2) One-half of the full program and the beneficiary coinsurance amounts if the procedure is discontinued after the patient is prepared for surgery and taken to the room where the procedure is to be performed but before anesthesia is induced.

**42 C.F.R. § 419.62**

Transitional pass-through payments: General rules.

(a) General. CMS provides for additional payments under §§ 419.64 and 419.66 for certain innovative medical devices, drugs, and biologicals.

(b) Budget neutrality. CMS establishes the additional payments under §§ 419.64 and 419.66 in a budget neutral manner.

(c) Uniform prospective reduction of pass-through payments. (1) If CMS estimates before the beginning of a calendar year that the total amount of pass-through payments under §§ 419.64 and 419.66 for the year would exceed the applicable percentage (as described in paragraph (c)(2) of this section) of the total amount of Medicare payments under the outpatient prospective payment system. CMS will reduce, pro rata, the amount of each of the additional payments under §§ 419.64 and 419.66 for that year to ensure that the applicable percentage is not exceeded.

(2) The applicable percentages are as follows:

(i) For a year before CY 2004, the applicable percentage is 2.5 percent.

(ii) For 2004 and subsequent years, the applicable percentage is a percentage specified by CMS up to (but not to exceed) 2.0 percent.

(d) CY 2002 incorporated amount. For the portion of CY 2002 affected by these rules, CMS incorporated 75 percent of the estimated pass-through costs (before the incorporation and any pro rata reduction) for devices into the procedure APCs associated with these devices.

**42 C.F.R. § 419.64**

Transitional pass-through payments: drugs and biologicals.

(a) Eligibility for pass-through payment. CMS makes a transitional pass-through payment for the following drugs and biologicals that are furnished as part of an outpatient hospital service:

(1) Orphan drugs. A drug or biological that is used for a rare disease or condition and has been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(2) Cancer therapy drugs and biologicals. A drug or biological that is used in cancer therapy, including, but not limited to, a chemotherapeutic agent, an antiemetic, a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, and a bisphosphonate if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(3) Radiopharmaceutical drugs and biological products. A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine services if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(4) Other drugs and biologicals. A drug or biological that meets the following conditions:

(i) It was first payable as an outpatient hospital service after December 31, 1996.

(ii) CMS has determined the cost of the drug or biological is not insignificant in relation to the amount payable for the applicable APC (as calculated under § 419.32(c)) as defined in paragraph (b) of this section.

(b) Cost. CMS determines the cost of a drug or biological to be not insignificant if it meets the following requirements:

(1) Services furnished before January 1, 2003. The expected reasonable cost of a drug or biological must exceed 10 percent of the applicable APC payment amount for the service related to the drug or biological.

(2) Services furnished after December 31, 2002. CMS considers the average cost of a new drug or biological to be not insignificant if it meets the following conditions:

(i) The estimated average reasonable cost of the drug or biological in the category exceeds 10 percent of the applicable APC payment amount for the service related to the drug or biological.

(ii) The estimated average reasonable cost of the drug or biological exceeds the cost of the drug or biological portion of the APC payment amount for the related service by at least 25 percent.

(iii) The difference between the estimated reasonable cost of the drug or biological and the estimated portion of the APC payment amount for the drug or biological exceeds 10 percent of the APC payment amount for the related service.

(c) Limited period of payment. CMS limits the eligibility for a pass-through payment under this section to a period of at least 2 years, but not more than 3 years, that begins as follows:

(1) For a drug or biological described in paragraphs (a)(1) through (a)(3) of this section -- August 1, 2000.

(2) For a drug or biological described in paragraph (a)(4) of this section -- the date that CMS makes its first pass-through payment for the drug or biological.

(d) Amount of pass-through payment. (1) Subject to any reduction determined under § 419.62(b), the pass-through payment for a drug or biological as specified in section 1842(o)(1)(A) and (o)(1)(D)(i) of the Act is 95 percent of the average wholesale price of the drug or biological minus the portion of the APC payment CMS determines is associated with the drug or biological.

(2) Subject to any reduction determined under § 419.62(b), the pass-through payment for a drug or biological as specified in section 1842(o)(1)(B) and (o)(1)(E)(i) of the act is 85 percent of the average wholesale price, determined as of April 1, 2003, of the drug or biological minus the portion of the APC payment CMS determines is associated with the drug or biological.

#### **42 C.F.R. § 419.66**

Transitional pass-through payments: medical devices.

(a) General rule. CMS makes a pass-through payment for a medical device that meets the requirements in paragraph (b) of this section and that is described by a category of devices established by CMS under the criteria in paragraph (c) of this section.

(b) Eligibility. A medical device must meet the following requirements:

(1) If required by the FDA, the device must have received FDA approval or clearance (except for a device that has received an FDA investigational device exemption (IDE) and has been

classified as a Category B device by the FDA in accordance with §§ 405.203 through 405.207 and 405.211 through 405.215 of this chapter) or another appropriate FDA exemption.

(2) The device is determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part (as required by section 1862(a)(1)(A) of the Act).

(3) The device is an integral and subordinate part of the service furnished, is used for one patient only, comes in contact with human tissue, and is surgically implanted or inserted whether or not it remains with the patient when the patient is released from the hospital.

(4) The device is not any of the following:

(i) Equipment, an instrument, apparatus, implement, or item of this type for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (CMS Pub. 15-1).

(ii) A material or supply furnished incident to a service (for example, a suture, customized surgical kit, or clip, other than radiological site marker).

(iii) A material that may be used to replace human skin (for example, a biological or synthetic material).

(c) Criteria for establishing device categories. CMS uses the following criteria to establish a category of devices under this section:

(1) CMS determines that a device to be included in the category is not described by any of the existing categories or by any category previously in effect, and was not being paid for as an outpatient service as of December 31, 1996.

(2) CMS determines that a device to be included in the category has demonstrated that it will substantially improve the diagnosis or treatment of an illness or injury or improve the functioning of a malformed body part compared to the benefits of a device or devices in a previously established category or other available treatment.

(3) Except for medical devices identified in paragraph (e) of this section, CMS determines the cost of the device is not insignificant as described in paragraph (d) of this section.

(d) Cost criteria. CMS considers the average cost of a category of devices to be not insignificant if it meets the following conditions:

(1) The estimated average reasonable cost of devices in the category exceeds 25 percent of the applicable APC payment amount for the service related to the category of devices.

(2) The estimated average reasonable cost of the devices in the category exceeds the cost of the device-related portion of the APC payment amount for the related service by at least 25 percent.

(3) The difference between the estimated average reasonable cost of the devices in the category and the portion of the APC payment amount for the device exceeds 10 percent of the APC payment amount for the related service.

(e) Devices exempt from cost criteria. The following medical devices are not subject to the cost requirements described in paragraph (d) of this section, if payment for the device was being made as an outpatient service on August 1, 2000:

(1) A device of brachytherapy.

(2) A device of temperature-monitored cryoablation.

(f) Identifying a category for a device. A device is described by a category, if it meets the following conditions:

(1) Matches the long descriptor of the category code established by CMS.

(2) Conforms to guidance issued by CMS relating to the definition of terms and other information in conjunction with the category descriptors and codes.

(g) Limited period of payment for devices. CMS limits the eligibility for a pass-through payment established under this section to a period of at least 2 years, but not more than 3 years beginning on the date that CMS establishes a category of devices.

(h) Amount of pass-through payment. Subject to any reduction determined under § 419.62(b), the pass-through payment for a device is the hospital's charge for the device, adjusted to the actual cost for the device, minus the amount included in the APC payment amount for the device.

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code

Reference: Sections 4600, 4603.2, and 5307.1, Labor Code

**Section 9789.39. Federal Regulations and Federal Register Notices by Date of Service.**

(a) Federal Regulations by Date of Service

The Federal Regulations can be accessed at: <http://www.cms.gov/HospitalOutpatientPPS/> and the referenced sections are incorporated by reference and will be made available upon request to the Administrative Director.

	Services Occurring On or After 7/15/2005	Services Occurring On or After 2/15/2006	Services Occurring on Or After 3/1/2007	Services Occurring On or After 3/1/2008
Title 42, Code of Federal Regulations, §419.2				
Title 42, Code of Federal Regulations, §419.32				
Title 42, Code of Federal Regulations, §419.43		As amended; effective January 1, 2006	As amended; effective January 1, 2007	As amended; effective January 1, 2008
Title 42, Code of Federal Regulations, §419.44				Amended; effective January 1, 2008
Title 42, Code of Federal Regulations, §419.62				
Title 42, Code of Federal Regulations, §419.64	As amended; effective January 1, 2005			
Title 42, Code of Federal Regulations, §419.66		As amended; effective January 1, 2006		

	Services Occurring On or After 3/1/2009	Services Occurring On or After 4/15/2010	Services Occurring On or After 9/15/2011	Services Occurring On or After 3/1/2012
Title 42, Code of Federal Regulations, §419.2				
Title 42, Code of Federal Regulations, §419.32			As amended; effective January 1, 2011	As amended; effective January 1, 2012
Title 42, Code of Federal Regulations, §419.43	As amended; effective January 1, 2009		As amended; effective January 1, 2011	As amended; effective January 1, 2012
Title 42, Code of Federal Regulations, §419.44				
Title 42, Code of Federal Regulations, §419.62				
Title 42, Code of Federal Regulations, §419.64		As amended; effective January 1, 2010		
Title 42, Code of Federal Regulations, §419.66		As amended; effective January 1, 2010		

(b) Federal Register Notices by Date of Service

The Federal Register Notices can be accessed at: <http://www.cms.gov/HospitalOutpatientPPS/> and the referenced sections are incorporated by reference and will be made available upon request to the Administrative Director.

	Services Occurring On or After 1/1/2004	Services Occurring On or After 7/15/2005	Services Occurring On or After 2/15/2006	Services Occurring on Or After 3/1/2007
Applicable FR Notices	(A) November 7, 2003 (CMS-1471-FC; 68 RE 63398); (B) December 31, 2003 (CMS-1471-CN; 68 FR 75442); (C) January 6, 2004 (CMS-1371-IFC; 69 FR 820); (D) August 1, 2003 (CMS-1470-F; 68 FR 45346); (E) August 11, 2003 (CMS-1470-F; 68 FR 47637)	(A) November 15, 2004 (CMS-1427-FC; 69 FR 65681); (B) December 30, 2004 (CMS-1427-CN; 69 FR 78315; (C) August 11, 2004 (CMS-1428-F; 69 FR 48916); (D) December 30, 2004 (CMS-1482-F2; 69 FR 78526	(A) November 10, 2005 (CMS-1501-FC; 70 FR 68515); (B) December 23, 2005 (CMS-1501-CN2; 70 FR 76176); (C) August 12, 2005 (CMS-1500-F; 70 FR 47278); (D) September 30, 2005 (CMS-1500-CN; 70 FR 57161)	(A) November 24, 2006 (CMS-1506-FC; 71 FR 67960); (B) August 18, 2006 (CMS-1488-F; 71 FR 47870) (C) October 11, 2006 (CMS-CMS-1488-N; 71 FR 59886)
APC Payment Rate	Addendum B (A) beginning on page 63488 conformed to comply with (B) beginning on page 75442 and (C) beginning on page 820	Addendum B (A)beginning on page 65887	Addendum B (A) beginning on page 68752	Addendum B (A) beginning on page 68283
APC Relative Weight	Addendum B (A) beginning on page 63488 conformed to comply with (B) beginning on page 75442 and (C) beginning on	Addendum B (A)beginning on page 65887	Addendum B (A) beginning on page 68752	Addendum B (A) beginning on page 68283

	Services Occurring On or After 1/1/2004	Services Occurring On or After 7/15/2005	Services Occurring On or After 2/15/2006	Services Occurring on Or After 3/1/2007
	page 820			
HOPPS Addenda	Addenda A, B, D1, D2, E, H, I, and J (A) beginning at page 63478; as changed by (B) beginning at page 75442; and (C) beginning at page 820	Addenda A, B, D1, D2, and E (A) beginning at page 65864	Addenda A, B, D1, D2, E and L (A) beginning at page 68729; and correction (B) beginning at page 76176	Addenda A, B, D1, D2, E, and L (A) beginning at page 68231
IPPS Tables		Tables 4A <sub>1</sub> , 4A <sub>2</sub> , 4B <sub>1</sub> , 4B <sub>2</sub> , 4C <sub>1</sub> 4C <sub>2</sub> and 4J (D) beginning at page 78619	Tables 4A, 4B, 4C, and 4J (D) beginning at page 57163; and Tables 4A, 4B, 4C, and 4J (C) beginning on page 47580	Tables 4A-1, 4A-2, 4B-1, 4B-2, 4C-1, 4C-2, and 4J (C) beginning at page 59975
Labor-related Share	60% ((A) page 63458)	60% ((A) beginning at page 65842)	60% ((A) beginning at page 68551)	60% ((A) beginning at page 68003)
Market Basket Inflation Factor	3.4% (D) page 45346	3.3% (C) page 49274	3.7% (C) page 47492	3.4% (B) page 48146
Outlier Threshold		\$1,175 (A) at page 65846	\$1,250 (A) at page 68565	\$1,825(A) at page 68012
Unadjusted Conversion Factor	\$53.924 (2003 unadjusted conversion factor of 52.151 x estimated inflation factor of 1.034)	\$55.703 (2004 unadjusted conversion factor of \$53.924 x estimated inflation factor of 1.033)	\$57.764 (2005 unadjusted conversion factor of \$55.703 x estimated inflation factor of 1.037)	\$59.728 (2006 unadjusted conversion factor of \$57.764 x estimated inflation factor of 1.034)
Wage Index	Addenda H through J (A) beginning at page 63682	Referenced in Addenda H through J (B) beginning at page 78316; wage index values are specified in Tables 4A <sub>1</sub>	Referenced in (A) beginning at page 68551; wage index values are specified in Tables 4A through 4C (D) beginning at	Referenced in (A) beginning at page 68003; wage index values are specified in Tables 4A-1 through 4C-2 (C) beginning



	Services Occurring On or After 1/1/2004	Services Occurring On or After 7/15/2005	Services Occurring On or After 2/15/2006	Services Occurring on Or After 3/1/2007
		through 4C <sub>2</sub> (D) beginning at page 78619	page 57163; and as specified in Tables 4A through 4C (C) beginning at page 47580	at page 59975

	Services Occurring On or After 3/1/2008	Services Occurring On or After 3/1/2009	Services Occurring On or After 4/15/2010	Services Occurring On or After 9/15/2011
Applicable FR Notices	(A) November 27, 2007 (CMS-1392-FC; CMS-1533-F2; 72 FR 66580); (B) August 22, 2007 (CMS-1533-FC; 72 FR 47130); (C) October 10, 2007 (CMS-1533-CN2; 72 FR 57634); (D) November 6, 2007 (CMS-1533-CN3; 72 FR 62585); (E) November 27, 2007 (CMS-1392-FC; CMS-1533-F2; 72 FR 66580); (F) February 22, 2008 (CMS-1392-CN; CMS-1533-CN)	(A) November 18, 2008 (CMS-1404-FC; 73 FR 68502); (B) August 19, 2008 (CMS-1390-F; 73 FR 48434); (C) October 3, 2008 (CMS-1390-CN; 73 FR 57541); (D) October 3, 2008 (CMS-1390-N; 73 FR 57888); (E) December 3, 2008 (CMS-1390-N2; 73 FR 73656); (F) January 26, 2009 (CMS-1404-CN; 74 FR 4343)	(A) November 20, 2009 (CMS-1414-FC; 74 FR 60316); (B) December 31, 2009 (CMS-1414-CN; 74 FR 69502); (C) August 27, 2009 (CMS-1406-F; 74 FR 43754); (D) October 7, 2009 (CMS-1406-CN; 74 FR 51496)	(A) November 24, 2010 (CMS-1504-FC; 75 FR 71800); (B) March 11, 2011 (CMS-1504-CN; 76 FR 13292); (C) August 16, 2010 (CMS-1498-F; 75 FR 50042); (D) October 1, 2010 (CMS-1498-F; 75 FR 60640)
APC Payment Rate	Addendum B (A) beginning on page 66993 conformed to comply with	Addendum B (A) beginning on page 68934 conformed to comply with	Addendum B (A) beginning on page 60752 conformed to comply with	Addendum B (A) beginning on page 72331 conformed to comply with

	Services Occurring On or After 3/1/2008	Services Occurring On or After 3/1/2009	Services Occurring On or After 4/15/2010	Services Occurring On or After 9/15/2011
	correction published in (F) beginning on page 9863	correction published in (F) beginning on page 4344	correction published in (B) page 69503	correction published in (B) page 13295
APC Relative Weight	Addendum B (A) beginning on page 66993 conformed to comply with correction published in (F) beginning on page 9863	Addendum B (A) beginning on page 68934 conformed to comply with correction published in (F) beginning on page 4344	Addendum B (A) beginning on page 60752 conformed to comply with correction published in (B) page 69503	Addendum B (A) beginning on page 72331 conformed to comply with correction published in (B) page 13295
HOPPS Addenda	Addenda A, B, D1, D2, E, L, and M (A) beginning at page 66934; and corrections to addenda A, B, D2, and M (F) beginning at page 9862	Addenda A, B, D1, D2, E, L, and M (A) beginning at page 68816; and corrections to addenda A and B (F) beginning at page 4343	Addenda A, B, D1, D2, E, L, and M (A) beginning at page 60682; and corrections to addenda B and E (B) beginning at page 69503	Addenda A, B, D1, D2, E, L, and M (A) beginning at page 72268; and corrections to addendum B (B) on page 13295
IPPS Tables	Tables 4A, 4B, and 4C (C) beginning at page 57698 and Table 4J (B) beginning at page 47531 and correction (C) beginning at page 57726	Tables 4A, 4B, 4C, and 4J (C) beginning at page 57956; and Tables 2 and 4J (E) beginning at page 73657	Tables 2, 4A, 4B, 4C, and 4J(C) beginning at page 44032; as changed by correction to Tables 2, 4A, 4B, 4C, and 4J (D) beginning at page 51499	Tables 2, 4A, 4B, 4C, and 4J (C) beginning at page 50451
Labor-related Share	60% ((A) beginning at page 66678)	60% ((A) beginning at page 68585)	60% ((A) beginning at page 60419)	60% ((A) beginning at page 71877)
Market Basket Inflation Factor	3.3% (B) page 47415	3.6% (B) page 48759	2.1% (C) page 44002	2.6% (C) page 50422
Outlier Threshold	\$1,575 (A) at page 66686	\$1,800 (A) at page 68594	\$2,175 (A) at page 60428	\$2,025 (A) at page 71889
Unadjusted Conversion Factor	\$61.699 (2007 unadjusted conversion factor of	\$63.920 (2008 unadjusted conversion factor of	\$65.262 (2009 unadjusted conversion factor of	\$66.959 (2010 unadjusted conversion factor of

	Services Occurring On or After 3/1/2008	Services Occurring On or After 3/1/2009	Services Occurring On or After 4/15/2010	Services Occurring On or After 9/15/2011
	\$59.728 x estimated inflation factor of 1.033)	\$61.699 x estimated inflation factor of 1.036)	\$63.920 x estimated inflation factor of 1.021)	\$65.262 x estimated inflation factor of 1.026)
Wage Index	Referenced in (A) beginning at page 66678; wage index values are specified in Tables 4A through 4C (C) beginning at page 57698	Referenced in (A) beginning at page 68585; wage index values are specified in Tables 4A through 4C (D) beginning at page 57956	Referenced in (A) beginning at page 60419; wage index values are specified in Tables 4A through 4C (D) beginning at page 51505; and as specified in Tables 4A through 4C (C) beginning at page 44085	Referenced in (A) beginning at page 71877; wage index values are specified in Tables 4A through 4C (C) beginning at page 50511

	Services Occurring On or After 3/1/2012	Services Occurring On or After 9/1/2012		
Applicable FR Notices	(A) November 30, 2011 (CMS-1525-FC; 76 FR 74122); (B) January 4, 2012 (CMS-1525-CN; 77 FR 217); (C) August 18, 2011 (CMS-1518-F; 76 FR 51476); (D) September 26, 2011 (CMS-1518-CN3; 76 FR 59263)	(A) November 30, 2011 (CMS-1525-FC; 76 FR 74122); (B) January 4, 2012 (CMS-1525-CN; 77 FR 217); (C) August 18, 2011 (CMS-1518-F; 76 FR 51476); (D) September 26, 2011 (CMS-1518-CN3; 76 FR 59263); (E) April 24, 2012 (CMS-1525-CN2; 77 FR 24409)		

	Services Occurring On or After 3/1/2012	Services Occurring On or After 9/1/2012		
APC Payment Rate	Addendum B (A) conformed to comply with correction published in (B) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>	Addendum B (A) conformed to comply with corrections published in (B) and (E) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>		
APC Relative Weight	Addendum B (A) conformed to comply with correction published in (B) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>	Addendum B (A) conformed to comply with corrections published in (B) and (E) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>		
HOPPS Addenda	Addenda A, B, D1, D2, E, L, and M (A) and corrections to addenda (B) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>	Addenda A, B, D1, D2, E, L, and M (A and E) and corrections to addenda (A) and (B) found on CMS website at: <a href="http://www.cms.gov/HospitalOutpatientPPS">http://www.cms.gov/HospitalOutpatientPPS</a>		
IPPS Tables	Tables 2, 4A, 4B, 4C, and 4J (C) and correction (D) found on CMS website at: <a href="http://www.cms.hhs.gov/AcuteInpatientPPS/">http://www.cms.hhs.gov/AcuteInpatientPPS/</a> .			
Labor-related	60% ((A))			

	Services Occurring On or After 3/1/2012	Services Occurring On or After 9/1/2012		
Share	beginning at page 74191)			
Market Basket Inflation Factor	3.0% (A) page 74189			
Outlier Threshold	\$2,025 (B) at page 222			
Unadjusted Conversion Factor	\$68.968 (2011 unadjusted conversion factor of \$66.959 x estimated inflation factor of 1.03)			
Wage Index	Referenced in (A) beginning at page 74191; wage index values are specified in Tables 4A through 4C (C) found on the CMS web site at: <a href="http://www.cms.gov/AcuteInpatientPPS/">http://www.cms.gov/AcuteInpatientPPS/</a>			

Authority: Sections 133, 4603.5, 5307.1, and 5307.3, Labor Code  
Reference: Sections 4600, 4603.2, and 5307.1, Labor Code