

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Official Medical Fee Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTION 9789.11**

Section 9789.11      Physician Services Rendered on or after July 1, 2004

**BACKGROUND TO REGULATORY PROCEEDING**

In response to the State's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 228 (Chapter 639, stats. of 2003 effective January 1, 2004). Senate Bill 228 included several provisions designed to control workers' compensation costs, including a revised Labor Code section 5307.1, which provides for the Administrative Director to adopt an Official Medical Fee Schedule (OMFS) for workers' compensation. Section 5307.1 requires the Administrative Director to adopt and revise periodically an official medical fee schedule that establishes the reasonable maximum fees paid for all medical services rendered in workers' compensation cases. Except for physician services, all fees in the adopted schedule must be in accordance with the fee-related structure and rules of the relevant Medicare (administered by the Center for Medicare & Medicaid Services of the United States Department of Health and Human Services) and Medi-Cal payment systems. For the Calendar Years 2004 and 2005, the maximum reimbursable fees for physician services are the rates set forth in the 2003 Official Medical Fee Schedule reduced by five (5) percent, but not less than the Medicare rates. The Administrative Director carried out the statutory mandate by adopting a Table A in title 8, California Code of Regulations section 9789.11 setting forth physician fees.

Table A was revised by emergency regulation effective January 14, 2005. On May 14, 2005, the Administrative Director readopted the Table A effective January 14, 2005 and adopted a revised Table A effective May 14, 2005 by emergency regulation. The emergency regulations were necessary to correct some typographical, arithmetical, and formatting errors and to correct some of the fees in the Table A that were not set according to the intentions of the Administrative Director. In addition, the Table A effective May 14, 2005 contains revised fees to ensure that the rates do not fall below Medicare rates.

## **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Division relied upon the following technical, theoretical, or empirical studies, reports, or similar documents in proposing the above-identified regulations:

(A) Centers for Medicare & Medicaid Services (CMS) Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005, published in the Federal Register on November 15, 2004, Volume 69, No. 219, pages 66236 through 66426.

(B) Centers for Medicare & Medicaid Services (CMS) Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005, published in the Federal Register on November 15, 2004, Volume 69, No. 219, Addenda A through F, pages 66236 through 66694 as follows:

- (1) Addendum A “Explanation and Use of Addenda B,” at pages 66426 through 66427
- (2) Addendum B “Relative Value Units (RVUs) And Related Information,” at pages 66428 through 66683
- (3) Addendum C “Codes with Interim RVUs,” at pages 66684 through 66688
- (4) Addendum D “2005 Geographic Practice Cost Indices By Medicare Carrier And Locality,” at pages 66689 through 66690
- (5) Addendum F “Comparison Of 2004 GAFs To 2005 GAFs,” at pages 66693 through 66694

(C) Table A Development Spreadsheet, an Excel document of the Division of Workers' Compensation, revised April 14, 2005

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

None of the proposed regulations mandate the use of specific technologies or equipment.

## **FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Division made an initial determination that these regulations will not have a significant statewide adverse effect on business. Of approximately 8,500 physician procedure codes, this regulatory change makes changes to only 303, and one third of these changes did not involve the fee. Some of the price changes are increases and some

are decreases. Any overall increase in costs of workers' compensation treatment will be minimal. Overall cost increases, if any, are due to the mandates of Labor Code section 5307.1.

## **Section 9789.11 Physician Services Rendered on or after July 1, 2004**

### Specific Purpose of Section 9789.11:

Section 9789.11 specifies that physician fees are to be determined by applying ground rules and using a Table A, incorporated by reference, which sets forth the relative value, conversion factor, percentage reduction amount, and maximum reimbursable fee. The section is changed by changing the Internet reference where the "General Information and Instructions" may be found, renumbering the subdivision of the section, adding an additional Table A, incorporated by reference, applicable to services rendered on or after January 14, 2005, adding an additional Table A, incorporated by reference, applicable to services rendered on or after May 14, 2005, and changing the Internet reference where the Table A may be found. Copyright notices are also added to the Table A.

### Necessity:

It is necessary to update the internet references in the section, as they were no longer correct. It is necessary to make the changes to the Table A, as the procedure codes changed were found to be no longer correct as mandated by Labor Code section 5307.1. The codes were incorrect because they were the result of arithmetical, typographical or formatting error, did not represent the 5% reduction mandated by Section 5307.1 as intended to be applied by the Administrative Director, did not have the 5% calculation applied to them when it should have been, had a 5% reduction applied to them when it was incorrect to do so, or had to be changed because of CMS' change in underlying Medicare fee rates effective January 1, 2005.

It is necessary to adopt separate versions of the Table A, applicable to different time periods, as this is the only feasible and economic manner to show different fees for some procedures, depending on the applicable date of service. It is necessary to reorganize the section for clarity in order to add references to the two additional Tables A which were incorporated by reference. The Division must add the copyright notices to the Table A to reflect the use of material copyrighted by the American Medical Association.

### Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

