

## N E W S L I N E

Newsline No. 39-13

June 17, 2013

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### **DWC issues notice of public hearing for an RBRVS-based physician fee schedule**

The Division of Workers' Compensation (DWC) has issued the notice of public hearing for a resource-based relative value scale (RBRVS) based physician fee schedule. A public hearing on the proposed regulations has been scheduled at 10 a.m., July 17, in the auditorium of the Elihu Harris Building, 1515 Clay Street, Oakland, CA, 94612. Members of the public may also submit written comment on the regulations until 5 p.m. that day.

Senate Bill 863 directs DWC's administrative director to adopt a physician fee schedule based upon the federal RBRVS used in the Medicare payment system.

"I am thrilled that the Division of Workers' Compensation has issued the proposed physician fee schedule regulations. We believe these regulations will put in place a fee schedule for physicians that will support the right incentives for appropriate care and return to work. We also believe that with these regulations we can more readily keep pace with updates and ensure all the changing technologies are available," said Christine Baker, the director of the Department of Industrial Relations.

In the RBRVS-based system, relative value units interact with payment ground rules and the conversion factor to determine the maximum fee in light of the resources to provide the service. The new provisions of Labor Code section statute 5307.1 direct the administrative director to "adopt and review periodically an official medical fee schedule (OMFS) based on the resource-based relative value scale for physician services and nonphysician practitioner services," provided:

- Liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration shall be determined in accordance with Labor Code section 4600
- The fee schedule is updated annually to reflect changes in procedure codes, relative weights and the adjustment factors in subdivision (g) (the Medicare Economic Index and any relative value scale adjustment factor)

- The maximum reasonable fees paid shall not exceed 120 percent of the estimated annualized aggregate fee prescribed in the Medicare physician fee schedule as it appeared on July 1, 2012 (before application of the Medicare Economic Index and any relative value scale adjustment factor)
- Any service provided to injured workers that is not covered under Medicare shall be included at its rate of payment established by the administrative director
- There is a four-year transition between the estimated aggregate maximum allowable under the OMFS physician schedule prior to Jan. 1, 2014 and the maximum allowable based on 120 percent of the Medicare conversion factors
- The physician fee schedule includes ground rules that differ from Medicare payment ground rules, including, as appropriate, payment of consultation codes and payment of evaluation and management services provided during a global period of surgery.

“We expect the workers’ compensation system to see many cost saving and efficiency benefits from adopting the RBRVS-based fee schedule, and the benefits will be enhanced by adopting the schedule prior to the ‘default’ fee caps that will automatically apply on Jan. 1, 2014 if a regulation is not adopted,” said Destie Overpeck, acting administrative director.

The benefits resulting from adopting the RBRVS-based fee schedule include the following:

- Relative Value Units used in the RBRVS are updated annually, and are established, maintained and revised by Centers for Medicare & Medicaid Services (CMS) with input from a broad range of medical specialty groups
- Regular updating can be done more efficiently by linking updates in the procedure codes and relative values to the annual updates published by CMS
- Payment is based on the resources used to provide the service, which aligns the financial incentives inherent in the fee schedule with value-based care
- Adoption of most Medicare payment rules improves accuracy of payment as the ground rules and RVUs operate in a complementary fashion to establish appropriate reimbursement, for example by avoiding duplicate payment for overlapping expense inherent in multiple procedures
- Adoption of payment rules in the regulations increases clarity regarding the specific ground rules that will apply
- Adoption of the regulations is preferable to the “default” option in Labor Code section 5703.1 that would apply on Jan. 1, 2014 if the administrative director does not adopt a RBRVS-

based fee schedule. The proposed regulations differ from Medicare where appropriate for workers' compensation including:

- o allowing separate payment of evaluation and management services during the global period if visits exceed the number reimbursed in the physician time file
- o payment of Primary Treating Physician's Progress Report (PR-2) during the global surgery period
- o separate payment of consultation reports requested by the Workers' Compensation Appeals Board or Administrative Director or requested in the context of a medical-legal evaluation
- o payment of the Health Professional Shortage Area Bonus at the time of payment of the service rather than quarterly
- Adoption of conversion factors in the regulations improves accuracy over the "default" fee caps, as the proposed conversion factors were derived by RAND with updated and more representative data
- Adoption of the regulations prior to Jan. 1, 2014 will allow the public to implement the new RBRVS fee schedule at one time, rather than implementing the "default" and then having to make system changes to implement the Administrative Director's adopted RBRVS fee schedule in the future.

The notice, text of the regulations, and forms can be found on the proposed regulations [page](#).

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