# State of California Department of Industrial Relations DIVISION OF WORKERS’ COMPENSATION



## Order of the Administrative Director of the Division of Workers’ Compensation

**Official Medical Fee Schedule - Physician Services and Non-Physician Practitioner Services**

**– Effective for Services Rendered on or after April 1, 2020, and Retroactively for Specified Services on or after March 1, 2020**

On April 10, 2020, the Administrative Director of the Division of Workers’ Compensation issued an order adjusting the physician and non-physician practitioner services portion of the Official Medical Fee Schedule contained in title 8, California Code of Regulations, sections 9789.12 and 9789.19 to conform to changes in the Medicare payment system, effective for services rendered on or after April 15, 2020. Thereafter, the Centers for Medicare and Medicaid Services (CMS) issued a revised physician fee schedule relative value file, correct coding initiative edit files, and an amended list of telehealth codes and rules to implement the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”.)

Pursuant to Labor Code section 5307.1, subdivision (g), the Administrative Director of the Division of Workers’ Compensation orders that the physician and non-physician practitioner services portion of the Official Medical Fee Schedule contained in title 8, California Code of Regulations, sections 9789.12.2 and 9789.19, is adjusted to conform to changes in the Medicare system as set forth below. The changes are intended to improve access to care and include policy revisions to support the provision of workers’ compensation medical treatment in a safe manner in light of the COVID-19 public health emergency declared by Governor Gavin Newsom ([Proclamation of State of Emergency](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)) and the federal government.

### Background and Basis for Order

In light of the COVID-19 pandemic, CMS adopted temporary changes to the Medicare Physician Fee Schedule by issuing an expanded list of telehealth services and revising some Medicare telehealth rules. ([Interim Final Rule with Comment Period [CMS-1744-IFC]](https://www.cms.gov/files/document/covid-final-ifc.pdf) “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency”, dated March 26, 2020.) The list of telehealth codes required the use of a telecommunication device using both video and audio. CMS adopted a revised Place of Service rule for Medicare telehealth services, which allowed telehealth services using video and audio communication to be paid the same rate as in person visits. Although the Medicare Physician Fee Schedule included CPT codes 99441 through 99443 for telephone evaluation and management services, these codes were paid at a substantially lower fee than in-person face to face visits, or face to face telehealth visits using both video and audio. In the April 10, 2020 Order, DWC adopted the Medicare Telehealth List “Covered Telehealth Services for PHE for the COVID-19 pandemic effective March 1, 2020” and the telehealth Place of Service Code revision, prospectively to take effect for services on or after April 15, 2020.

On April 30, 2020, CMS issued the I[nterim Final Rule with Comment Period [CMS-5531-IFC]](https://www.cms.gov/files/document/covid-medicare-and-medicaid-ifc2.pdf) “Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program”. The Interim Final Rule with Comment Period [CMS-5531-IFC] adopts a wide variety of temporary emergency provisions to address the COVID-19 pandemic in order to increase access to needed care and appropriately reimburse medical providers. Significantly, CMS has adopted a temporary expanded list of telehealth codes, and has specified which codes may be billed for services that are “audio only” and which codes require use of video and audio. The excel document “[Covered Telehealth Services for PHE for the COVID-19 pandemic effective March 1 2020-updated April 30 2020](https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes)” is adopted by CMS retroactively for services rendered on or after March 1, 2020.

The Interim Final Rule increases the fee for the physician telephone evaluation and management CPT codes 99441 through 99443 to the level of an in-person evaluation and management visit and adds them to the list of telehealth services effective March 1, 2020. CMS explains the policy reasons that support the increase in fees for the audio only CPT codes 99441 – 99443 as follows:

“In the time since we established these payment amounts, stakeholders have informed us that use of audio-only services is more prevalent than we had previously considered, especially because many beneficiaries are not utilizing video-enabled communication technology from their homes. In other words, there are many cases where practitioners would under ordinary circumstances utilize telehealth or in-person visits to evaluate and manage patients’ medical concerns, but are instead using audio-only interactions to manage more complex care. While we previously acknowledged the likelihood that, under the circumstances of the PHE, more time would be spent interacting with the patient via audio-only technology, we are now recognizing that the intensity of furnishing an audio-only visit to a beneficiary during the unique circumstances of the COVID-19 pandemic is not accurately captured by the valuation of these services we established in the March 31st COVID-19 IFC. This is particularly true to the extent that these audio-only services are actually serving as a substitute for office/outpatient Medicare telehealth visits for beneficiaries not using video-enabled telecommunications technology contrary to the situation we anticipated when establishing payment for them in the March 31st COVID-19 IFC. Given our new understanding that these audio-only services are being furnished primarily as a replacement for care that would otherwise be reported as an in-person or telehealth visit using the office/outpatient E/M codes, we are establishing new RVUs for the telephone E/M services based on crosswalks to the most analogous office/outpatient E/M codes…Specifically, we are crosswalking CPT codes 99212, 99213, and 99214 to 99441, 99442, and 99443 respectively.” [Interim Final Rule with Comment Period [CMS-5531-IFC]](https://www.cms.gov/files/document/covid-medicare-and-medicaid-ifc2.pdf), page 139.

DWC has determined that retroactive adoption of the increased fees for CPT codes 99441 through 99443, and the adoption of the expanded emergency Medicare telehealth list for the duration of the public health emergency would support the goal for residents to “stay at home” while increasing access to workers’ compensation medical treatment.

In addition, the Administrative Director’s April 10, 2020 Order adopted the CMS’ temporary modification to the Medicare Physician Fee Schedule which suspends the Telehealth Place of Service Code 02 and instead uses the Place of Service Code (POS) representing the POS code that would have been reported had the service been furnished in person. The Administrative Director adopted this change prospectively for services rendered on or after April 15, 2020. In light of the adoption of the new expanded “[Covered Telehealth Services for PHE for the COVID-19 pandemic effective March 1 2020-updated April 30 2020](https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes)” retroactive for services on or after March 1, 2020, there is good cause to adopt a revised POS Code effective date. This will support appropriate reimbursement for services that were rendered via telehealth on or after March 1, 2020.

### Order to Adjust Fee Schedule and Incorporation by Reference

Therefore, in order to further the use of telehealth while supporting access to workers’ compensation medical treatment during the public health emergency, pursuant to the authority of Labor Code section 5307.1, subdivision (g), this Order adopts the following changes to the OMFS for Physician Services and Non-Physician Practitioner Services to conform to relevant Medicare changes:

#### 1) Place of Service Code: revision of effective date.

Title 8, California Code of Regulations section 9789.12.2, subdivision (d)(2), is modified as follows:

|  |  |
| --- | --- |
| POS Code and Name  Description | Payment Rate  Facility = F  Nonfacility = NF |
| 01 Pharmacy  A facility or location where drugs and other medically related items and services are sold, dispensed, or otherwise provided directly to patients. | NF |
| 02 Telehealth  The location where health services and health related services are provided or received, through a telecommunication system.  (Effective for services on or after March 1, 2017 and prior to ~~April 15~~ March 1, 2020. For services on or after ~~April 15~~ March 1, 2020, report the POS code that would have been reported had the service been furnished in person.) | F |

#### 2) Correct Coding Initiative Practitioner Procedure to Procedure (PTP) Edits update.

Title 8, California Code of Regulations section 9789.19, subdivision (g) is modified as follows:

The Medicare revised Correct Coding Initiative Practitioner Procedure to Procedure (PTP) Edits files, version v261r1, are adopted and incorporated by reference, effective April 1, 2020, and replace version v261r0, to conform to the Medicare revision:

Practitioner PTP Edits v261r1 effective April 1, 2020 (532,940 records) 0001M/36591 – 25999/96523

Practitioner PTP Edits v261r1 effective April 1, 2020 (529,534 records) 26010/01810 – 36909/J2001

Practitioner PTP Edits v261r1 effective April 1, 2020 (503,072 records) 37140/0213T – 59899/96523

Practitioner PTP Edits v261r1 effective April 1, 2020 (562,285 records) : 60000/0213T – R0075/R0070

#### 3) CMS’ Medicare National Physician Fee Schedule Relative Value File update and adoption of retroactive increase of fees for telephone Evaluation and Management CPT Codes 99441 through 99443.

The updated CMS’ Medicare National Physician Fee Schedule Relative Value File [RVU20B (Updated 05/01/2020) (ZIP)](https://www.cms.gov/medicaremedicare-fee-service-paymentphysicianfeeschedpfs-relative-value-files/rvu20b) is adopted and incorporated by reference and replaces the previous RVU20B file. It is effective for services rendered on or after April 1, 2020, except that it is effective for services rendered on or after March 1, 2020 for CPT codes 99441 through 99443.

|  |  |
| --- | --- |
| CMS’ Medicare National Physician Fee Schedule Relative Value File [Zip] | For services rendered on or after January 1, 2020:  [RVU20A](https://www.cms.gov/medicaremedicare-fee-service-paymentphysicianfeeschedpfs-relative-value-files/rvu20a) (Updated 01/31/2020) (ZIP)   * RVU20A (Excluding Attachment A) * PPRRVU20\_Jan * OPPSCAP\_Jan * 20LOCCO * GPCI2020   Excluding:  ANES2020  For services rendered on or after March 1, 2020, for CPT codes 99441, 99442, 99443:  [RVU20B (Updated 05/01/2020) (ZIP)](https://www.cms.gov/medicaremedicare-fee-service-paymentphysicianfeeschedpfs-relative-value-files/rvu20b)   * RVU20B-508 (Excluding Attachment A) * PPRRVU20\_APR * OPPSCAP\_APR * 20LOCCO * GPCI2020   Excluding:  ANES2020  For services rendered on or after April 1, 2020:  [~~RVU20B~~](https://www.cms.gov/medicaremedicare-fee-service-paymentphysicianfeeschedpfs-relative-value-files/rvu20b)  [RVU20B (Updated 05/01/2020) (ZIP)](https://www.cms.gov/medicaremedicare-fee-service-paymentphysicianfeeschedpfs-relative-value-files/rvu20b)   * RVU20B-508 (Excluding Attachment A) * PPRRVU20\_APR * OPPSCAP\_APR * 20LOCCO * GPCI2020   Excluding:  ANES2020  [Access the Relative Value File on the CMS website](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files.html): https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files.html |

Conforming changes are adopted for RVU20B references in the following portions of the section 9789.19 subdivision (g) Update Table:

Diagnostic Cardiovascular Procedure CPT codes subject to the MPPR

Diagnostic Imaging Family Indicator Description

Diagnostic Imaging Family Procedures Subject to the MPPR

Diagnostic Imaging Multiple Procedures Subject to the MPPR

Geographic Practice Cost Index (GPCI) by locality (Other than anesthesia services)

Geographic Practice Cost Index (GPCIs) by locality and anesthesia shares (Anesthesia)

Incident To Codes

Ophthalmology Procedure CPT codes subject to the MPPR

Physical Therapy Multiple Procedure Payment Reduction: “Always Therapy” Codes; and Acupuncture and Chiropractic Codes

#### 4) Retroactive adoption of revised Telehealth List including identification of services that can be billed when rendered with audio only technology and those services that require video and audio technology.

The Medicare excel document “[Covered Telehealth Services for PHE for the COVID-19 pandemic effective March 1 2020-updated April 30 2020](https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes)” is adopted and incorporated by reference into title 8, California Code of Regulations, section 9789.19, subdivision (g), for services rendered on or after March 1, 2020. The Telehealth Services list updated April 30, 2020 is adopted retroactively for services rendered on or after March 1, 2020 and supersedes “Covered Telehealth Services for PHE for the COVID-19 pandemic effective March 1, 2020” which is rescinded. Section 9789.19, subdivision (g), is modified by amending the update table as follows:

|  |  |
| --- | --- |
| Telehealth – Services Accessible Through Telehealth (using audio and video telecommunication method and audio only telecommunication method) During the COVID-19 Public Health Emergency | For services on or after ~~April 15~~March 1, 2020:  CMS – ~~“Covered Telehealth Services for PHE for the COVID-19 pandemic, effective for services March 1, 2020”~~ “[Telehealth Services for PHE for the COVID-19 pandemic effective March 1 2020-updated April 30 2020](https://www.cms.gov/files/zip/covid-19-telehealth-services-phe.zip)”  File specifies codes that may be billed when service is rendered using audio only telecommunication and codes that may only be billed if service is rendered using a telecommunication method that includes both audio and video. The list is adopted retroactively for services rendered on or after March 1, 2020.  In accord with CPT 2020, append modifier 95 to procedure code when delivered via telehealth. |

This Order and the updated regulations shall be published on the website of the Division of Workers’ Compensation on the [physician services and non-physician practitioner services fee schedule](https://www.dir.ca.gov/dwc/OMFS9904.htm#7) webpage.

**IT IS SO ORDERED.**

Dated: May 7, 2020 /S/ GEORGE P. PARISOTTO\_\_\_\_\_\_\_

GEORGE P. PARISOTTO

Administrative Director of the

Division of Workers’ Compensation