

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

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS AND
NOTICE OF ADDITION OF DOCUMENTS TO RULEMAKING FILE**

**Subject Matter of Regulations: Workers' Compensation – Official Medical Fee Schedule:
Inpatient Hospital Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9789.20 et seq.**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, 5307.1 and 5307.3 proposes to modify the text of the following proposed amendments to Article 5.3 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations, relating to the Official Medical Fee Schedule – Inpatient Hospital Fee Schedule:

Amended Section 9789.22 Payment of Inpatient Hospital Services

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

IMPORTANT PROCEDURAL NOTES ABOUT THIS RULEMAKING:

1. The Inpatient Hospital Fee Schedule component of the Official Medical Fee Schedule "establish(es) or fix(es) rates, prices, or tariffs" within the meaning of Government Code section 11340.9(g) and is therefore not subject to Chapter 3.5 of the Administrative Procedure Act (commencing at Government Code section 11340) relating to administrative regulations and rulemaking.

This rulemaking proceeding to amend the Inpatient Hospital Fee Schedule is being conducted under the Acting Administrative Director's rulemaking power under Labor Code sections 133, 4603.5, 5307.1 and 5307.3. This regulatory proceeding is subject to the procedural requirements of Labor Code sections 5307.1 and 5307.4.

This Notice is being prepared to comply with the procedural requirements of Labor Code section 5307.4 and for the convenience of the regulated public to assist the regulated public in analyzing and commenting on this non-APA rulemaking proceeding.

WRITTEN COMMENT PERIOD

Notice of 2nd 15-Day Comment Period and Changes to Proposed Text and Notice of Addition of Documents to Rulemaking File – Official Medical Fee Schedule: Inpatient Hospital Fee Schedule (November 2012) 8 CCR §§9789.20, 9789.21, 9789.22, and 9789.25

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed modification to the regulation or to the added documents, to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on November 28, 2012**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time.

Submit written comments prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated, added documents relied upon, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for initial comment period ending on January 25, 2011:

Deletions from the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by single underlining: added language.

Proposed Text Noticed for First 15-Day Comment Period ending on November 2, 2012:

Deletions from the proposed revisions noticed for the initial comment period ending on January 25, 2011, are indicated by strike-through underlining: ~~deleted language~~

Codified regulatory text that was deleted for the initial comment period ending on January 25, 2011, but is reinstated for this 15-day comment period, are indicated by italics: *reinstated language*.

Additions to the regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double strike-through: ~~~~deleted language~~~~.

Deletions of text codified by Administrative Director order subsequent to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double strike-through: ~~~~deleted language~~~~.

Additions of text codified by Administrative Director order subsequent to the original codified regulatory text noticed for the initial comment period ending on January 25, 2011, are indicated by double underlining: added language.

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

Newly proposed deletions from the regulatory text, proposed revisions noticed for the initial comment period ending on January 25, 2011, or from the proposed revisions noticed for the first 15-day comment period ending November 2, 2012, are indicated by bold strike-through: ~~**deleted language**~~.

Newly proposed additions to the regulatory text, proposed revisions noticed for the initial comment period ending on January 25, 2011, or from the proposed revisions noticed for the first 15-day comment period ending November 2, 2012, are indicated by dashed underline: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9789.22 - Payment of Inpatient Hospital Services

Subdivision (f)(1) is amended to modify the following:

Step 2 is to read, “Determine costs. $\text{Costs} = ((\text{total billed charges} - \text{charges for spinal devices}) \times \text{total cost-to-charge ratio}) + \text{documented paid spinal device costs, net of discounts and rebates, plus any sales tax and/or shipping and handling charges actually paid.}$ ”

Step 3 is to read, “Determine outlier threshold. $\text{Outlier threshold} = (\text{Inpatient Hospital Fee Schedule payment amount} + \text{hospital specific outlier factor} + \text{any new technology pass-through payment determined under Section 9789.22(h)} + \text{any additional allowance for spinal devices under Section 9789.22(g)(2)}).$ ”

Subdivision (f)(3) is amended to clarify that this subsection applies to discharges occurring before January 1, 2013, and the referenced charges pertain to spinal devices reimbursed under subsection 9789.22(g)(1).

Subdivision (g)(2) is amended to change the additional allowance for spinal devices used in specified complex spinal surgery MS-DRGs. An additional allowance of \$9,140 shall be made for spinal devices used during complex spinal surgery MS-DRGs 453, 454, and 455. An additional allowance of \$3,170 shall be made for spinal devices used during complex spinal surgery MS-DRG 456, and an additional allowance of \$670 shall be made for spinal devices used during complex spinal surgery MS-DRGs 028, 029, and 030.

Subdivision (g)(3) is amended to clarify that the Administrative Director may extend section 9789.22(g)(2) to discharges on or after the January 1, 2014, through a later enacted regulation.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

1. *Orthopedic Network News*, Volume 21, Number 4, October 2010.
2. *Lumbar Fusion Surgery in California: Volumes, Costs, Length of Stay, Surgical Complications, and Insurance Reimbursement*, Berkeley Center for Health Technology, Volume 2, Issue 4.
3. *Volumes, Costs, and Reimbursement for Cervical Fusion Surgery in California Hospitals, 2008*, Berkeley Center for Health Technology, Volume 2, Issue 5.
4. Wynn, Barbara, O., *Analysis of Add-On Allowances*.