

**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**OFFICE OF WORKERS' COMPENSATION**  
Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)  
19 DE Admin. Code 1341

**FINAL**

**1341 Workers' Compensation Regulations**

**ORDER**

A public meeting was held on May 3, 2010, by the Department of Labor to receive public comments relating to revised sections of the Definitions, the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines. The members of the Health Care Advisory Panel ("HCAP") present recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 13, Issue 10 (April 2010).

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Exhibits Admitted:

Exhibit 1 - News Journal, Affidavit of publication of notice of public meeting.

Exhibit 2 - Delaware State News, Affidavit of publication of notice of public meeting.

Exhibit 3 - Written comments submitted by American Insurance Association prior to the public meeting.

No further written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, the public was invited to share their comments.

The following comments were made during the public meeting.

Definitions

No Public Comment

Fee Schedule Instructions:

Mr. Richard Stokes spoke on behalf of Property Casualty Insurance Association of America. He said his organization does not support the changes to regulation 4.20.1.1 regarding anesthesia, as well as 4.26.1.3.5, regarding puncture site reimbursement. Mr. Stokes stated those "dramatic" changes will increase costs to the system.

Mr. Eric Goldberg spoke on behalf of the American Insurance Association (AIA) and said he "echos" Mr. Stokes comments regarding anesthesia.

Low Back Practice Guideline:

Mr. Eric Goldberg spoke on behalf of the American Insurance Association (AIA) regarding the changes to section 6.0 of the Low Back Practice Guidelines. He reiterated the written comments submitted by his organization that AIA Directors of Workers' Compensation could not find one study that supported the change to remove the "one level" degenerative disc disease and allow for multiple levels. In addition, he commented that the FDA was not petitioned nor did it approve multiple levels.

Mr. Goldberg also commented that his organization was unaware of any other guidelines around the country that supported reducing from 6 months to 4 months the required non-invasive treatment prior to performing a disc arthroplasty

Mr. Richard Stokes said he "echos" Mr. Goldberg's comments.

The Panel voted:

- (1) Unanimously to recommend approval of the Definitions revisions;
- (2) Unanimously to recommend approval of the Fee Schedule Instructions revisions; and
- (3) With one nay vote from Theresa Smith to recommend approval of the Low Back Practice Guideline revisions.

Therefore, the HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Definitions, the Fee Schedule Instructions and Guidelines, and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines.

### **RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION**

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law.

### **RECOMMENDATION**

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 3<sup>rd</sup> day of May, 2010.

### **HEALTH CARE ADVISORY PANEL**

Bruce Rudin, M.D., Chair  
Harry Gravell  
Glenn Brown, MMSC, PT  
James Downing, M.D.  
A. Richard Heffron  
Theresa Smith  
Joseph J. Rhoades, Esquire

George B. Heckler, Esquire, Vice Chair  
R. Walter Power, M.D.  
Douglas Briggs, D.C.  
Barry Bakst, D.O.  
Wayne Smith  
Josette Covington, M.D., MPH

### **DECISION AND EFFECTIVE DATE**

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Definitions; the Fee Schedule Instructions and Guidelines, and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines. The Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines are hereby adopted by the Delaware Department of Labor and made effective June 11, 2010.

### **TEXT AND CITATION**

The proposed Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines notice appeared in the *Register of Regulations*, Volume 13, Issue 10 (April 1, 2010). The Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: [www.delawareworks.com](http://www.delawareworks.com).

### **DEPARTMENT OF LABOR**

John McMahon, Secretary of Labor

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1283 (13 DE Reg. 1283). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<http://regulations.delaware.gov/register/june2010/final/13 DE Reg XXX 06-01-10.htm>**

## **1341 Workers' Compensation Regulations**

### **1.0 Purpose and Scope**

- 1.1 Section 2322B, Chapter 23, Title 19, **Delaware Code** authorizes and directs the Department within 180 days from the first meeting of the Health Care Advisory Panel to adopt a Health Care Payment System by regulation after promulgation by the Health Care Advisory Panel.
- 1.2 Section 2322B, Chapter 23, Title 19, **Delaware Code**, authorizes and directs the Health Care Advisory Panel to adopt and recommend, a coordinated set of instructions and guidelines to accompany the health care payment system, to the Department for adoption by regulation.
- 1.3 Section 2322B(3), Chapter 23, Title 19, **Delaware Code** establishes the formula based upon historical data required to determine the Fee Schedule Amounts for professional services.
- 1.4 Section 2322B(5), Chapter 23, Title 19, **Delaware Code** establishes the amount of reimbursement for a procedure, treatment or service to be eighty-five (85%) of the actual charge as of November 1, 2008, if a specific fee is not set forth in the Fee Schedule Amounts.
- 1.5 Section 2322B(7), Chapter 23, Title 19, **Delaware Code** establishes separate service categories.
- 1.6 Section 2322B(8), Chapter 23, Title 19, **Delaware Code** establishes the Hospital fees developed for the Health Care Payment System.
- 1.7 Section 2322B(9), Chapter 23, Title 19, **Delaware Code** establishes the Ambulatory Surgical Treatment Center fees developed for the Health Care Payment System.
- 1.8 The fees to be established in Sections 2322B(11)(12) and (13) shall be promulgated and recommended by the Health Care Advisory Panel to the Department before the effective date of the regulation.
- 1.9 Section 2322D, Chapter 23, Title 19, **Delaware Code** authorizes and directs the Department to adopt by regulation complete rules and regulations relating to Health Care Provider Certification within one (1) year after the first meeting of the Health Care Advisory Panel.
- 1.10 Section 2322E, Chapter 23, Title 19, **Delaware Code**, authorizes and directs the Health Care Advisory Panel to approve, propose and recommend to the Department the adoption by regulation of consistent forms for the health care providers ("HCAP Forms").

**11 DE Reg. 920 (01/01/08)**

### **2.0 Definitions**

As used in this regulation:

**"Certification"** means the certification pursuant to 19 **Del.C.** §2322D, required for a Health Care Provider to provide treatment to an employee, pursuant to Delaware's Workers' Compensation Statute.

**"Certification of Health Care Providers in an Inpatient Hospital Setting."** With regard to health care provider certification as required by 19 **Del.C.** §2322D, such certification applies to physicians, chiropractors, and physical therapists providing treatment to an injured worker during his or her period of inpatient hospitalization; all other personnel employed by a hospital providing treatment to an injured worker during his or her period of inpatient hospitalization are excluded from certification.

**"Department"** means the Department of Labor.

**"Fee Schedule Amounts"** mean the fees as set forth by the Health Care Payment System.

**"HCAP Forms"** means the standard forms for the provision of health care services set forth in Section 2322E, Chapter 23, Title 19, **Delaware Code**.

**"Health Care Advisory Panel" or "HCAP"** means the seventeen (17) members appointed by the Governor by and with the consent of the Senate to carry out the provisions of Chapter 23, Title 19, **Delaware Code**.

**"Health Care Payment System"** means the comprehensive fee schedule promulgated by the Health Care Advisory Panel to establish medical payments for both professional and facility fees generated on workers' compensation claims.

**"Health Care Provider Application for Certification"** means the Department's approved application form which Health Care Providers must submit to the Department so that pre-authorization of each health care procedure, office visit or health care service to be provided to the employee is not required.

~~**"Health Care Providers"** for the purposes of Certification includes physicians, chiropractors and physical therapists providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization; all other personnel employed by a hospital providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization are excluded from the Certification process.~~

**"Utilization Review"** means the utilization review program and associated procedures to guide utilization of health care treatments in workers' compensation as set forth in Section 2322F(j), Chapter 23, Title 19, **Delaware Code**.

### 3.0 Health Care Provider Certification

3.1 Section 2322D(a), Chapter 23, Title 19, **Delaware Code** establishes the minimum certification requirement to be certified as a Health Care Provider:

3.1.1 With regard to the Certification of any hospital facility providing inpatient and/or outpatient services, the person completing and signing the Health Care Provider Application for Certification on behalf of the hospital shall have the authority to do so and must attest to and be responsible for the completion of all of the requirements set forth on the Health Care Provider Application for Certification.

3.1.2 Services provided by an emergency department of a hospital pursuant to §2322B(8)(c) of Chapter 23, Title 19, **Delaware Code** shall not be subject to the requirement of Certification.

3.1.3 The provisions of this section shall apply to all treatment of employees provided after the effective date of these rules and regulations regardless of the date of injury.

3.1.4 In accordance with the provisions of 19 **Del.C.** §2322(D), certification is required for a health care provider to provide treatment to an employee, pursuant to Delaware's Workers' Compensation Statute, without the requirement that the health care provider first pre-authorize each health care procedure, office visit or health care service to be provided to the employee with the employer if self-insured, or the employer's insurance carrier. Pursuant to 19 **Del.C.** §2322B and F, for purposes of the Certification requirements of §2322D, "health care provider" specifically includes physicians, chiropractors and physical therapists providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization; all other personnel employed by a hospital providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization are excluded from the Certification requirements of this Subsection. With regard to any hospital facility providing inpatient and/or outpatient services, to be Certified in accordance with the provisions of §2322D so that pre-authorization from the employer or insurance carrier for the employer is not required for each health care procedure, office visit or health care service provided to an injured employee, the person completing and signing the Health Care Provider Application for Certification on behalf of the hospital shall have the authority to do so and must attest to and be responsible for the completion of all of the requirements set forth on such Application. Services provided by an emergency department of a hospital pursuant to §2322B(8)(c) shall not be subject to the requirement of Certification. The provisions of §2322(D) shall apply to all treatments to employees provided after the effective date of the rule/regulation provided by this subsection and regardless of the date of injury. A health care provider shall be certified only upon meeting the following minimum certification requirements:

3.1.4.1 Have a current license to practice, as applicable;

- 3.1.4.2 Meet other general certification requirements for the specific provider type;
- 3.1.4.3 Possess a current and valid Drug Enforcement Agency ("DEA") registration, unless not required by the provider's discipline and scope of practice;
- 3.1.4.4 Have no previous involuntary termination from participation in Medicare, Medicaid or the Delaware workers' compensation system. Any such involuntary termination shall be considered to be inconsistent with certification;
- 3.1.4.5 Have no felony convictions in any jurisdiction, under a federal-controlled substance act or for an act involving dishonesty, fraud or misrepresentation. A felony conviction in any jurisdiction under a federal-controlled substance act or for an act involving dishonesty, fraud or misrepresentation shall be considered to be inconsistent with certification;
- 3.1.4.6 Provide proof of adequate, current professional malpractice and liability insurance.
- 3.1.5 In addition to the above, the health care provider to be certified must agree to the terms and conditions set forth on the Health Care Provider Application for Certification, as follows:
  - 3.1.5.1 Comply with Delaware workers' compensation laws and rules;
  - 3.1.5.2 Maintain acceptable malpractice coverage;
  - 3.1.5.3 Complete state-approved continuing education courses in workers' compensation every two (2) years from the date of the health care provider's initial certification. A listing of continuing education courses in workers' compensation care approved by the State of Delaware, Department of Labor, Office of Workers' Compensation, will be posted on the Office of Workers' Compensation website. To maintain certification, every two (2) years from the initial date of certification the health care provider must provide written notification to the Office of Workers' Compensation of compliance with the continuing education course requirement noted above, setting forth the name of the course(s) completed and the date of completion;
  - 3.1.5.4 Practice in a best-practices environment, complying with practice guidelines and Utilization Review Accreditation Council ("URAC") utilization review determinations;
  - 3.1.5.5 Agree to bill only for services and items performed or provided, and medically necessary, cost-effective and related to the claim or allowed condition;
  - 3.1.5.6 Agree to inform an employee of his or her liability for payment of non-covered services prior to delivery;
  - 3.1.5.7 Accept reimbursement for and not unbundle charges into separate procedure codes when a single procedure code is more appropriate;
  - 3.1.5.8 Agree not to balance bill any employee or employer. Employees shall not be required to contribute a co-payment or meet any deductibles;
  - 3.1.5.9 Agree to have knowledge of all statements authorized under the certified health care provider's signature and to be responsible for the content of all bills submitted pursuant to the provisions of 19 **Del.C.** §§2322B, C, E, F;
  - 3.1.5.10 Agree to provide written notification to the Department of Labor, Office of Workers' Compensation, State of Delaware, of any relevant changes to the requirements set forth in the Certification Form within thirty (30) days of the health care provider's knowledge or receipt of notice of any and all such change(s).
- 3.1.6 Notwithstanding the provisions of §2322D of Chapter 23, Title 19, **Delaware Code**, any health care provider may provide services during one office visit, or other single instance of treatment, without first having obtained prior authorization from the employer if self insured, or the employer's insurance carrier, and receive reimbursement for reasonable and necessary services directly related to the employee's injury or condition at the health care provider's usual and customary fee, or the maximum allowable fee pursuant to fee schedule adopted pursuant to Section 2322B of Chapter 23, Title 19, **Delaware Code** whichever is less.
- 3.1.7 The allowance of reimbursement for the employee's first contact with any health care provider for treatment of the injury as described in 3.1.4 is further limited to instances when the health care

provider believes in good faith, that the injury or occupational disease was suffered in the course of the employee's employment.

- 3.1.8 The provisions of this subsection, §2322(D), shall apply to all treatments to injured employees provided after the effective date of this subsection, and regardless of the date of injury.
- 3.2 Completed Certification should be mailed to:
- Mr. John F. Kirk, III  
State of Delaware Department of Labor  
Office of Workers' Compensation  
Wilmington, DE 19809-9954
- 3.3 Instructions and provisions for completing the Certification Form online will be published on the Office of Workers' Compensation website when available.

#### **4.0 Workers' Compensation Health Care Payment Rates for Physicians and Hospitals (the "Fee Schedule"). Instructions and Guidelines**

##### **Introduction and Purpose**

The intent of the health care payment system developed pursuant to Delaware's Workers' Compensation Act ("Act") is not to establish a "pushdown" system, but is instead to establish a system that eliminates outlier charges and streamlines payments by creating a presumption of acceptability of charges implemented through a transparent process, involving relevant interested parties, that prospectively responds to the cost of maintaining a health care practice, eliminating cost shifting among health care service categories, and avoiding institutionalization of upward rate creep.

The maximum allowable payment for health care treatment and procedures covered under the Workers' Compensation Act shall be the lesser of the health care provider's actual charges or the fee set by the payment system. The payment system will set fees at ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the service or treatment is rendered, utilizing information contained in employers' and insurance carriers' national databases. For purposes of the Act, "geozip" means an area defined by reference to United States ZIP Codes; Delaware shall consist of one "197 geozip" (comprised of all areas within the State where the address has a ZIP Code beginning with the three digits 197 or 198), and one "199 geozip" (comprised of all areas within the State where the address has a ZIP Code beginning with the three digits 199). If a geozip does not have the necessary number of charges and fees to calculate a valid percentile for a specific procedure, treatment or service, the Health Care Advisory Panel created pursuant to 19 **Del.C.** §2322(A), in its discretion may combine data from Delaware's two geozips for a specific procedure, treatment, or service. In the event that the Health Care Advisory Panel determines that there is insufficient data to calculate a valid percentile for a procedure, treatment or service, or that data from a commercial vendor is not sufficiently reliable to implement a payment system for professional services for a specific procedure, treatment or service, then the Health Care Advisory Panel may recommend an alternative method for a payment system for professional charges.

Three (3) years after the effective date of the Act, January 17, 2007, the Health Care Advisory panel shall review the geozip reporting system and make a recommendation concerning whether the State should operate its workers' compensation health care payment system on a geozip basis or on a single statewide basis.

If an employer or an insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in any such contract shall prevail.

This document is intended to assist with fee schedule application, and to ensure correct billing and reimbursement on workers' compensation medical claims. This document is NOT intended, and should not be construed, as a utilization review guide or practice manual.

The general payment system will be adjusted yearly based on percentage changes to the Consumer Price Index-Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics. The Hospital and Ambulatory Surgery Treatment Center (ASTC) payment system will be

adjusted yearly based on percentage changes to the Consumer Price Index-Urban, U.S. City Average, Medical Care, as published by the United States Bureau of Labor Statistics.

The physician portion of the fee schedule includes fee amounts for specific medical services and procedures as identified using CPT numeric identifying codes and modifiers for reporting medical services and procedures as established by the 2008 Current Procedural Terminology (CPT), copyright American Medical Association (AMA). Any use or interpretation of CPT descriptions not specifically described herein shall be based on CPT 2008.

#### 4.1 Format of the Fee Schedule

This fee schedule represents the maximum amount of reimbursement providers may receive for medical or surgical services for the treatment of work-related injuries and illnesses covered under the workers' compensation laws of the State of Delaware.

- 4.1.1 The maximum allowable reimbursement for CPT codes is generally separable into eight distinct sections based on the category or type of service rendered. Each category of service has separate instructions for the application of ground rules and modifier adjustments. The categories of service subject to this fee schedule are:

For each procedure, the fee schedule table includes the following details (if applicable):

- 4.1.1.1 New (?), changed descriptor (?), add-on (+), modifier 51 exempt (\*), or conscious sedation (K) icons
- 4.1.1.2 Five-digit CPT code number
- 4.1.1.3 CPT description
- 4.1.1.4 Maximum allowable reimbursement
- 4.1.1.5 Maximum reimbursement for professional component modifier 26
- 4.1.1.6 Maximum reimbursement for technical component modifier TC
- 4.1.1.7 Follow-up day limits in FUD column

- 4.1.2 The total maximum allowable reimbursement includes the professional component for a procedure and the technical component. Under no circumstances shall the maximum allowable reimbursement be more than the value of the technical component and the professional component combined for a procedure.

- 4.1.3 For anesthesia fee amounts, ~~the table includes basic relative values. Anesthesia fees are determined somewhat differently than other services using a relative value, physical status modifiers, and qualifying circumstances. Anesthesia services provided to employees pursuant to this chapter shall be equal to paid at eighty-five percent (85%) of actual charges for such services as of October 31, 2006, subject to adjustment as provided in 19 Del.C. §2322B. this subsection. Verification that such billing is performed in compliance with this subsection shall be provided by each hospital to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the hospital by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of this section shall be reimbursed to the Department of Insurance by whose billing is audited.~~

- 4.1.4 General Medical Services Categories CPT Codes

Evaluation & Management	99201–99499
Anesthesia	00100–01999, 99100–99140
Surgery	10021–69990
Radiology	70010–79999
Pathology & Laboratory	80048–89356

General Medicine	90281–96999, 97802–97804, 98960–99091, 99143–99199, 99500–99607
Physical Medicine	97001–97799, 97810–98943
HCPCS	A0000–V9999

- 4.1.4.1 For anesthesia fee amounts, the table includes basic relative values. ~~Anesthesia fees are determined somewhat differently than other services using a relative value, physical status modifiers, qualifying circumstances, and a dollar conversion factor. See the Anesthesia section for an explanation of how anesthesia fee amounts are to be determined. The Delaware workers' compensation health care payment system does not use relative values or conversion factors. Anesthesia is paid at eighty-five percent (85%) of actual charges for such services as of October 31, 2006, subject to adjustment as provided in 19 Del.C. §2322B.~~
- 4.1.4.2 Within each section, you will find definitions and medical terms that explain services provided. Also, in certain sections there is an index of procedures by CPT code identifiers. Use each specific section in addition to general ground rules for clarification of terms and services.
- 4.1.4.3 The fee schedule is designed to be an accurate and authoritative source of information about medical coding and reimbursement. Every reasonable effort has been made to verify its accuracy and all information is believed reliable at the time of publication. Absolute accuracy and completeness, however, is neither intended nor guaranteed. The rules and guidelines described herein cannot specifically refer to every payment contingency; ~~the usual, customary, and reasonable fee~~ 19 Del.C. §2322B(5) will govern treatment provided under unusual circumstances.

#### 4.1.5 Reference Materials

The health care payment system and fee schedule is in accordance with the following documents, including codes, guidelines and modifiers:

- *Current Procedural Terminology*, copyright, American Medical Association, 515 N. State St., Chicago, IL 60610, Chicago, 2006;
- *HCPCS Level II*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Baltimore, 2006;
- *National Correct Coding Policy Manual in Comprehensive Code Sequence for Part B Medicare Carriers, Version 12.0*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Baltimore, 2006;
- ~~*Relative Value Guide*, copyright, American Society of Anesthesiologists, 520 N. Northwest Highway, Park Ridge, IL 60068-2573, Park Ridge, 2006;~~
- Diagnosis-Related Group (DRG) classification system, Centers for Medicare and Medicaid Services (CMS), *Federal Register*, Vol. 70, No. 155, August 2005.
- The follow up days for post-operative care that have been adopted by the Delaware Office of Workers' Compensation for their Fee Schedule and Guidelines have been established by reference to CMS (Centers for Medicare and Medicaid Services).

#### 4.2 HCPCS (Healthcare Common Procedure Coding System) (Level II)

The health care payment system requires that services be reported with the Healthcare Common Procedural Coding System Level 2 ("HCPCS Level 2"), or CPT codes that most comprehensively



describe the services performed. Proprietary bundling edits more restrictive than the National Correct Coding Policy Manual in Comprehensive Code Sequence for Part B Medicare Carriers, Version 12.0, U.S. Department of Health and Human Services, Centers for Medicare and Medicare Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, 2009, no later dates or editions, shall be prohibited. Bundling edits is the process of reporting codes so that they most comprehensively describe the services performed.

#### 4.3 Professional Services/CPT Code Set

4.3.1 Unless otherwise specified herein, the payment system for professional services shall conform to the Current Procedural Terminology ("CPT"), American Medical Association, 515 North State Street, Chicago, Illinois, 60610, 2009, no later dates or editions.

4.3.2 The fee schedule defers to guides and descriptions in the CPT Code Set in establishing the correct classification for health care services.

#### 4.4 Physician/Health Care Provider Services

4.4.1 The maximum allowable payment for health care treatment and procedures shall be the lesser of the health care provider's actual charges or ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the service or treatment is rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.

4.4.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85"), which actual charge will be fixed as of 11/1/08 and subsequent to such date will be subject to verification, audit and/or review by the Department of Insurance. Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited. From the effective date of this regulation through and including 10/31/08, the "POC 85" charges, if contested, will be subject to review pursuant to Hearing to be conducted before the Industrial Accident Board.

4.4.3 The payment system will be adjusted yearly pursuant to 19 **Del.C. §2322B(14)** ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, based on percentage changes to the Consumer Price Index—Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.~~

#### 4.5 Modifiers

Modifiers augment CPT codes to more accurately describe the circumstances of services provided. When applicable, the circumstances should be identified by a modifier code: a two-digit number placed after the usual procedure code. If more than one modifier is needed, place modifier 99 after the procedure code to indicate that two or more modifiers will follow. Some modifier descriptions in this fee schedule have been changed from the CPT language.

#### 4.6 Ambulatory Surgical Treatment

4.6.1 Fees billed for services provided to injured workers pursuant to the Act by an Ambulatory Surgical Treatment Center ("ASTC") shall be reimbursed at a rate equal to eighty-five percent (85%) of each ASTC's actual charges for services as of October 31, 2006. Verification that such billing is performed in compliance with 19 **Del.C. §2322B(9)(a)** shall be provided by each ASTC to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the ASTC by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of the above-referenced section of the Act shall be reimbursed to the Department of Insurance by the ASTC whose billing is audited. The ASTC fee determination mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the regulation implementing the fee schedule and regardless of the date of injury.

4.6.2 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, and each year thereafter the~~

~~Department of Labor shall make an automatic adjustment to each ASTC's reimbursement rates as derived pursuant to the above for procedures, treatments or services in effect in January of that year. The amount payable to each ASTC pursuant to the above shall be adjusted annually by the Department of Labor in accordance with the Consumer Price Index - Urban, U.S. City Average for Medical Care, as published by the United States Bureau of Labor Statistics pursuant to 19 Del.C. §2322B(9)(b) for each ASTC's procedures, treatments or services in effect in January of that year. The adjustment factor referenced above in 19 Del.C. §2322B shall be reviewed by the Health Care Advisory Panel three (3) years after the effective date of this section and the Panel shall make a recommendation concerning the continued use of the Consumer Price Index for Medical Care, or the adoption of a different index for cost adjustments in fees for ASTC services.~~

#### 4.7 Dental Services

- 4.7.1 The maximum allowable payment for dental treatment, procedures or services shall be the lesser of the health care provider's actual charges of ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the treatment, procedure or service is rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.
- 4.7.2 Whenever the health care payment system does not set a specific fee for a dental treatment, procedure or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85") for such service as of October 31, 2006, subject to verification, review and/or audit by the Department of Insurance. Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the dental practitioner whose billing is audited.
- 4.7.3 ~~The payment system will be adjusted yearly from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, and each year thereafter the Department of Labor shall make an automatic adjustment to the maximum payment for a dental treatment, procedure or service in effect in January of that year. The Department of Labor shall increase or decrease the maximum payment by the percentage change of increase or decrease in the Consumer Price Index Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics pursuant to 19 Del.C. §2322B(14) for a dental treatment procedure or service in effect in January of that year.~~

#### 4.8 Emergency Department of a Hospital

- 4.8.1 Services provided by an emergency department of a hospital, or any other facility subject to the Federal Emergency Medical Treatment and Active Labor Act, 42 United States Code §1395dd, et seq., and any emergency medical services provided in a pre-hospital setting by ambulance attendants and/or paramedics, shall be exempt from the healthcare payment system and shall not be subject to the requirement that a health care provider be certified pursuant to 19 Del.C. §2322D, requirements for preauthorization of services, or the health care practice guidelines adopted pursuant to 19 Del.C. §2322C.
- 4.8.2 Upon admission to a hospital and discharge from an emergency department, hospital charges shall be subject to that which is set forth in the section below titled "Hospital".

#### 4.9 Hospital

- 4.9.1 Hospital fees billed for inpatient and outpatient services provided to injured workers pursuant to the Act shall be reimbursed at a rate equal to eighty-five percent (85%) of each hospital's actual charges for such services as of October 31, 2006, subject to adjustment as provided below. Verification that such billing is performed in compliance with the above and 19 Del.C. §2322B(8) shall be provided by each hospital to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the hospital by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the hospital whose billing is audited.

4.9.2 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, with automatic adjustment to each pursuant to 19 Del.C. §2322B(8)(b) for hospital's reimbursement rates, as derived pursuant to 19 Del.C. §2322B(8), for procedures, treatments or services in effect in January of that year. The amount payable to each hospital pursuant to 19 Del.C. §2322B(8) shall be adjusted annually by the Department of Labor in accordance with the Consumer Price Index - Urban, U.S. City Average for Medical Care, as published by the United States Bureau of Labor Statistics. The adjustment factor referenced above in 19 Del.C. §2322B(8)(b) shall be reviewed by the Health Care Advisory Panel three (3) years after the effective date of the regulation implementing the fee schedule, and the Panel shall make a recommendation concerning the continued use of the Consumer Price Index for medical care, or the adoption of a different index for cost adjustments in fees for hospital services.~~

4.10 Allied Health Care Professional

An allied health care professional, such as a certified registered nurse anesthetist ("CRNA"), physician assistant ("PA") or nurse practitioner ("NP"), shall be reimbursed at the same rate as other health care professionals when the allied health care professional is performing, coding and billing for the same services as other health care professionals if a physician health care provider is physically present when the service or treatment is rendered, and shall be reimbursed at eight percent (80%) of the primary health care provider's rate if a physician health care provider is not physically present when the service or treatment is rendered.

4.11 Independently Operated Diagnostic Testing Facility

4.11.1 Charges of an independently operated diagnostic testing facility shall be subject to the professional services and HCPCS Level II health care payment system where applicable. An independent diagnostic testing facility is an entity independent of a hospital or physician's office, whether a fixed location, a mobile entity, or an individual non-physician practitioner, in which diagnostic tests are performed by licensed or certified non-physician personnel under appropriate physician supervision.

4.11.2 In the event that the professional services and HCPCS Level II health care payment system is inapplicable, the fee for reimbursement of independent diagnostic testing facility services shall be eight-five percent (85%) of actual charge ("POC 85") for such service as of October 31, 2006, subject to verification, review and/or audit by the Department of Insurance. Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited.

4.11.3 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, and each year thereafter the Department of Labor shall make an automatic adjustment to the maximum payment pursuant to 19 Del.C. §2322B(14) for a procedure, treatment or service in effect in January of that year. The Department of Labor shall increase or decrease the maximum payment by the percentage change of increase or decrease in the Consumer Price Index - Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.~~

4.12 Pathology

4.12.1 The maximum allowable payment for pathology services and procedures shall be the lesser of the health care provider's actual charges or ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the pathology service or procedure is rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.

4.12.2 Whenever the health care payment system does not set forth a specific fee for a pathology service or procedure in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85") for such service or procedure as of October 31, 2006, subject to verification, review and/or audit by the Department of Insurance. Reasonable costs of such review

or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited.

- 4.12.3 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, and each year thereafter the Department of Labor shall make an automatic adjustment to the maximum payment pursuant to 19 Del.C. §2322B(14)~~ for a procedure, treatment or service in effect in January of that year. ~~The Department of Labor shall increase or decrease the maximum payment by the percentage change of increase or decrease in the Consumer Price Index - Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.~~

#### 4.13 Pharmacy

- 4.13.1 Reimbursement for pharmacy services, prescription drugs and other pharmaceuticals is 100% of the Average Wholesale Price (AWP) as of the date of service, or the actual charge, whichever is less. Verification that such billing is performed in compliance with the above and 19 Del.C. §2322B is subject to review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of the above shall be reimbursed to the Department of Insurance by the provider whose billing is audited.
- 4.13.2 A prescription drug formulary has been adopted and recommended by the Health Care Advisory Panel which designates preferred prescription drugs and encourages the use of generic drugs over name brand drugs.

#### 4.14 Total Component/Professional Component, Technical Component

- 4.14.1 A total fee includes both the professional component and the technical component needed to accomplish the procedure. Explanations of the professional component and the technical component are listed below. The values listed in the Amount column represent the total reimbursement. Under no circumstance shall the combined amounts of the professional and technical components exceed the amount of the total component.
- 4.14.2 Professional Component: The professional component represents the reimbursement allowance of the professional services of the physician and is identified by the use of modifier 26. This includes examination of the patient when indicated, performance or supervision of the procedure, interpretation and written report of the examination, and consultation with the referring physician. Values in the PC Amount column are intended for the services of the professional for the professional component only and do not include any other charges. To identify a charge for a professional component only, use the five-digit code followed by modifier 26.
- 4.14.3 Technical Component: The technical component includes charges made by the institution or clinic to cover the services of the facilities. To identify a charge for a technical component only, use of the five-digit code followed by HCPCS Level II modifier TC.

#### 4.15 Billing and Payment for Health Care Services

- 4.15.1 Pursuant to 19 Del.C. §2322F, charges for medical evaluation, treatment and therapy, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurance carrier along with a bill or invoice for such charges, accompanied by records or notes, concerning the treatment or services submitted for payment, documenting the employee's condition and the appropriateness of the evaluation, treatment or therapy, with reference to the health care practice guidelines adopted pursuant to 19 Del.C. §2322C, or documenting the preauthorization of such evaluation, treatment or therapy. The initial copy of the supporting notes or records shall be produced without separate or additional charge to the employer, insurance carrier or employee.
- 4.15.2 Those healthcare providers who obtained certification pursuant to 19 Del.C. §2322D are not required to first preauthorize each health care procedure, office visit or health care service to be provided to an injured employee with the employer or insurance carrier.
- 4.15.3 Charges for hospital services and items supplied by a hospital, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurance carrier along with a bill or invoice which shall be documented in a nationally recognized uniform billing code format and as reference above, in sufficient detail to document the services or items

provided, and any preauthorization of the services and items shall also be documented. The initial copy of the supporting medical notes or records shall be produced without separate or additional charge to the employer, insurance carrier or employee.

- 4.15.4 Payment for hospital services, including payment for invoices rendered for emergency department services, shall be made within thirty (30) days of the submission of a "clean claim" accompanied by notes documenting the employee's condition and the appropriateness of the evaluation, treatment or therapy.
- 4.15.5 Preauthorized evaluations, treatments or therapy shall be paid at the agreed fee within thirty (30) days of the date of submission of the invoice, unless the compliance with the preauthorization is contested, in good faith, pursuant to the utilization review system set forth in 19 **Del.C.** §2322F(j) [see the rules and regulation regarding Utilization Review].
- 4.15.6 Treatments, evaluations and therapy provided by a certified health care provider shall be paid within thirty (30) days of receipt of the health care provider's bill or invoice together with records or notes as provided above and pursuant to 19 **Del.C.** §2322F, unless compliance with the health care payment system or practice guidelines adopted pursuant to 19 **Del.C.** §§2322B or 2322C is contested, in good faith, pursuant to the utilization review system as referenced above.
- 4.15.7 Denial of payment of health care services provided pursuant to the Act, whether in whole or in part, shall be accompanied with written explanation for reason for denial.
- 4.15.8 In the event that a portion of a health care invoice is contested, the uncontested portion shall be paid without prejudice to the right to contest the remainder. The time limits set forth above and in §2322F shall apply to payment of all uncontested portions of health care payments.
- 4.15.9 An employer or insurance carrier shall be required to pay a health care invoice within thirty (30) days of receipt of the invoice as long as the claim contains substantially all the required data elements necessary to adjudicate the invoice, unless the invoice is contested in good faith. If the contested invoice pertains to an acknowledged compensable claim and the denial is based upon compliance with the health care payment system and/or health care practice guidelines, it shall be referred to utilization review. Unpaid invoices shall incur interest at a rate of one percent (1%) per month payable to the provider. A provider shall not hold an employee liable for costs related to non-disputed services for a compensable injury and shall not bill or attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or insurance carrier on a compensable injury.
- 4.15.10 If, following a hearing, the Industrial Accident Board determines that an employer, an insurance carrier, or health care provider failed in its responsibilities under 19 **Del.C.** §§2322B, 2322C, 2322D, 2322E or 2322F, it shall assess a fine of not less than \$1,000.00 nor more than \$5,000.00 for violations of said sections, such fines shall be payable to the Workers' Compensation Fund.
- 4.15.11 Payment Rates for Physicians and Hospitals (Fee Schedule)  
<http://regulations.state.de.us/AdminCode/title19/1000/1300/1340/feeschedule.pdf> **Fee Schedule**
- 4.16 Fees for Non-Clinical Services
  - 4.16.1 Pursuant to 19 **Del.C.** §2322B(13), fees for certain non-clinical services are set as follows, and will be periodically revised upon recommendation of the Health Care Advisory Panel to reflect changes in the cost of providing such services:
    - 4.16.1.1 Retrieving, copying and transmitting existing medical reports and records, to include copying of medical notes and/or records supporting a bill or invoice for charges for treatment or services:
      - \$25.00 for search and retrieval
      - \$1.25 per page for first 20 pages
      - \$.90 per page for pages 21 through 60
      - \$.30 per page for pages 61 and thereafter
    - 4.16.1.2 Testimony by a physician for non-video deposition shall not exceed \$2,000.00; for video deposition: \$500.00 additional;
    - 4.16.1.3 Live testimony by a physician at any hearing or proceeding shall not exceed \$3,500.00;

4.16.1.4 Completion and transmission of any Statutorily required report, form or document by a physician/health care provider: \$30.00.

4.17 Effective Date

4.17.1 The health care payment system shall apply to all services provided after the effective date of the health care payment system regulations and regardless of date of injury.

4.17.2 The Department of Labor of the State of Delaware reserves the authority to determine applicability of all rules of the fee schedule. Any physician, other medical professional, or other entity having questions regarding applicability to their individual reimbursement as it applies to the fee schedule, should direct any such question to the Department of Labor or to such other authority as directed by the Department of Labor.

4.18 General Rules

4.18.1 Definitions

**“Adjust”** means that a payer or a payer's agent reduces or otherwise alters a health care provider's request for payment.

**“Appropriate care”** means health care that is suitable for a particular patient, condition, occasion, or place.

**“Bill”** means a claim submitted by a provider to a payer for payment of health care services provided in connection with a covered injury or illness.

**“Bill adjustment”** means a reduction of a fee on a provider's bill, or other alteration of a provider's bill.

**“Carrier”** means any stock company, mutual company, or reciprocal or inter-insurance exchange authorized to write or carry on the business of Workers' Compensation Insurance in this State, or self-insured group, or third-party payer, or self-insured employer, or uninsured employer.

**“CMS-1500”** means the CMS-1500 form and instructions that are used by non institutional providers and suppliers to bill for outpatient services. Use of the most current CMS-1500 form is required.

**“Case”** means a covered injury or illness occurring on a specific date and identified by the worker's name and date of injury or illness.

**“Consultation”** means a service provided by a physician whose opinion or advice regarding evaluation and/or management of a specific problem is requested by another physician or other appropriate source. If a consultant, subsequent to the first encounter, assumes responsibility for management of the patient's condition, that physician becomes a treating physician. The first encounter is a consultation and shall be billed and reimbursed as such. A consultant shall provide a written report of his/her findings. A second opinion is considered a consultation.

**“Critical care”** means care rendered in a variety of medical emergencies that requires the constant attention of the practitioner, such as cardiac arrest, shock, bleeding, respiratory failure, postoperative complications, and is usually provided in a critical care unit or an emergency department.

**“Day”** means a continuous 24-hour period.

**“Diagnostic procedure”** means a service that helps determine the nature and causes of a disease or injury.

**“Durable medical equipment (DME)”** means specialized equipment designed to stand repeated use, appropriate for home use, and used solely for medical purposes.

**“Expendable medical supply”** means a disposable article that is needed in quantity on a daily or monthly basis.

**“Follow-up care”** means the care which is related to the recovery from a specific procedure and which is considered part of the procedure's maximum reimbursement allowance, but does not include complications.

**“Follow-up days”** are the days of care following a surgical procedure which are included in the procedure's maximum reimbursement allowance amount, but which do not include complications. The follow-up day period begins on the day of the surgical procedure(s).

**“Independent procedure”** means a procedure that may be carried out by itself, completely separate and apart from the total service that usually accompanies it.

**“Inpatient services”** means services rendered to a person who is admitted as an inpatient to a hospital.

**“Medical record”** means a record in which the medical service provider records the subjective findings, objective findings, diagnosis, treatment rendered, treatment plan, and return to work status and/or goals and impairment rating as applicable.

**“Medical supply”** means either a piece of durable medical equipment or an expendable medical supply.

**“Observation services”** means services rendered to a person who is designated or admitted as observation status.

**“Operative report”** means the practitioner's written description of the surgery and includes all of the following:

- A preoperative diagnosis;
- A postoperative diagnosis;
- A step-by-step description of the surgery;
- A description of any problems that occurred in surgery; and
- The condition of the patient upon leaving the operating room.

**“Optometrist”** means an individual licensed to practice optometry.

**“Orthotic equipment”** means an orthopedic apparatus designed to support, align, prevent, or correct deformities, or improve the function of a moveable body part.

**“Orthotist”** means a person skilled in the construction and application of orthotic equipment.

**“Outpatient service”** means services provided to patients at a time when they are not hospitalized as inpatients.

**“Payer”** means the employer or self-insured employed group, carrier, or third-party administrator (TPA) who pays the provider billings.

**“Pharmacy”** means the place where the science, art, and practice of preparing, preserving, compounding, dispensing, and giving appropriate instruction in the use of drugs is practiced.

**“Physician Specialty”**. The rules and reimbursement allowances in the Delaware Workers' Compensation Medical Fee Schedule do not address physician specialization within a specialty. Payment is not based on the fact that a physician has elected to treat patients with a particular/ specific problem. Reimbursement to qualified physicians is the same amount regardless of specialty.

**“Procedure code”** means a five-digit numerical sequence or a sequence containing an alpha character and preceded or followed by four digits, which identifies the service performed and billed.

**“Prosthesis”** means an artificial substitute for a missing body part.

**“Prosthetist”** means a person skilled in the construction and application of prostheses.

**“Provider”** means a facility, health care organization, or a practitioner who provides medical care or services.

**“Secondary procedure”** means a surgical procedure performed during the same operative session as the primary surgery but considered an independent procedure that may not be performed as part of the primary surgery.

#### 4.18.2 Injections

4.18.2.1 Reimbursement for injections includes charges for the administration of the drug and the cost of the supplies to administer the drug. Medications are charged separately.

4.18.2.2 The description must include the name of the medication, strength, and dose injected.

- 4.18.2.3 When multiple drugs are administered from the same syringe, reimbursement will be for a single injection.
- 4.18.2.4 Reimbursement for anesthetic agents such as Xylocaine and Carbocaine, when used for infiltration, is included in the reimbursement for the procedure performed and will not be separately reimbursed.
- 4.18.2.5 Anesthetic agents for local infiltration must not be billed separately; this is included in the reimbursement for the procedure.
- 4.18.2.6 Reimbursement for intra-articular and intra-bursal injections (steroids and anesthetic agents) may be separately billed. The description must include the name of the medication, strength, and volume given.
- 4.18.3 General Ground Rules
  - 4.18.3.1 Multiple Procedures. It is appropriate to designate multiple procedures that are rendered on the same date by separate entries. For Example, if a level three established patient office visit (99213) and an ECG (93000) are performed during the visit, it is appropriate to designate both the established patient office visit and the ECG. In this instance both 99213 and 93000 would be reported.
  - 4.18.3.2 Materials Supplied by Physician. Supplies and equipment used in conjunction with medication administration should be billed with the appropriate HCPCS codes and shall be reimbursed according to the Fee Schedule.
  - 4.18.3.3 Separate Procedures
    - 4.18.3.3.1 Some of the procedures or services listed in the CPT codebook that are commonly carried out as an integral component of a total service or procedure have been identified by the inclusion of the term "separate procedure." The codes designated as "separate procedure" should not be reported in addition to the code for the total procedure or service of which it is consider an integral component.
    - 4.18.3.3.2 However, when a procedure or service that is designated as a "separate procedure" is carried out independently or considered to be unrelated or distinct from other procedure/services provided at that time, it may be reported by itself, or in addition to other procedures/services by appending modifier 59 to the specific "separate procedure" code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure. This may represent a different session, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries).
  - 4.18.3.4 Concurrent/Coordinating Care. Providing similar service (e.g., hospital visits by more than one physician) to the same injured employee on the same day for treatment of the same illness is concurrent care. When concurrent care is provided, no special reporting is required. Duplicate services, however, (e.g., visit by a physician of the same subspecialty for the same illness which is not a second opinion) will not be reimbursed. The authorized treating physician should coordinate care by all specialists.
  - 4.18.3.5 Alternating Physicians. When physicians of similar skills alternate in the care of a patient (e.g., partners, groups, or same facility covering for another physician on weekends or vacation periods), each physician shall bill individually for the services each personally rendered and in accordance with the Medical Fee Schedule.
  - 4.18.3.6 Ground Rules for Physician Assistants (PA) and Nurse Practitioners (NP)
    - 4.18.3.6.1 Physician Supervision
      - Definition of Supervision
      - The term "supervise," for billing purposes, encompasses the following supervision requirement:
      - Direct personal supervision in the office setting does not mean that the physician must be present in the same room with a PA or NP. However, the physician must be present



in the office suite and immediately available to provide assistance and direction throughout the time the PA or NP is performing the services. In this instance, reimbursement should be made at the normal physician payment level as if the physician had provided the service. If the PA or NP provides care to the injured worker and the supervising physician is not immediately available, the reimbursements will be at 80% of the fee schedule rate.

4.18.3.6.2 Billing for PA or NP Service. The physician must render the bill for care, with the ensuing payment for the PA or NP service made directly to the physician employer.

4.18.3.6.3 Management of a New or Established Patient with a New Workers' Compensation Problem

If the physician supervises the physician assistant's or nurse practitioner's evaluation, payment should be made at the physician's normal Workers' Compensation level for PA or NP services rendered in an outpatient setting.

Where on-site direct physician supervision is not available and the physician assistant or nurse practitioner providing patient care is only able to communicate with a physician supervisor by telephone or other effective means of communication, payment for this service should be made at 80% of the Physician Payment Schedule.

Physician assistants and nurse practitioners acting in the capacity of an assistant at surgery will receive 20% percent of the total allowance for the surgical procedures. Payment will be made to the physician assistant's or nurse practitioner's employer (the physician).

4.18.3.6.4 Follow-up Care of an Existing Patient with a Compensable Problem. If the physician supervises the physician assistant's or nurse practitioner's evaluation, payment should be made at the physician's normal reimbursement level for the PA or NP services rendered in the outpatient setting.

4.18.3.6.5 Modifiers for Physician Assistant and Nurse Practitioner Services. When a physician assistant (PA) or nurse practitioner (NP) bills for services other than assistant at surgery, modifiers "PA" or "NP" are used. Modifier 83, AS, is used to identify assistant at surgery services provided by a physician assistant or nurse practitioner.

4.18.3.7 Add-On Procedures

#### **Appendix D from the American Medical Association's 2009 CPT Codes Summary of CPT Add-on Codes**

01953	01968	01969	11001	11008	11101	11201	11732	11922	13102
13122	13133	13153	15003	15005	15101	15111	15116	15121	15131
15136	15151	15152	15156	15157	15171	15176	15201	15221	15241
15261	15301	15321	15331	15336	15341	15361	15366	15401	15421
15431	15787	15847	16036	17003	17312	17314	17315	19001	19126
19291	19295	19297	20930	20931	20936	20937	20938	20985	22103
22116	22208	22216	22226	22328	22522	22525	22527	22534	22585
22614	22632	22840	22841	22842	22843	22844	22845	22846	22847
22848	22851	26125	26861	26863	27358	27692	31620	31632	31633
31637	32501	33141	33225	33257	33258	33259	33508	33517	33518
33519	33521	33522	33523	33530	33572	33768	33884	33924	33961
34806	34808	34813	34826	35306	35390	35400	35500	35572	35600
35681	35682	35683	35685	35686	35697	35700	36218	36248	36476
36479	37185	37186	37206	37208	37250	37251	38102	38746	38747

43273	43635	44015	44121	44128	44139	44203	44213	44701	44955
47001	47550	48400	49326	49435	49568	49905	51797	56606	57267
58110	58611	59525	60512	61316	61517	61609	61610	61611	61612
61641	61642	61795	61797	61799	61800	61864	61868	62148	62160
63035	63043	63044	63048	63057	63066	63076	63078	63082	63086
63088	63091	63103	63295	63308	63621	64472	64476	64480	64484
64623	64627	64727	64778	64783	64787	64832	64837	64859	64872
64874	64876	64901	64902	65757	66990	67225	67320	67331	67332
67334	67335	67340	69990	74301	75774	75946	75964	75968	75993
75996	76125	76802	76810	76812	76814	76937	77001	77051	77052
78020	78478	78480	78496	78730	83901	87187	87904	88155	88185
88311	88312	88313	88314	90466	90468	90472	90474	92547	92608
92627	92973	92974	92978	92979	92981	92984	92996	92998	93320
93321	93325	93352	93571	93572	93609	93613	93621	93622	93623
93662	94645	95873	95874	95920	95962	95967	95973	95975	95979
96361	96366	96367	96368	96370	96371	96375	96376	96411	96415
96417	96423	96570	96571	97546	97811	97814	99100	99116	99135
99140	99145	99150	99292	99354	99355	99356	99357	99358	99359
99467	99602	99607	0054T	0055T	0063T	0076T	0079T	0081T	0092T
0095T	0098T	0151T	0159T	0163T	0164T	0165T	0172T	0173T	0174T
0189T	0190T	0196T							

#### 4.18.3.8 Exempt from Modifier 51 Codes

4.18.3.8.1 The (\*) symbol is used to identify CPT codes that are exempt from the use of modifier 51, but have NOT been designated as CPT add-on procedures/services. As the description implies, modifier 51 exempt procedures are not subject to multiple procedure rules and as such modifier 51 does not apply. Fee schedule amounts for modifier 51 exempt codes are not subject to reduction and should be reimbursed at the lesser of 100 percent of the listed value or the billed amount.

4.18.3.8.2 Modifier 51 exempt services and procedures can be found in Appendix E of CPT 2009 and include the following CPT codes:

#### **Appendix E from the American Medical Association's 2009 CPT Codes Summary of CPT Codes Exempt from Modifier 51**

**Note:** Procedures on this list are often performed with another procedure or may be performed alone.

17004	20697	20974	20975	31500	36620	44500	61107	93503	93539
93540	93544	93545	93555	93556	93600	93602	93603	93610	93612
93615	93616	93618	93631	94610	95900	95903	95904	95992	99143
99144									

#### 4.18.3.9 Modifiers

Modifiers augment CPT codes to more accurately describe the circumstances of services provided. When applicable, the circumstances should be identified by a modifier code: a two-digit number placed after the usual procedure code. If more than one modifier is

needed, place modifier 99 after the procedure code to indicate that two or more modifiers will follow. Some modifier descriptions in this fee schedule have been changed from the CPT language.

**21 Prolonged Evaluation and Management Services:** When the face-to-face or floor/unit service(s) provided is prolonged or otherwise greater than that usually required for the highest level of evaluation and management service within a given category, it may be identified by adding modifier 21 to the evaluation and management code number. A report may also be appropriate.

**22 Unusual Procedural Services:** When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier 22 to the usual procedure number. A report may also be appropriate. Add an additional 20% to the value of the code when billed with this modifier.

**23 Unusual Anesthesia:** Occasionally, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding modifier 23 to the procedure code of the basic service.

**24 Unrelated Evaluation and Management Services by the Same Physician During a Postoperative Period:** The physician may need to indicate that an evaluation and management service was performed during a postoperative period for a reason(s) unrelated to the original procedure. This circumstance may be reported by adding modifier 24 to the appropriate level of E/M service.

**25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician on the Same Day of the Procedure or Other Service:** It may be necessary to indicate that on the day a procedure or service identified by a CPT code was performed, the patient's condition required a significant, separately identifiable E/M service provided above or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately E/M service is defined or substantiated by documentation that satisfies the relevant criteria for the respective E/M service to be reported (see Evaluation and Management Services Guidelines for I instructions on determining level of E/M service). The E/M service may be prompted by the symptom or condition for which the procedure and/or service was provided. As such, different diagnoses are not required for reporting of the E/M service on the same date. This circumstance may be reported adding modifier 25 to the appropriate level E/M code. Note: This modifier is not used to report an E/M service that resulted in a decision to perform surgery. See modifier 57. For significant, separately identifiable non-E/M services, see modifier 59.

**26 Professional Component:** Certain procedures are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding modifier 26 to the usual procedure number.

**TC Technical Component:** Certain procedures are a combination of a physician component and a technical component. When the technical component is reported separately, the service may be identified by adding modifier TC to the usual procedure number.

**27 Multiple Outpatient Hospital E/M Encounters on the Same Date:** (This CPT modifier is for use by Ambulatory Surgery Center (ASC) and Hospital Outpatient Settings Only.) For hospital outpatient reporting purposes, utilization of hospital resources related to separate and distinct E/M encounters performed in multiple outpatient hospital settings on the same date may be reported by adding modifier 27 to each appropriate level outpatient and/or emergency department E/M code(s). This modifier provides a means of reporting circumstances involving evaluation and management services provided by physician(s) in more than one (multiple) outpatient hospital setting(s) (e.g., hospital emergency

department, clinic). Note: This modifier is not to be used for physician reporting of multiple E/M services performed by the same physician on the same date. For physician reporting of all outpatient evaluation and management services provided by the same physician on the same date and performed in multiple outpatient setting(s) (e.g., hospital emergency department, clinic), see Evaluation and Management, Emergency Department, or Preventive Medicine Services codes.

**32 Mandated Services:** Services related to mandated consultation and/or related services (e.g., PRO, third-party payer, governmental, legislative, or regulatory requirement) may be identified by adding modifier 32 to the basic procedure.

**47 Anesthesia by Surgeon:** Regional or general anesthesia provided by the surgeon may be reported by adding modifier 47 to the basic service. (This does not include local anesthesia.) Note: Modifier 47 would not be used as a modifier for the anesthesia procedures 00100-01999.

**50 Bilateral Procedure:** Unless otherwise identified in the listings, bilateral procedures that are performed at the same operative session should be identified by adding modifier 50 to the appropriate five-digit code.

**51 Multiple Procedures:** When multiple procedures, other than Evaluation and Management Services, are performed at the same session by the same provider, the primary procedure or service may be reported as listed. The additional procedure(s) or service(s) may be identified by appending modifier 51 to the additional procedure or service code(s). Note: This modifier should not be appended to designated "add-on" codes or modifier 51 exempt codes (See CPT Appendix D.)

**52 Reduced Services:** Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's discretion. Under these circumstances the service provided can be identified by its usual procedure number and the addition of modifier 52, signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. Note: For hospital outpatient reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**53 Discontinued Procedure:** Under certain circumstances the physician may elect to terminate a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well-being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code reported by the physician for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure prior to the patient's anesthesia induction and/or surgical preparation in the operating suite. For outpatient hospital/ambulatory surgery center (ASC) reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**54 Surgical Care Only:** When one physician performs a surgical procedure and another provides preoperative and/or postoperative management, surgical services may be identified by adding modifier 54 to the usual procedure number.

**55 Postoperative Management Only:** When one physician performs the postoperative management and another physician has performed the surgical procedure, the postoperative component may be identified by adding modifier 55 to the usual procedure number.

**56 Preoperative Management Only:** When one physician performs the preoperative care and evaluation and another physician performs the surgical procedure, the preoperative component may be identified by adding modifier 56 to the usual procedure number.

**57 Decision for Surgery:** An evaluation and management service that resulted in the initial decision to perform the surgery may be identified by adding modifier 57 to the appropriate level of E/M service.

**58 Staged or Related Procedure or Service by the Same Physician During the Postoperative Period:** The physician may need to indicate that the performance of a procedure or service during the postoperative period was: a) planned prospectively at the time of the original procedure (staged); b) more extensive than the original procedure; or c) for therapy following a diagnostic surgical procedure. This circumstance may be reported by adding modifier 58 to the staged or related procedure. Note: This modifier is not used to report the treatment of a problem that requires a return to the operating room. See modifier 78.

**59 Distinct Procedural Service:** Under certain circumstances, the physician may need to indicate that a procedure or service was distinct or independent from other services performed on the same day. Modifier 59 is used to identify procedures/services that are not normally reported together, but are appropriate under the circumstances. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same physician. However, when another already established modifier is appropriate, it should be used rather than modifier 59. Only if no more descriptive modifier is available, and the use of modifier 59 best explains the circumstances, should modifier 59 be used.

**62 Two Surgeons:** When two surgeons work together as primary surgeons performing distinct part(s) of a procedure, each surgeon should report his/her distinct operative work by adding modifier 62 to the procedure code and any associated add-on code(s) for that procedure as long as both surgeons continue to work together as primary surgeons. Each surgeon should report the co-surgery once using the same procedure code. If additional procedure(s) (including add-on procedure(s)) are performed during the same surgical session, separate code(s) may be reported with modifier 62 added. Note: If a co-surgeon acts as an assistant in the performance of an additional procedure(s) during the same surgical session, that service(s) may be reported using separate procedure code(s) with modifier 80 or modifier 81 added, as appropriate.

**66 Surgical Team:** Under some circumstances, highly complex procedures (requiring the concomitant services of several physicians, often of different specialties, plus other highly skilled, specially trained personnel, various types of complex equipment) are carried out under the "surgical team" concept. Such circumstances may be identified by each participating physician with the addition of modifier 66 to the basic procedure number used for reporting services.

**76 Repeat Procedure by the Same Physician:** The physician may need to indicate that a procedure or service was repeated subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure/service.

**77 Repeat Procedure by Another Physician:** The physician may need to indicate that a basic procedure or service performed by another physician had to be repeated. This situation may be reported by adding modifier 77 to the repeated procedure/service.

**78 Return to the Operating Room for a Related Procedure During the Postoperative Period**

The physician may need to indicate that another procedure was performed during the postoperative period of the initial procedure. When this subsequent procedure is related to

the first, and requires the use of the operating room, it may be reported by adding modifier 78 to the related procedure. (For repeat procedures on the same day, see modifier 76.)

**79 Unrelated Procedure or Service by the Same Physician During the Postoperative Period:** The physician may need to indicate that the performance of a procedure or service during the postoperative period was unrelated to the original procedure. This circumstance may be reported by using modifier 79. (For repeat procedures on the same day, see modifier 76.)

**80 Assistant Surgeon:** Surgical assistant services may be identified by adding modifier 80 to the usual procedure number(s).

**81 Minimum Assistant Surgeon:** Minimum surgical assistant services are identified by adding modifier 81 to the usual procedure number.

**82 Assistant Surgeon (when qualified resident surgeon not available):** The unavailability of a qualified resident surgeon is a prerequisite for use of modifier 82 appended to the usual procedure code number(s).

**83 Physician Assistant or Nurse Practitioner as Assistant Surgeon:** When a physician assistant or nurse practitioner performs services for assistants at surgery, identify the services by adding modifier 83 to the usual procedure code. Services of a physician assistant or nurse practitioner are reimbursed at 20 percent of the listed value of the surgical code and payable to the employing physician. This modifier is valid for surgery only.

**90 Reference (Outside) Laboratory:** When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding modifier 90 to the usual procedure number.

**91 Repeat Clinical Diagnostic Laboratory Test:** In the course of treatment of the patient, it may be necessary to repeat the same laboratory test on the same day to obtain subsequent (multiple) test results. Under these circumstances, the laboratory test performed can be identified by its usual procedure number with the addition of modifier 91. Note: This modifier may not be used when tests are rerun to confirm initial results due to testing problems with specimens or equipment, or for any other reason when a normal, one-time, reportable result is all that is required. This modifier may not be used when other code(s) describe a series of test results (e.g., glucose tolerance tests). This modifier may only be used for laboratory test(s) performed more than once on the same day on the same patient.

**92 Alternative Laboratory Platform Testing:** When laboratory testing is being performed using a kit or transportable instrument that wholly or in part consists of a single use, disposable analytical chamber, the service may be identified by adding modifier 92 to the usual laboratory procedure code (HIV testing 86701-86703). The test does not require permanent dedicated space, hence by its design may be hand carried or transported to the vicinity of the patient for immediate testing at that site, although location of the testing is not in itself determinative of the use of this modifier.

**99 Multiple Modifiers:** Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier 99 should be added to the basic procedure, and other applicable modifiers may be listed as part of the description of the service.

**PA Services Performed by a Physician Assistant:** When services of a physician assistant are performed, identify the services by adding modifier PA to the usual procedure code.

**NP Services Performed by a Nurse Practitioner:** When services of a nurse practitioner are performed, identify the services by adding modifier NP to the usual procedure code.

#### 4.19 Evaluation and Management

##### 4.19.1 Payment Ground Rules for E/M Category

#### 4.19.1.1 General Guidelines

The E/M section is divided into broad categories such as office visits, hospital visits, and consultations. Most of the categories are further divided into two or more subcategories of E/M services. For example, there are two subcategories of office visits (new patient and established patient) and there are two subcategories of hospital visits (initial and subsequent). The subcategories of E/M services are further classified into levels of E/M services that are identified by specific codes. This classification is important because the nature of a physician's work varies by type of service, place of service, and the injured employee's status.

Physicians should include CPT codes for specific performance of diagnostic tests/studies for which specific CPT codes are available. These CPT codes should be reported separately, in addition to the appropriate E/M code.

#### 4.19.1.2 Definitions

Certain key words and phrases are used throughout the E/M section. The following definitions are intended to reduce the potential for differing interpretations and to increase the consistency of reporting by physicians in differing specialties.

##### 4.19.1.2.1 New and Established Patient

Solely for the purposes of distinguishing between a new and established patients, professional services are those face-to-face services rendered by a physician and reported by a specific CPT code(s). A new patient is one who has not received any professional services from the physician or another physician of the same specialty who belongs to the same group practice, with in the past three years.

An established patient is one who has received professional services from a physician or another physician of the same specialty who belongs to the same group practice, with the past three years.

##### 4.19.1.2.2 On-Call or Substitute Physician

In the instance where a physician is on call for or is covering for the authorized treating physician, the injured employee's encounter will be classified as it would have been by the physician who is not available.

##### 4.19.1.2.3 Emergency Situation

No distinction is made between new and established patients in the emergency room. Emergency room services should be reported for any patient (new or established) who presents for treatment in the emergency department.

##### 4.19.1.2.4 Concurrent Care

Concurrent care is the provision of similar service (e.g., hospital visits) to the same patient by more than one physician on the same day. When concurrent care is provided, no special reporting is required.

##### 4.19.1.2.5 Counseling

Counseling is a discussion with an injured employee and/or family concerning one or more of the following areas:

- Diagnostic results, impressions, and/or recommended diagnostic studies
- Prognosis
- Risks and benefits of management (treatment) options
- Instructions for management (treatment) and/or follow-up
- Importance of compliance with chosen management (treatment) options
- Risk factor reduction
- Injured employee and family education.

##### 4.19.1.2.6 Consultations

As defined in the CPT book, consultation is a type of service provided by a physician whose opinion or advice regarding evaluation and/or management of a specific problem is requested by another physician or appropriate source. Consultations are

reimbursable only to physicians with the appropriate specialty for the services provided. A consulting physician shall only initiate diagnostic and/or therapeutic services with approval from the authorized treating physician. Following a consultation, if the consulting physician assumes responsibility for management of all or any part of the injured employee's condition(s), the injured employee becomes an "established patient" (rather than follow-up consultation) under the care of the consulting physician.

#### 4.19.1.2.7 Time

The amount of time spent with a patient is a factor to be taken into consideration when selecting the appropriate E&M code. CPT guidelines are to be followed.

#### 4.19.2 Payment Modifiers for E/M Category

A modifier indicates that a service or procedure performed has been altered by some specific circumstance but has not changed its definition or code. The modifying circumstance shall be identified by the appropriate modifier following the procedure code. The two-digit modifier should be placed after the usual procedure number. If more than one modifier is used, place the "Multiple Modifiers" code 99 immediately after the procedure code. This indicates that one or more additional modifier codes will follow. Only certain modifiers in each of the categories (Evaluation and Management, Anesthesia, Surgery, Pathology/Laboratory, Radiology, General Medicine, and Physical Medicine) will be recognized for reimbursement purposes. It is understood that modifiers not only clarify the services performed, but that the fee may be adjusted accordingly based on the increase or decrease in service.

The modifiers listed below may differ from those published by the American Medical Association. Medical providers submitting workers' compensation billing shall use only the modifiers set out in the fee schedule. The following modifiers will be recognized for reimbursement by the fee schedule for Evaluation and Management (E/M) codes:

**24 Unrelated Evaluation and Management Service by the Same Physician during a Postoperative Period:** The physician may need to indicate that an E/M service was performed during a postoperative period for a reason(s) unrelated to the original procedure. This circumstance may be reported by adding modifier 24 to the appropriate level of E/M service.

**25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician on the Same Day of the Procedure or Other Service:** It may be necessary to indicate that on the day a procedure or service identified by a CPT code was performed, the patient's condition required a significant, separately identifiable E/M service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately E/M service is defined or substantiated by documentation that satisfies the relevant criteria for the respective E/M service to be reported (see Evaluation and Management Services Guidelines for instructions on determining level of E/M service). The E/M service may be prompted by the symptom or condition for which the procedure and/or service was provided. As such, different diagnoses are not required for reporting of the E/M service. Note: This modifier is not used to report an E/M service that resulted in a decision to perform surgery. See modifier 57. For significant, separately identifiable non-E/M services, see modifier 59.

**52 Reduced Services:** Under certain circumstances, a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances, the service provided can be identified by its usual procedure number and the addition of modifier 52, signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. Note: For hospital outpatient reporting of a previously scheduled procedure/service that is partially reduced or canceled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use). When reporting a reduced service, it is expected that the billed amount will be reduced by the provider. The amount of the reduction is at the discretion of the provider, but should reflect a level of reimbursement commensurate with the actual work done.



**53 Discontinued Procedure:** Under certain circumstances, the physician may elect to terminate a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code reported by the physician for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure prior to the patient's anesthesia induction and/or surgical preparation in the operating suite. For outpatient hospital/ambulatory surgery center (ASC) reporting of a previously scheduled procedure/service that is partially reduced or canceled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**57 Decision for Surgery:** An evaluation and management service that resulted in the initial decision to perform the surgery may be identified by adding modifier 57 to the appropriate level of E/M service.

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services, that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. Note: Modifier 59 should not be appended to an E/M service. To report a separate and distinct E/M service with a non-E/M service performed on the same date, see modifier 25.

#### 4.20 Anesthesia

##### 4.20.1 Introduction

~~4.20.1.1 The base units in this section have been determined on an entirely different basis from the relative values in other sections. A conversion factor applicable to this section is not applicable to any other section.~~

~~4.20.1.2 The American Society of Anesthesiologists' (ASA) Relative Value Guide™ 2008 is recognized as an appropriate assessment of current relative values for specific anesthesiology procedures. It is the basis for the assigned base units for CPT codes in the Anesthesia section of the Fee Schedule. As such, any changes to the base units in the subsequent versions of the ASA Relative Value Guide™ will be reflected under the base units for CPT codes in the Anesthesia section of the Fee Schedule will be updated accordingly.~~

~~4.20.1.31 Anesthesia services provided to employees pursuant to this chapter shall be equal to paid at eighty-five percent (85%) of actual charges for such services as of October 31, 2006, subject to adjustment as provided in this subsection. Verification that such billing is performed in compliance with this subsection shall be provided by each hospital to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the hospital by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of this section shall be reimbursed to the Department of Insurance by whose billing is audited 19 Del.C. §2322B.~~

~~4.20.1.42 The health care payment system as to Anesthesia will be adjusted yearly from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, and each year thereafter the Department of Labor shall make an automatic adjustment to the maximum payment pursuant to 19 Del.C. §2322B for anesthesia treatment, procedures and/or services in effect in January of that year. The Department of Labor shall increase or decrease the maximum payment by the percentage change of~~

increase or decrease in the Consumer Price Index—Urban, U.S. City Average, All Items, as published in the United States Bureau of Labor Statistics.

#### 4.20.2 Base Units

Base units are listed for most procedures. This value is determined by the complexity of the service and includes all usual anesthesia services except the time actively spent in anesthesia care and the modifying factors. The base units include preoperative and postoperative visits, the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring (ECG, temperature, blood pressure, oximetry, and other usual monitoring procedures). The basic anesthesia unit includes the routine follow-up care and observation (including recovery room observation and monitoring). When multiple surgical procedures are performed during the same period of anesthesia, only the highest base unit allowance of the various surgical procedures will be used.

#### 4.20.3 Time Units

Time begins when the anesthesiologist begins to prepare the patient for anesthesia care in the operating room or in an equivalent area. Time ends when the anesthesiologist is no longer in personal attendance, that is, when the patient may be safely placed under postoperative supervision. The anesthesia time units will be calculated in 15-minute intervals, or portions thereof, equaling one (1) time unit. No additional time units are allowed for recovery room time and monitoring once the patient has been safely turned over to the recovery room staff.

#### 4.20.42 Special Circumstances

##### 4.20.42.1 Physical Status Modifiers

Physical status modifiers are represented by the initial letter P followed by a single digit from one (1) to six (6) defined below:

##### Status Description Base Units

- P1 A normal healthy patient 0
- P2 A patient with mild systemic disease 0
- P3 A patient with severe systemic disease 1
- P4 A patient with severe systemic disease that is a constant threat to life 2
- P5 A moribund patient who is not expected to survive without the operation 3
- P6 A patient declared brain-dead whose organs are being removed for donor purposes 0

The above six levels are consistent with the American Society of Anesthesiologists' (ASA) ranking of patient physical status. Physical status is included in the CPT book to distinguish between various levels of complexity of the anesthesia service provided.

##### 4.20.42.2 Qualifying Circumstances

##### 4.20.42.2.1 More than one qualifying circumstance may be selected.

Many anesthesia services are provided under particularly difficult circumstances, depending on factors such as extraordinary condition of patient, notable operative conditions, and/or unusual risk factors. This section includes a list of important qualifying circumstances that significantly affect the character of the anesthesia service provided. These procedures would not be reported alone but would be reported as additional procedure numbers qualifying an anesthesia procedure or service.

**99100** Anesthesia for patient of extreme age, younger than one year and older than seventy (List separately in addition to code for primary anesthesia procedure)1

**99116** Anesthesia complicated by utilization of total body hypothermia (List separately in addition to code for primary anesthesia procedure)5

**99135** Anesthesia complicated by utilization of controlled hypotension (List separately in addition to code for primary anesthesia procedure)5

**99140** Anesthesia complicated by emergency conditions (specify conditions) (List separately in addition to code for primary anesthesia procedure) (An emergency is

defined as existing when delay in treatment of a patient would lead to a significant increase in the threat to life or body part.)<sup>2</sup>

4.20.42.2.2 Payers must utilize their medical consultants when there is a question regarding modifiers and/or special circumstances for anesthesia charges.

#### 4.20.53 Monitored Anesthesia Care

Monitored anesthesia care occurs when the attending physician requests that an anesthesiologist be present during a procedure. This may be to insure compliance with accepted procedures of the facility. Monitored anesthesia care includes pre-anesthesia exam and evaluation of the patient. The anesthesiologist must participate or provide medical direction for the plan of care. The anesthesiologist, resident, or nurse anesthetist must be in continuous physical presence and provide diagnosis and treatment of emergencies. This will also include noninvasive monitoring of cardiocirculatory and respiratory systems with administration of oxygen and/or intravenous administration of medications. Reimbursement will be the same as if general anesthesia had been administered (~~time units + base units~~).

#### 4.20.64 Reimbursement for Anesthesia Services

##### 4.20.64.1 Criteria for Reimbursement

Anesthesia services may be billed for any one of the three following circumstances:

4.20.64.1.1 An anesthesiologist provides total and individual anesthesia service.

4.20.64.1.2 An anesthesiologist directs a CRNA or AA.

4.20.64.1.3 Anesthesia provided by a CRNA or AA working independent of an anesthesiologist's supervision is covered under the following conditions:

- The service falls within the CRNA's or AA's scope of practice and scope of license as defined by law.
- The service is supervised by a licensed health care provider who has prescriptive authority in accordance with the clinical privileges individually granted by the hospital or other health care organization.

##### 4.20.64.2 Reimbursement

4.20.6.2.1 ~~The maximum reimbursement allowance for anesthesia is calculated by adding the base unit value, the number of time units, any applicable modifier and/or unusual circumstances units, and multiplying the sum by a dollar amount (conversion factor) allowed per unit.~~

4.20.64.2.2<sup>1</sup> Reimbursement includes the usual pre- and postoperative visits, the care by the anesthesiologist during surgery, the administration of fluids and/or blood, and the usual monitoring services. Unusual forms of monitoring, such as central venous, intra-arterial, and Swan-Ganz monitoring, may be reimbursed separately.

4.20.64.2.3<sup>2</sup> When an unlisted service or procedure is provided, the value should be substantiated with a report. Unlisted services are identified in this Fee Schedule as by report.

4.20.64.2.4<sup>3</sup> When it is necessary to have a second anesthesiologist, the necessity should be substantiated. ~~The second anesthesiologist will receive five base units + time units (calculation of total anesthesia value).~~

4.20.64.2.5<sup>4</sup> Payment for covered anesthesia services is as follows:

- When the anesthesiologist provides an anesthesia service directly, payment will be made in accordance with the billing reimbursement rules of this Fee Schedule.
- When an anesthesiologist provides medical direction to the CRNA or AA providing the anesthesia service, then the reimbursement will be divided between the two of them at fifty percent (50%).
- When the CRNA or AA provides the anesthesia service directly, then payment will be the lesser of the billed charge or eighty percent (85%) of the maximum allowable listed in the Fee Schedule for that procedure.

4.20.64.2.6<sup>5</sup> Anesthesiologists, CRNAs, and AAs must bill their services with the appropriate modifiers to indicate which one provided the service. Bills NOT properly coded may

cause a delay or error in reimbursement by the payer. Application of the appropriate modifier to the bill for service is the responsibility of the provider, regardless of the place of service. Modifiers are as follows:

**AA** Anesthesiologist services performed personally by an anesthesiologist

**AD** Medical supervision by a physician: more than four concurrent anesthesia procedures

**QK** Medical direction of two, three, or four concurrent anesthesia procedures involving qualified individuals (CRNA or AA) by an anesthesiologist

**QX** CRNA or AA service: with medical direction by an anesthesiologist

**QY** Medical direction of one certified registered nurse anesthetist (CRNA or AA) by an anesthesiologist

**QZ** CRNA service: without medical direction by an anesthesiologist

#### 4.20.75 Anesthesia Modifiers

All anesthesia services are reported by using the anesthesia five-digit procedure codes. The ~~basic value fee~~ for most procedures may be modified under certain circumstances as listed below. When applicable, the modifying circumstances should be identified by the addition of the appropriate modifier (including the hyphen) after the usual anesthesia code. Certain modifiers require a special report for clarification of services provided.

Modifiers commonly used in anesthesia are as follows:

**22 Unusual Procedural Services:** When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier 22 to the usual procedure number. A report may also be appropriate.

**23 Unusual Anesthesia:** Occasionally, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding modifier 23 to the procedure code of the basic service.

**32 Mandated Services:** Services related to mandated consultation and/or related services (eg, third-party payer, governmental, legislative, or regulatory requirement) may be identified by adding modifier 32 to the basic procedure.

**53 Discontinued Procedure:** Under certain circumstances the physician may elect to terminate a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well-being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code reported by the physician for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure prior to the patient's anesthesia induction and/or surgical preparation in the operating suite.

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. Note: Modifier 59 should not be appended to an E/M service with a non-E/M service with a non-E/M service performed on the same date, see modifier 25.

**AA Anesthesia Services Performed Personally by the Anesthesiologist:** Report modifier AA when the anesthesia services are personally performed by an anesthesiologist.

**AD Medical Supervision by a Physician:** More Than Four Concurrent Anesthesia Procedures: Report modifier AD when the anesthesiologist supervises more than four concurrent anesthesia procedures.

**QK Medical Direction of Two, Three, or Four Concurrent Anesthesia Procedures Involving Qualified Individuals:** Report modifier QK when the anesthesiologist supervises two, three, or four concurrent anesthesia procedures.

**QX CRNA or AA Service with Medical Direction by a Physician:** Regional or general anesthesia provided by the CRNA or AA with medical direction by a physician may be reported by adding modifier QX.

**QY Medical Supervision by Physician of One CRNA or AA:** Report modifier QY when the anesthesiologist supervises one CRNA or AA.

**QZ CRNA or AA Service without Medical Direction by a Physician:** Regional or general anesthesia provided by the CRNA or AA without medical direction by a physician may be reported by adding modifier QZ.

#### 4.20.86 Moderate (Conscious) Sedation

- 4.20.86.1 CPT Codes that Include Moderate (Conscious) Sedation - Moderate (conscious) sedation is a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.
- 4.20.86.2 Moderate sedation does not include minimal sedation (anxiolysis), deep sedation or monitored anesthesia care (00100-01999).
- 4.20.86.3 When providing moderate sedation, the following services are included and NOT reported separately:
  - 4.20.86.3.1 Assessment of the patient (not included in intraservice time);
  - 4.20.86.3.2 Establishment IV access and fluids to maintain patency, when performed;
  - 4.20.86.3.3 Administration of agent(s);
  - 4.20.86.3.4 Maintenance of sedation;
  - 4.20.86.3.5 Monitoring of oxygen saturation, heart rate and blood pressure; and
  - 4.20.86.3.6 Recovery (not included in intraservice time).
- 4.20.86.4 Intraservice time starts with the administration of the sedation agent(s), require continuous face-to-face attendance, and ends at the conclusion of personal contact by the physician providing the sedation.
- 4.20.86.5 Do not report 99143-99150 in conjunction with 94760-94762.
- 4.20.86.6 Do not report 99143-99145 in conjunction with codes listed in Appendix G. Do not report 99148-99150 in conjunction with codes listed in Appendix G when performed in the non-facility setting.

#### **Appendix G from the American Medical Association's 2009 CPT Codes Summary of CPT Codes That Include Moderate (Conscious) Sedation**

**Note:** Because these codes include moderate sedation, it is not appropriate for the same physician to report both the service and the sedation codes 99143-99145.

If a physician other than the treating physician provides moderate sedation in a facility for one of the procedures on this list, the other physician should report codes 99148-99150. If this arrangement occurs in the provider's office, these codes would not be reported.

CPT codes 00100-01999 can be used to report associated anesthesia services regardless of whether the procedure is on this list.

19298	20982	22526	22527	31615	31620	31622	31623	31624	31625
31628	31629	31635	31645	31646	31656	31725	32201	32550	32551
33010	33011	33206	33207	33208	33210	33211	33212	33213	33214
33216	33217	33218	33220	33222	33223	33233	33234	33235	33240
33241	33244	33249	35470	35471	35472	35473	35474	35475	35476
36555	36557	36558	36560	36561	36563	36565	36566	36568	36570
36571	36576	36578	36581	36582	36583	36585	36590	36870	37184
37185	37186	37187	37188	37203	37210	37215	37216	43200	43201
43202	43204	43205	43215	43216	43217	43219	43220	43226	43227
43228	43231	43232	43234	43235	43236	43237	43238	43239	43240
43241	43242	43243	43244	43245	43246	43247	43248	43249	43250
43251	43255	43256	43257	43258	43259	43260	43261	43262	43263
43264	43265	43267	43268	43269	43271	43272	43273	43453	43456
43458	44360	44361	44363	44364	44365	44366	44369	44370	44372
44373	44376	44377	44378	44379	44380	44382	44383	44385	44386
44388	44389	44390	44391	44392	44393	44394	44397	44500	44901
45303	45305	45307	45308	45309	45315	45317	45320	45321	45327
45332	45333	45334	45335	45337	45338	45339	45340	45341	45342
45345	45355	45378	45379	45380	45381	45382	45383	45384	45385
45386	45387	45391	45392	47011	48511	49021	49041	49061	49440
49441	49442	49446	50021	50382	50384	50385	50386	50387	50592
50593	58823	66720	69300	77600	77605	77610	77615	92953	92960
92961	92973	92974	92975	92978	92979	92980	92981	92982	92984
92986	92987	92995	92996	93312	93313	93314	93315	93316	93317
93318	93501	93505	93508	93510	93511	93514	93524	93526	93527
93528	93529	93530	93539	93540	93541	93542	93543	93544	93545
93555	93556	93561	93562	93571	93572	93609	93613	93615	93616
93618	93619	93620	93621	93622	93624	93640	93641	93642	93650
93651	93652								

4.20.86.7 When a second physician other than the healthcare professional performing the diagnostic or therapeutic services provides moderate sedation in the facility setting (e.g., hospital, outpatient hospital/ambulatory surgery center, skilled nursing facility) for the procedures listed in G, the second physician reports 99148-99150. However, for the circumstance in which these services are performed by the second physician in the non-facility setting (e.g., physician office, freestanding imaging center), codes 99148-99150 are not reported.

4.20.86.8 Some CPT codes include moderate (conscious) sedation as an inherent component of the procedure. These are identified in the CPT book with a K symbol. Because these services include moderate (conscious) sedation, special rules apply when reporting the moderate (conscious) sedation CPT codes 99143–99150. Moderate (conscious) sedation services provided by the same physician performing the diagnostic or therapeutic service that the sedation supports and requiring the presence of a second independent trained observer for monitoring purposes (CPT codes 99143–99145) may not be reported in conjunction with CPT codes identified with a K symbol and listed in Appendix G.

4.20.86.9 In rare instances a second physician other than the physician performing the diagnostic or therapeutic service may be required to provide the moderate (conscious) sedation service (CPT codes 99148–99150). When these sedation services are performed in a facility setting (e.g., hospital, outpatient hospital/ambulatory surgery center, skilled nursing facility), the second physician may report the moderate (conscious) sedation service with CPT code(s) 99148–99150 in conjunction with CPT codes identified with a K symbol and listed in Appendix G. However, when the second physician performs the moderate (conscious) sedation services in a non facility setting (e.g., physician office, freestanding imaging center) CPT code(s) 99148–99150 should not be reported separately and are not in **Delaware Workers' Compensation Medical Fee Schedule**. CPT code(s) 99148–99150 should not be reported separately and are not reimbursable when performed in conjunction with CPT codes identified with a K symbol and listed in Appendix G. See Appendix G in *CPT 2008* for a list of CPT codes that includes moderate (conscious) sedation.

## 4.21 Surgery

### 4.21.1 General Guidelines

#### 4.21.1.1 Global Reimbursement

The reimbursement allowances for surgical procedures are based on a global reimbursement concept that covers performing the basic service and the normal range of care required after surgery.

##### 4.21.1.1.1 Global reimbursement includes:

- The operation per se
- Local infiltration, metacarpal/metatarsal/digital block or topical anesthesia
- Immediate postoperative care, including dictating operative notes, talking with the family and other physicians
- Writing orders
- Evaluating the patient in the post anesthesia recovery area
- Normal, uncomplicated follow-up care for the time periods indicated in the follow-up days (FUD) column to the right of each procedure code. The number in that column establishes the days during which no additional reimbursement is allowed for the usual care provided following surgery, absent complications or unusual circumstances.
- The maximum reimbursement allowances cover all normal postoperative care, including the removal of sutures by the surgeon or associate. Follow-up days are specified by procedure.

##### 4.21.1.1.2 Follow-up days listed are for 0, 10, or 90 days and are listed in the Fee Schedule as 000, 010, or 090.

#### 4.21.1.2 Follow-up Care for Diagnostic Procedures

Follow-up care for diagnostic procedures (e.g., endoscopy, arthroscopy, injection procedures for radiography) includes only the care related to recovery from the diagnostic procedure itself. Care of the condition for which the diagnostic procedure was performed or of other concomitant conditions is not included and may be listed separately.

#### 4.21.1.3 Follow-up Care for Therapeutic Surgical Procedures

Follow-up care for therapeutic surgical procedures includes only care that is usually part of the surgical procedure. Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring additional services should be reported separately.

#### 4.21.1.4 Separate Procedures

Some of the procedures or services listed in the CPT codebook that are commonly carried out as an integral component of a total service or procedure have been identified by the inclusion of the term “separate procedure”. The codes designated as “separate procedure” should not be reported in addition to the code for the total procedure or service of which it is considered an integral component.

#### 4.21.1.5 **Biopsy Procedures**

A biopsy of the skin and another surgical procedure performed on the same lesion on the same day must be billed as one procedure.

#### 4.21.1.6 **Repair of Nerves, Blood Vessels, and Tendons with Wound Repairs**

The repair of nerves, blood vessels, and tendons is usually reported under the appropriate system. The repair of associated wounds is included in the primary procedure unless it qualifies as a complex wound, in which case modifier 51 may be applied. Simple exploration of nerves, blood vessels, and tendons exposed in an open wound is also considered part of the essential treatment of the wound closure and is not a separate procedure unless appreciable dissection is required.

#### 4.21.1.7 **Suture Removal**

Billing for suture removal by the operating surgeon is not appropriate as this is considered part of the global fee.

#### 4.21.1.8 **Supplies and Materials**

Supplies and materials provided by the physician (e.g., sterile trays/drugs) over and above those usually included with the office visit may be listed separately using CPT code 99070 or specific HCPCS Level II codes.

#### 4.21.1.9 **Implants**

Implants of any type are to be billed as part of the hospital or ASC billing. Bone morphogenetic protein is an FDA approved biologic fusion and fracture healing aid. Its use in spine and fracture surgery represents the standard of care in our community, and in both on-label and off-label applications is accepted and to be reimbursed to the facility providing the implant, at rates consistent with implant payment rates determined under the respective ASC and hospital reimbursement guidelines.

#### 4.21.1.10 **Aspirations and Injections**

Puncture of a cavity or joint for aspiration followed by injection of a therapeutic agent is one procedure and should be billed as such.

#### 4.21.1.11 **Surgical Assistant**

4.21.1.11.1 **Physician surgical assistant** — For the purpose of reimbursement, a physician who assists at surgery is reimbursed as a surgical assistant. Assistant surgeons should use modifier 80 and are allowed twenty percent (20%) of the maximum reimbursement allowance (MRA) for the procedure(s).

#### 4.21.1.11.2 **Registered Nurse Surgical Assistant or Physician Assistant**

- A physician assistant (PA), or registered nurses (NP) who have completed an approved first assistant training course, may be allowed a fee when assisting a surgeon in the operating room (O.R.).
- The maximum reimbursement allowance for the physician assistant or the registered nurse first assistant (RNFA) is twenty percent (20%) of the surgeon's fee for the procedure(s) performed.
- Under no circumstances will a fee be allowed for an assistant surgeon and a physician assistant or RNFA at the same surgical encounter.
- Registered nurses on staff in the O.R. of a hospital, clinic, or outpatient surgery center do not qualify for reimbursement as an RNFA.

#### 4.21.1.12 **Operative Reports**

An operative report must be submitted to the payer before reimbursement can be made for the surgeon's or assistant surgeon's services.

#### 4.21.1.13 **Needle Procedures**

Needle procedures (lumbar puncture, thoracentesis, jugular or femoral taps, etc.) should be billed in addition to the medical care on the same day.

#### 4.21.1.14 **Therapeutic Procedures**



Therapeutic procedures (injecting into cavities, nerve blocks, etc.) (CPT codes 20526–20610, 64400, and 64450) may be billed in addition to the medical care for a new patient. (Use appropriate level of service plus injection.) In follow-up cases for additional therapeutic injections and/or aspirations, an office visit is only indicated if it is necessary to re-evaluate the patient. In this case, a minimal visit may be listed in addition to the injection. Documentation supporting the office visit charge must be submitted with the bill to the payer. This is clarified in the treatment guidelines in a more specific manner. Trigger point injection is considered one procedure and reimbursed as such regardless of the number of injection sites. Two codes are available for reporting trigger point injections. Use 20552 for injection(s) of single or multiple trigger point(s) in one or two muscles or 20553 when three or more muscles are involved.

**4.21.1.15 Anesthesia by Surgeon**

In certain circumstances it may be appropriate for the attending surgeon to provide regional or general anesthesia. Anesthesia by the surgeon is considered to be more than local or digital anesthesia. Identify this service by adding modifier 47 to the surgical procedure code.

**4.21.1.16 Therapeutic/Diagnostic Injections**

Injections are considered incidental to the procedure when performed with a related invasive procedure.

**4.21.1.17 Intervertebral Biomechanical Device(s) and Use of Code 22851**

Code 22851 describes the application of an intervertebral biomechanical device to a vertebral defect or interspace. Code 22851 should be listed in conjunction with a primary procedure without the use of modifier 51. The use of 22851 is limited to one instance per single interspace or single vertebral defect regardless of the number of devices applied and infers additional qualifying training, experience, sizing, and/or use of special surgical appliances to insert the biomechanical device. Qualifying devices include manufactured synthetic or allograft biomechanical devices, or methyl methacrylate constructs, and are not dependant on a specific manufacturer, shape, or material of which it is constructed. Qualifying devices are machine cut to specific dimensions for precise application to an intervertebral defect. (For example, the use of code 22851 would be appropriate during a cervical arthrodesis (22554) when applying a synthetic alloy cage, a threaded bone dowel, or a machine cut hexahedron cortical, cancellous, or corticocancellous allograft biomechanical device. Surgeons utilizing generic non-machined bony allografts or autografts are referred to code sets 20930–20931, 20936–20938 respectively.)

**4.21.1.18 Spinal and Cranial Services Require Additional Surgeon**

Certain spinal and cranial procedures require the services of an additional surgeon of a different specialty to gain exposure to the spine and brain. These typically are vascular, thoracic and ENT. The surgical exposure portion of these procedures will be billed, dictated and followed separately by the exposure surgeon for their portion of the procedure. Since the exposure surgeon is required based upon the type of surgery recommended by the treating surgeon, it is intended that an approval for the primary procedure includes the approach, and no separate pre-approval or pre-authorization is required. The exposure surgeon is bound by the fee schedule regarding reimbursement and all other rules delineated above.

**4.22 Ambulatory Surgery Centers**

**4.22.1 Definition**

For purposes of this section of the Fee Schedule, "ambulatory surgery center" means an establishment with an organized medical staff of physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures; with continuous physicians and registered nurses on site when the facility is open. An ambulatory surgery center may be a freestanding facility or may be attached to a hospital facility. For purposes

of Workers' Compensation reimbursement to ASCs, the facility must be an approved Medicare ASC, or certified by AAA.

#### 4.22.2 Coding and Billing Rules

- 4.22.2.1 Facility fees for ambulatory surgery must be billed on the UB-04 form.
- 4.22.2.2 The CPT/HCPCS code(s) of the procedure(s) performed determines the reimbursement for the facility fee. Report all procedures performed.
- 4.22.2.3 The payment rate for an ASC surgical procedure includes all facility services directly related to the procedure performed on the day of surgery. Facility services include:
  - Nursing and technician services
  - Use of the facility
  - Drugs, biologicals, surgical dressings, splints, casts and equipment directly related to the provision of the surgical procedure
  - Materials for anesthesia
  - Administration, record keeping and housekeeping items and services.
- 4.22.2.4 Disposable injection supplies under \$75 are included in the facility fee. Those over \$75 are reimbursed at 85% of the ASC fee for the item.
- 4.22.2.5 Separate payment is not made for the following services that are directly related to the surgery:
  - Pharmacy
  - Medical/surgical supplies other than 5 and 6 above in this section,
  - Sterile supplies
  - Operating room services
  - Ambulatory surgical care
  - Recovery room
  - Treatment or Observation room
- 4.22.2.6 Facility fees do not include physician services, x-rays, diagnostic procedures, laboratory procedures, CRNA or anesthesia physician services, prosthetic devices, ambulance services, braces, artificial limbs or DME for use in the patient's home. These items will be reimbursed according to Fee Schedule.

#### 4.22.3 Modifiers Approved for Ambulatory Surgery Center (ASC) Hospital Outpatient Use

**25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician on the Same Day of the Procedure or Other Service:** It may be necessary to indicate that on the day a procedure or service identified by a CPT code was performed, the patient's condition required a significant, separately identifiable E/M service provided above or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately E/M service is defined or substantiated by documentation that satisfies the relevant criteria for the respective E/M service to be reported (see Evaluation and Management Services Guidelines for I instructions on determining level of E/M service). The E/M service may be prompted by the symptom or condition for which the procedure and/or service was provided. As such, different diagnoses are not required for reporting of the E/M service on the same date. This circumstance may be reported adding modifier 25 to the appropriate level E/M code. Note: This modifier is not used to report an E/M service that resulted in a decision to perform surgery. See modifier 57. For significant, separately identifiable non-E/M services, see modifier 59.

**27 Multiple Outpatient Hospital E/M Encounters on the Same Date:** For hospital outpatient reporting purposes, utilization of hospital resources related to separate and distinct E/M encounters performed in multiple outpatient hospital settings on the same date may be reported by adding modifier 27 to each appropriate level outpatient and/or emergency department E/M code(s). This modifier provides a means of reporting circumstances involving evaluation and management services provided by physician(s) in more than one (multiple) outpatient hospital setting(s) (e.g., hospital emergency department, clinic). **Note:** This modifier is not to be used for physician reporting of multiple E/M services performed by the same physician on the same date.

For physician reporting of all outpatient evaluation and management services provided by the same physician on the same date and performed in multiple outpatient setting(s) (e.g., hospital emergency department, clinic), see Evaluation and Management, Emergency Department, or Preventive Medicine Services codes.

**50 Bilateral Procedure:** Unless otherwise identified in the listings, bilateral procedures that are performed at the same operative session should be identified by adding modifier 50 to the appropriate five digit code.

**52 Reduced Services:** Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's discretion. Under these circumstances the service provided can be identified by its usual procedure number and the addition of modifier 52, signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. **Note:** For hospital outpatient reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**58 Staged or Related Procedure or Service by the Same Physician During the Postoperative Period:** It may be necessary to indicate that the performance of a procedure or service during the postoperative period was (a) planned or anticipated (staged); (b) more extensive than the original procedure; or (c) for therapy following a surgical procedure. This circumstance may be reported by adding modifier 58 to the staged or related procedure. **Note:** For treatment of a problem that requires a return to the operating or procedure room (e.g., unanticipated clinical condition), see modifier 78.

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. **Note:** Modifier 59 should not be appended to an E/M service with a non-E/M service with a non-E/M service performed on the same date, see modifier 25.

**73 Discontinued Out-Patient Hospital/ Ambulatory Surgery Center (ASC) Procedure Prior to the Administration of Anesthesia:** Due to extenuating circumstances or those that threaten the well-being of the patient, the physician may cancel a surgical or diagnostic procedure subsequent to the patient's surgical preparation (including sedation when provided, and being taken to the room where the procedure is to be performed), but prior to the administration of anesthesia (local, regional block(s) or general). Under these circumstances, the intended service that is prepared for but cancelled can be reported by its usual procedure number and the addition of modifier 73. **Note:** The elective cancellation of a service prior to the administration of anesthesia and/or surgical preparation of the patient should not be reported. For physician reporting of a discontinued procedure, see modifier 53.

**74 Discontinued Out-Patient Hospital/ Ambulatory Surgery Center (ASC) Procedure After Administration of Anesthesia:** Due to extenuating circumstances or those that threaten the well-being of the patient, the physician may terminate a surgical or diagnostic procedure after the administration of anesthesia (local, regional block(s), general) or after the procedure was started (incision made, intubation started, scope inserted, etc). Under these circumstances, the procedure started but terminated can be reported by its usual procedure number and the addition of modifier 74. **Note:** The elective cancellation of a service prior to the administration of anesthesia and/or surgical preparation of the patient should not be reported. For physician reporting of a discontinued procedure, see modifier 53.

**76 Repeat Procedure or Service by Same Physician:** It may be necessary to indicate that a procedure or service was repeated subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure/service.

**77 Repeat Procedure by Another Physician:** The physician may need to indicate that a basic procedure or service performed by another physician had to be repeated. This situation may be reported by adding modifier 77 to the repeated procedure/service.

**78 Unplanned Return to the Operating/Procedure Room by the Same Physician Following Initial Procedure for a Related Procedure During the Postoperative Period:** It may be necessary to indicate that another procedure was performed during the postoperative period of the initial procedure (unplanned procedure following initial procedure). When this procedure is related to the first and require the use of an operating or procedure room, it may be reported by adding modifier 78 to the related procedure. (For repeat procedures, see modifier 76.)

**79 Unrelated Procedure or Service by the Same Physician During the Postoperative Period:** The physician may need to indicate that the performance of a procedure or service during the postoperative period was unrelated to the original procedure. This circumstance may be reported by using modifier 79. (For repeat procedures on the same day, see modifier 76.)

**91 Repeat Clinical Diagnostic Laboratory Test:** In the course of treatment of the patient, it may be necessary to repeat the same laboratory test on the same day to obtain subsequent (multiple) test results. Under these circumstances, the laboratory test performed can be identified by its usual procedure number and the addition of modifier 91. **Note:** This modifier may not be used when tests are rerun to confirm initial results; due to testing problems with specimens or equipment; or for any other reason when a normal, one-time, reportable result is all that is required. This modifier may not be used when other code(s) describe a series of test results (e.g., glucose tolerance tests, evocative/suppression testing). This modifier may only be used for laboratory test(s) performed more than once on the same day on the same patient.

#### 4.23 Multiple Procedures

##### 4.23.1 Multiple Procedure Reimbursement Rules

Multiple procedures performed during the same operative session at the same operative site are reimbursed as follows:

- One hundred percent (100%) of the allowable fee for the primary procedure
- One hundred percent (100%) of the allowable fee for the second and subsequent procedures

##### 4.23.2 Bilateral Procedure Reimbursement Rule

Physicians and staff are sometimes confused by the definition of bilateral. Bilateral procedures are identical procedures (i.e., use the same CPT code) performed on the same anatomic site but on opposite sides of the body.

##### 4.23.3 Multiple Procedure Billing Rules

- The primary procedure, which is defined as the procedure with the highest RVU, must be billed with the applicable CPT code.
- The second or lesser or additional procedure(s) may be billed by adding modifier 51 to the codes unless the procedure(s) is exempt from modifier 51 or qualifies as an add-on code.

#### 4.24 Repair of Wounds

##### 4.24.1 Definitions

Wound repairs are classified as simple, intermediate, or complex.

**4.24.1.1 Simple repair.** Simple repair is repair of superficial wounds involving primarily epidermis and dermis or subcutaneous tissues without significant involvement of deeper structures and simple one layer closure/suturing. This includes local anesthesia and chemical or electro cauterization of wounds not closed.

**4.24.1.2 Intermediate repair.** Intermediate repair is repair of wounds that requires layered closure of one or more of the subcutaneous tissues and superficial (non-muscle) fascia, in

addition to the skin (epidermal and dermal) closure. Single-layer closure of heavily contaminated wounds that require extensive cleaning or removal of particulate matter also constitutes intermediate repair.

- 4.24.1.3 **Complex repair.** Complex repair is repair of wounds requiring more than layered closure, scar revision, debridement (e.g., traumatic lacerations or avulsions), extensive undermining, stents or retention sutures. It may include creation of the defect and necessary preparation for repairs or the debridement and repair of complicated lacerations or avulsions.

#### 4.24.2 Reporting

The following instructions are for reporting services at the time of the wound repair:

- 4.24.2.1 The repaired wound(s) should be measured and recorded in centimeters, whether curved, angular, or stellate.
- 4.24.2.2 When multiple wounds are repaired, add together the lengths of those in the same classification (see above) and anatomical grouping and report as a single item. When more than one classification of wound is repaired, list the more complicated as the primary procedure and the less complicated as the secondary procedure using modifier 51.
- 4.24.2.3 Debridement is considered a separate procedure only when gross contamination requires prolonged cleansing, when appreciable amounts of devitalized or contaminated tissue are removed, or when debridement is carried out separately without immediate primary closure (extensive debridement of soft tissue and/or bone).
- 4.24.2.4 Report involvement of nerves, blood vessels, and tendons under the appropriate system (nervous, musculoskeletal, etc.) for repair. The repair of these wounds is included in the fee for the primary procedure unless it qualifies as a complex wound, in which case modifier 51 applies.
- 4.24.2.5 Simple ligation of vessels in an open wound is considered part of any wound closure, as is simple exploration of nerves, blood vessels, or tendons.
- 4.24.2.6 Adjacent tissue transfers, flaps and grafts include such procedures as Z-plasty, W-plasty, V-4-plasty or rotation flaps. Reimbursement is based on the size of the defect. Closing the donor site with a skin graft is considered an additional procedure and will be reimbursed in addition to the primary procedure. Excision of a lesion prior to repair by adjacent tissue transfer is considered "bundled" into the tissue transfer procedure and is not reimbursed separately.
- 4.24.2.7 Wound exploration codes should not be billed with codes that specifically describe a repair to major structure or major vessel. The specific repair code supersedes the use of a wound exploration code.

#### 4.25 Musculoskeletal System

##### 4.25.1 Casting and Strapping

This applies to severe muscle sprains or strains that require casting or strapping.

- 4.25.1.1 Initial (new patient) treatment for soft tissue injuries must be billed under the appropriate office visit code.
- 4.25.1.2 When a cast or strapping is applied during an initial visit, supplies and materials (e.g., stockinet, plaster, fiberglass, ace bandages) may be itemized and billed separately using the appropriate HCPCS Level II code.
- 4.25.1.3 When initial casting and/or strapping is applied for the first time during an established patient visit, reimbursement may be made for the itemized supplies and materials in addition to the appropriate established patient visit.
- 4.25.1.4 Replacement casts or strapping provided during a follow-up visit (established patient) includes reimbursement for the replacement service as well as the removal of casts, splints, or strapping. If a cast is damaged or destroyed and must be replaced, the supplies and the office visit are reimbursed. Office notes should substantiate medical necessity of

the visit. Cast supplies may be billed using the appropriate HCPCS Level II code and reimbursed separately.

#### **4.25.2 Fracture Care**

- 4.25.2.1 Fracture care is a global service. It includes the examination, restoration or stabilization of the fracture, application of the first cast, and cast removal. Casting material is not considered part of the global package and may be reimbursed separately. It is inappropriate to bill an office visit since the reason for the encounter is for fracture care. However, if the patient requires surgical intervention, additional reimbursement can be made for the appropriate E/M code to properly evaluate the patient for surgery. Use modifier 57 with the E/M code.
- 4.25.2.2 Reimbursement for fracture care includes the application and removal of the first cast or traction device only. Replacement casting during the period of follow-up care is reimbursed separately.
- 4.25.2.3 The phrase "with manipulation" describes reduction of a fracture.
- 4.25.2.4 Re-reduction of a fracture performed by the primary physician may be identified by the addition of modifier 76 to the usual procedure code to indicate "repeat procedure" by the same physician.
- 4.25.2.5 The term "complicated" appears in some musculoskeletal code descriptions. It implies an infection occurred or the surgery took longer than usual. Be sure the medical record documentation supports the "complicated" descriptor to justify reimbursement.

#### **4.25.3 Arthroscopy**

**Note:** Surgical arthroscopy always includes a diagnostic arthroscopy. Only in the most unusual case is an increased fee justified because of increased complexity of the intra-articular surgery performed.

- 4.25.3.1 Diagnostic arthroscopy should be billed at fifty percent (50%) when followed by open surgery.
- 4.25.3.2 Diagnostic arthroscopy is not billed when followed by arthroscopic surgery.
- 4.25.3.3 If there are only minor findings that do not confirm a significant preoperative diagnosis, the procedure should be billed as a diagnostic arthroscopy.

#### **4.25.4 Arthrodesis Procedures**

Many revisions have occurred in CPT coding for arthrodesis procedures. References to bone grafting and fixation are now procedures which are listed and reimbursed separately from the arthrodesis codes. To help alleviate any misunderstanding about when to code a discectomy in addition to an arthrodesis, the statement "including minimal discectomy" to prepare interspace has been added to the anterior interbody technique. If the disk is removed for decompression of the spinal cord, the decompression should be coded and reimbursed separately.

#### **4.25.5 External Spinal Stimulators Post Fusion**

The following criteria is established for the medically accepted standard of care when determining applicability for the use of an external spinal stimulator.

- 4.25.5.1 Patient has had a previously failed spinal fusion, and/or
- 4.25.5.2 Patient is scheduled for revision or repair of pseudo arthrosis, and/or
- 4.25.5.3 The patient smokes greater than a pack of cigarettes per day and is scheduled for spinal fusion
- 4.25.5.4 The patient is metabolically in poor health, with other medical comorbidities such as diabetes, Rheumatoid arthritis, lupus or other illnesses requiring oral steroids or cytotoxic medications.
- 4.25.5.5 Pre certification is required for use of the external spinal stimulator if the planned use falls outside the above indications.

#### **4.25.6 Carpal Tunnel Release**

The following intra operative services are included in the global service package for carpal tunnel release and should not be reported separately and do not warrant additional reimbursement:

- Surgical approach
- Isolation of neurovascular structures
- Video imaging
- Stimulation of nerves for identification
- Application of dressing, splint, or cast
- Tenolysis of flexor tendons
- Flexor tenosynovectomy
- Excision of lipoma of carpal canal
- Division of transverse carpal ligament
- Use of endoscopic equipment
- Placement and removal of surgical drains or suction device
- Closure of wound

#### 4.26 Radiology

##### 4.26.1 Payment Ground Rules for Diagnostic and Therapeutic Radiological Services

###### 4.26.1.1 General Guidelines

- 4.26.1.1.1 The maximum allowable payment for health care treatment and procedures shall be the lesser of the health care provider's actual charges or ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the service or treatment is rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.
- 4.26.1.1.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85"), which actual charge will be fixed as of 10/31/06 and subsequent to such date will be subject to verification, audit and/or review by the Department of Insurance. Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited.
- 4.26.1.1.3 ~~The payment system will be adjusted yearly from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, based on percentage changes to the Consumer Price Index Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics pursuant to 19 Del.C. §2322B(14).~~
- 4.26.1.1.4 The maximum allowed rate column for a radiological procedure includes the professional component (PC) and the technical component (TC). Under no circumstances shall the maximum allowed rate for a procedure be more than the combined value of the TC and the PC. This value is applicable in any situation in which a single charge is made to include both professional services and the technical cost of providing that service. Identification of a procedure without modifier 26 indicates that the charge includes both the "professional" and the "technical" components.
- 4.26.1.1.5 The PC fee amount represents the value of the professional radiological services of the physician. This component is applicable in any situation in which the physician submits a bill for these professional services only. It does not include the cost of personnel, materials, space, equipment, or other facilities.
- 4.26.1.1.6 A written report, signed by the interpreting physician, is considered an integral part of a radiological procedure or interpretation and shall not be reimbursed separately. To identify a charge for the PC, use the five-digit CPT procedure code followed by

modifier 26. If a “0” fee amount appears in the PC column, the procedure is assumed to be purely technical in nature and no PC charge will be allowed.

- 4.26.1.1.7 The TC includes the charges for personnel, materials, including ionic contrast media and drugs, film or xerography, space, equipment, and other facility resources. The technical component maximum allowable reimbursement excludes radioisotope cost. To identify a charge for the TC only, use the procedure code followed by modifier TC.
- 4.26.1.1.8 A complete examination includes all of the necessary views for optimal examination of the body part for the suspected condition. If the reimbursement of multiple single views exceeds the cost of a complete examination, reimbursement shall be based on the complete examination value.
- 4.26.1.2 **Definitions and items unique to radiology are listed below:**
  - 4.26.1.2.1 Noninvasive/interventional diagnostic imaging includes standard radiographs, single or multiple views, contrast studies, computerized tomography, and magnetic resonance imaging. In the event that radiographs have to be repeated in the course of a radiographic encounter due to substandard quality, only one unit of service for the code can be billed.
  - 4.26.1.2.2 Interventional/invasive diagnostic imaging—When a contrast can be administered orally (upper GI) or rectally (barium enema), the administration is included as part of the procedure and no administration service is billed. When contrast material is parenterally administered, whether the timing of the injection has to correlate with the procedure or not (e.g., IVP, CT scans, gadolinium), the administration and the injection (e.g., CPT codes 36000, 36406, 36410, and 90772–90774) are included in the contrast studies.
- 4.26.1.3 **Subject Listings**

Subject listings apply when radiological services are performed by or under the responsible supervision of a physician.

  - 4.26.1.3.1 **Supervision and Interpretation**

When two physicians perform a procedure, the radiological portion of the procedure is designated as “radiological supervision and interpretation.” When a physician performs both the procedure and provides imaging supervision and interpretation, a combination of CPT procedure codes outside the 70000 series and imaging supervision and interpretation codes are to be used. Note: The Radiological Supervision and Interpretation codes are not applicable to the radiation oncology subsection.
  - 4.26.1.3.2 **Review of Diagnostic Studies**

No separate charge is warranted for prior studies reviewed in conjunction with a visit, consultation, record review, or other evaluation by the medical practitioner or other medical personnel; neither the professional component value modifier 26 nor the radiological consultation CPT code 76140 is reimbursable. The review of diagnostic tests is included in the evaluation and management codes.
  - 4.26.1.3.3 **Written Report(s)**

A written report, signed by the interpreting physician, should be considered an integral part of a radiological procedure or interpretation.
  - 4.26.1.3.4 **Unbundling of “Entrance” Fees**

Unbundling of fees to free standing diagnostic radiology centers will not be allowed. Any entrance fees billed in addition to the global or testing procedure code will not be reimbursed.
  - 4.26.1.3.5 **Injection Procedure**

Fees include all usual pre- and postinjection care specifically related to the injection procedure, necessary local anesthesia, placement of needle or catheter, and injection of contrast media with or without auto power injection. The phrase “with contrast” used



in the codes for procedures performed using contrast for imaging enhancement represents contrast material administered intravascularly, intra-articularly, or intrathecally.

For intra-articular injection, use the appropriate joint injection code. If radiographic arthrography is performed, also use the arthrography supervision and interpretation code for the appropriate joint (which includes fluoroscopy). If CT or MR arthrography is performed without radiographic arthrography, use the appropriate joint injection code, the appropriate CT or MR code ("with contrast" or "without followed by contrast"), and the appropriate imaging guidance code for needle placement for contrast injection.

For spine examinations using computed tomography, magnetic resonance imaging, magnetic resonance angiography, "with contrast" includes intrathecal or intravascular injection. For intrathecal injection, use also CPT code 61055 or 62284. Injection intravascular (IV) contrast material is part of the "with contrast" CT, CTA, MRI, MRA procedure and shall not be reimbursed separately. When introducing additional materials through the same puncture site, reimbursement shall be allowed for the materials only. ~~Usual, customary and reasonable charges~~ Title 19 Section 2322B(5) will apply to such charges. Oral and/or rectal contrast administration alone does not qualify as a study "with contrast."

#### **4.26.2 Payment Modifiers for Diagnostic and Therapeutic Radiological Services**

4.26.2.1 A modifier indicates a service or procedure performed has been altered by some specific circumstance but has not changed its definition or code. The modifying circumstance shall be identified by the appropriate modifier following the procedure code. When two modifiers are applicable to a single code, indicate each modifier on the bill. If more than one modifier is used, place the "Multiple Modifiers" modifier 99 immediately after the procedure code. This indicates that one or more additional modifier codes will follow.

4.26.2.2 Only certain modifiers in each of the categories (Evaluation and Management Services, Anesthesia, Surgery, Pathology/Laboratory, Radiology, General Medicine, and Physical Medicine) will be recognized for reimbursement purposes. The modifiers listed below may differ from those published by the American Medical Association. Medical providers submitting workers' compensation billing shall use only the modifiers set out in the fee schedule.

4.26.2.3 The following modifiers will be recognized for reimbursement by the fee schedule for diagnostic and therapeutic radiology services codes:

**22 Increased Procedural Services:** When the work required to provide a service is substantially greater than typically required, it may be identified by adding modifier 22 to the usual procedure code. Documentation must support the substantial additional work and the reason for the additional work (i.e., increased intensity, time, technical difficulty of procedure, and severity of patient's condition, physical and mental effort required). Note: This modifier should not be appended to an E/M. Add an additional 20% to the value of the procedure code when billed with this modifier.

**26 Professional Component Only:** Certain procedures are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding modifier 26 to the usual procedure number.

**50 Bilateral Procedure:** Unless otherwise identified in the listings, bilateral procedures that are performed at the same operative session should be identified by adding modifier 50 to the appropriate five-digit code.

**52 Reduced Services:** Under certain circumstances, a service or procedure is partially reduced or eliminated at the physician's discretion. Under these circumstances, the service provided can be identified by its usual procedure number and the addition of modifier 52 signifying that the service is reduced. This provides a means of reporting

reduced services without disturbing the identification of the basic service. Note: For hospital outpatient reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**53 Discontinued Procedure:** Under certain circumstances, the physician may elect to terminate a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well-being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure before the patient's anesthesia induction and/or surgical preparation in the operating suite. For outpatient hospital/ambulatory surgery center (ASC) reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifier 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. Note: Modifier 59 should not be appended to an E/M service with a non-E/M service with a non-E/M service performed on the same date, see modifier 25.

**76 Repeat Procedure or Service by Same Physician:** It may be necessary to indicate that a procedure or service was repeated subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure/service.

**77 Repeat Procedure by Another Physician:** The physician may need to indicate that a basic procedure or service performed by another physician had to be repeated. This situation may be reported by adding modifier 77 to the repeated procedure/service.

**99 Multiple Modifiers:** Under certain circumstances, two or more modifiers may be necessary to completely delineate a service. In such situations, modifier 99 should be added to the basic procedure and other applicable modifiers may be listed as part of the description of the service.

**LT Left Side:** Used to identify procedures performed on the left side of the body.

**RT Right Side:** Used to identify procedures performed on the right side of the body.

**TC Technical Component Only:** Certain procedures are a combination of a physician component and a technical component. When the technical component is reported separately, the service may be identified by adding modifier TC to the usual procedure number.

## **4.27 Laboratory/Pathology**

### **4.27.1 Payment Ground Rules for Pathology and Laboratory Services**

#### **4.27.1.1 General Guidelines**

- 4.27.1.1.1 The maximum allowable payment for health care treatment and procedures shall be the lesser of the health care provider's actual charges or ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the service or treatment is

rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.

4.27.1.1.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85"), which actual charge will be fixed as of 10/31/06 and subsequent to such date will be subject to verification, audit and/or review by the Department of Insurance. Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited.

4.27.1.1.3 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, based on percentage changes to the Consumer Price Index--Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics pursuant to 19 Del.C. §2322B(14).~~

4.27.1.1.4 Physicians should include CPT codes for specific performance of diagnostic tests/studies for which specific CPT codes are available. Items used by all physicians in reporting their services are presented in the introduction. Definitions and explanations unique to pathology and laboratory are included below.

4.27.1.2 **Services in Pathology & Laboratory**

Services are those provided by the pathologist or by the technologists under responsible supervision of a physician. The fees listed in this section include recording of the specimen, performance of the test, and reporting of the result. The fees do not include specimen collection, specimen transfer, or individual patient administrative services.

4.27.1.3 **Review of Diagnostic Studies**

The medical practitioner or other medical personnel warrant no separate charge for the review of prior studies in conjunction with a visit, consultation, record review, or other evaluation. Neither the professional component modifier 26 nor the pathology consultation CPT codes 80500 and 80502 are reimbursable under this circumstance. The review of diagnostic tests is included in the evaluation and management (E/M) codes.

4.27.1.4 **Referral Laboratory Tests**

The laboratory tests and services listed in this section when performed by other than the billing physician shall be billed at the value charged by the referral (outside) laboratory under the applicable procedure number with the appropriate modifier 90; the name of the referral laboratory and the charge made by that laboratory should also be identified.

4.27.1.5 **Collection and Handling Procedures**

Fees assigned to each test represent only the cost of performing the individual test, whether it is manual or automated (mechanized). The collection, handling, and patient administrative services have been assigned separate fees and separate code numbers.

4.27.1.5.1 Report a collection, handling, and patient administrative service separately, where applicable. For venipuncture, see CPT code 36415. For collection of capillary blood specimen, see CPT code 36416. For collection of blood specimen from a completely implantable venous access device, see CPT code 36540. For handling, see CPT codes 99000 and 99001.

4.27.1.5.2 Only the physician or laboratory drawing the blood or obtaining the specimen is entitled to a collection and handling fee.

4.27.1.5.3 Relative value units for specimen collection, handling, and patient administrative service are assigned in relation to the complexity of the process.

4.27.1.5.4 Although there is no billing for the test itself, the physician or laboratory performing the service can report a collection and handling charge. The test ordered and the name of the testing facility should be indicated.

4.27.1.5.5 When collection and handling are performed at the testing facility (laboratory), the laboratory may include separate charges for these services.

**4.27.1.6 Professional Component**

The maximum allowable reimbursement includes the professional component (PC) plus the technical component (TC). This value is applicable in any situation in which a single charge is made to include both professional services and the technical cost of providing that service.

4.27.1.6.1 Identification of a procedure by the five-digit CPT code without modifier 26 indicates that the charge includes both the professional and technical components. The professional component percentage represents the value of the professional pathology services of the physician. This includes: examination of the injured employee, when indicated performance and/or supervision of the procedure, interpretation, and written report of the laboratory procedure, and consultation with the authorized treating physician. This component is applicable in any situation in which the physician submits a bill for these professional services only. It does not include the cost of personnel, materials, space, equipment, or other facilities. To identify the charge for the professional component, use the five-digit CPT code followed by modifier 26.

4.27.1.6.2 The technical component includes the charges for personnel, materials, space, equipment, and other facilities, and should be reported using modifier TC. In no instance will the sum of the charges for the professional and technical components of a service be greater than the value of the total service listed.

**4.27.1.7 Separate or Multiple Procedures**

It is appropriate to designate multiple procedures that are rendered at the same session by separate entries.

**4.27.1.8 Unusual Service or Procedure**

Services that may necessitate skills and time of the physician over and above that usually required should be substantiated by special report (detailed below).

**4.27.1.9 Unlisted Service or Procedure**

When an unlisted service or procedure is provided, the values used should be substantiated by special report (detailed below). Identify by name or description.

**4.27.1.10 Special Report**

A service that is rarely provided, unusual, variable, or new may require a special report in determining medical appropriateness of the service. Pertinent information should include an adequate definition or description of the nature, extent, and need for the procedure; and the time, effort, and equipment necessary to provide the service. Additional items that may be included are:

- Complexity of symptoms
- Final diagnosis
- Pertinent physical findings
- Diagnostic and therapeutic procedures
- Concurrent problems
- Follow-up care

**4.27.2 Payment Modifiers for Pathology and Laboratory Services**

4.27.2.1 A modifier indicates a service or procedure performed has been altered by some specific circumstance but has not changed its definition or code. The modifying circumstance shall be identified by use of the appropriate modifier following the procedure code. When two modifiers are applicable to a single code, indicate each modifier on the bill. If more than

one modifier is used, place the “Multiple Modifiers” code 99 immediately after the procedure code. This indicates that one or more additional modifier codes will follow. Only certain modifiers in each of the categories (Evaluation and Management Services, Anesthesia, Surgery, Pathology/Laboratory, Radiology, General Medicine, and Physical Medicine) will be recognized for reimbursement purposes.

4.27.2.2 The modifiers listed below may differ from those published by the American Medical Association. Providers submitting workers’ compensation billing shall use only the modifiers set out in the fee schedule.

4.27.2.3 The following modifiers will be recognized for reimbursement by the fee schedule for pathology and laboratory codes:

**22 Increased Procedural Services:** When the work required to provide a service is substantially greater than typically required, it may be identified by adding modifier 22 to the usual procedure code. Documentation must support the substantial additional work and the reason for the additional work (i.e., increased intensity, time, technical difficulty of procedure, and severity of patient’s condition, physical and mental effort required). Note: This modifier should not be appended to an E/M. Add an additional 20% to the value of the procedure code when billed with this modifier.

**26 Professional Component Only:** Certain procedures are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding modifier 26 to the usual procedure number.

**53 Discontinued Procedure:** Under certain circumstances, the physician may elect to end a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well-being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure before the patient’s anesthesia induction and/or surgical preparation in the operating suite. For outpatient hospital/ ambulatory surgery center (ASC) reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifier 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. Note: Modifier 59 should not be appended to an E/M service with a non-E/M service with a non-E/M service performed on the same date, see modifier 25.

**90 Reference (Outside) Laboratory:** When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding modifier 90 to the usual procedure number.

**91 Repeat Clinical Diagnostic Laboratory Test:** In the course of treatment of the patient, it may be necessary to repeat the same laboratory test on the same day to obtain subsequent (multiple) test results. Under these circumstances, the laboratory test performed can be identified by its usual procedure number and the addition of modifier 91. Note: This modifier may not be used when tests are rerun to confirm initial results; due to

testing problems with specimens or equipment; or for any other reason when a normal, one-time, reportable result is all that is required. This modifier may not be used when other code(s) describe a series of test results (e.g., glucose tolerance tests, evocative/suppression testing). This modifier may only be used for laboratory test(s) performed more than once on the same day on the same patient.

**92 Alternative Laboratory Platform Testing:** When laboratory testing is being performed using a kit or transportable instrument that wholly or in part consists of a single use, disposable analytical chamber, the service may be identified by adding modifier 92 to the usual laboratory procedure code (HIV testing 86701-86703). The test does not require permanent dedicated space; hence by its design it may be hand carried or transported to the vicinity of the patient for immediate testing at that site, although location of the testing is not itself determinative of the use of this modifier.

**99 Multiple Modifiers:** Under certain circumstances, two or more modifiers may be necessary to completely delineate a service. In such situations modifier 99 should be added to the basic procedure, and other applicable modifiers may be listed as part of the description of the service.

**TC Technical Component Only:** Certain procedures are a combination of a physician component and a technical component. When the technical component is reported separately, the service may be identified by adding modifier TC to the usual procedure number.

## **4.28 Physical Medicine**

### **4.28.1 Payment Ground Rules for Physical Medicine Services**

#### **4.28.1.1 General Guidelines**

4.28.1.1.1 Protocols used by physicians in reporting their services are generally described below. Some of the commonalities with other subsections may be repeated here. If no appropriate code is found for medical services performed by a medical provider, use the appropriate unlisted code (e.g., CPT code 99199), and adequately describe the service provided. Chiropractic and physical therapy service reimbursements are explained in this section.

4.28.1.1.2 Supplies and materials provided by the medical provider (e.g., sterile trays), over and above that usually provided during an office visit, or other services rendered, may be charged for separately and coded separately. A physician office visit code may be charged in addition to the code for modalities/procedures only if the accompanying documentation clearly indicates that the physician or medical provider actually examined the worker during the office visit.

#### **4.28.1.2 Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists**

4.28.1.2.1 CPT code 97001, Physical therapy evaluation, is a one-time-only charge per episode of care. CPT code 97002, Physical therapy re-evaluation, may be charged at the discretion of the clinician based on patient presentation at a particular visit. The use of the 97002 code shall not exceed once per month unless unusual and/or unforeseen circumstances exist.

4.28.1.2.2 CPT code 97003, Occupational therapy evaluation, is a one-time-only charge per episode of care. CPT code 97004, Occupational therapy re-evaluation, may be charged at the discretion of the treating clinician based on patient presentation at a particular visit. The use of the 97004 code shall not exceed once per month unless unusual and/or unforeseen circumstances exist.

#### **4.28.1.3 Exam Visits to Occupational Therapists or Physical Therapists**

Services performed by a physical therapist and/or occupational therapist shall be performed in conjunction with the authorized treating physician detailing the type, frequency, and duration of therapy to be provided. Only physical therapists and/or occupational therapists procedures and services are billable.

#### 4.28.1.4 **Manipulation Codes**

Manipulation performed by physical therapists are billed under the 97140 (manual therapy) CPT code and there is no special modifier necessitated with the use of the 97140 code.

Special codes are designated for use by chiropractors and osteopaths to bill for manipulation services. When billing for manipulation services, licensed chiropractors may bill using CPT codes 98940–98943. Licensed osteopaths may bill using CPT codes 98925–98929. The chiropractic manipulative treatment codes include a pre manipulation patient assessment. Additional evaluation and management (E/M) services may be reported separately using modifier 25, if the injured employee's condition requires a significant, separately identifiable E/M service, which is above and beyond the usual pre service and post service work associated with the procedure.

#### 4.28.1.5 **Fabrication of Orthotics**

Orthotics must be billed separately for professional fitting and supplies. CPT code 97760 must be used for a medical provider or therapist to fabricate orthotics. Custom-made orthotics and prosthetics are exempt from the medical supplies reimbursement formula; however, usual, customary, and reasonable charges will apply or by agreement of the parties. Additional medical supplies may not exceed medical supplies reimbursement formula.

#### 4.28.1.6 **TENS Units**

TENS units (transcutaneous electrical nerve stimulation) must be prescribed by the authorized treating physician. Rental equipment is subject to usual, customary, and reasonable charges or by agreement. Rental equipment is exempt from the reimbursement formula. The purchase of such units will be subject to durable/medical supplies reimbursement formula utilizing the appropriate.

### 4.28.2 **Payment Modifiers for Physical Medicine Services**

4.28.2.1 A modifier indicates a service or procedure performed has been altered by some specific circumstance but has not changed its definition or code. The modifying circumstance shall be identified by the appropriate modifier following the procedure code. When two modifiers are applicable to a single code, indicate each modifier on the bill. If more than one modifier is used, place the "Multiple Modifiers" modifier 99 immediately after the procedure code. This indicates that one or more additional modifier codes will follow. Only certain modifiers in each of the categories (Evaluation and Management, Anesthesia, Surgery, Pathology/Laboratory, Radiology, General Medicine, and Physical Medicine) will be recognized for reimbursement purposes.

4.28.2.2 The modifiers listed below may differ from those published by the American Medical Association. Medical providers submitting workers' compensation billing shall use only the modifiers set out in the fee schedule.

4.28.2.3 The following modifiers will be recognized for reimbursement by the fee schedule for physical medicine services codes:

**22 Increased Procedural Services:** When the work required to provide a service is substantially greater than typically required, it may be identified by adding modifier 22 to the usual procedure code. Documentation must support the substantial additional work and the reason for the additional work (i.e., increased intensity, time, technical difficulty of procedure, and severity of patient's condition, physical and mental effort required). Note: This modifier should not be appended to an E/M. Add an additional 20% to the value of the procedure code when billed with this modifier.

**24 Unrelated Evaluation and Management Service by the Same Physician during a Postoperative Period:** The physician may need to indicate that an evaluation and management service was performed during a postoperative period for a reason(s) unrelated to the original procedure. This circumstance may be reported by adding modifier 24 to the appropriate level of E/M service.

**26 Professional Component Only:** Certain procedures are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding modifier 26 to the usual procedure number.

**52 Reduced Services:** Under certain circumstances, a service or procedure is partially reduced or eliminated at the physician's discretion. Under these circumstances, the service provided can be identified by its usual procedure number and the addition of modifier 52 signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. Note: For hospital outpatient reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**53 Discontinued Procedure:** Under certain circumstances, the physician may elect to end a surgical or diagnostic procedure. Due to extenuating circumstances or those that threaten the well-being of the patient, it may be necessary to indicate that a surgical or diagnostic procedure was started but discontinued. This circumstance may be reported by adding modifier 53 to the code for the discontinued procedure. Note: This modifier is not used to report the elective cancellation of a procedure before the patient's anesthesia induction and/or surgical preparation in the operating suite. For outpatient hospital/ambulatory surgery center (ASC) reporting of a previously scheduled procedure/service that is partially reduced or cancelled as a result of extenuating circumstances or those that threaten the well-being of the patient prior to or after administration of anesthesia, see modifiers 73 and 74 (see modifiers approved for ASC hospital outpatient use).

**59 Distinct Procedural Service:** Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services that are not normally reported together but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier available and use of modifier 59 best explains the circumstances should modifier 59 be used. Note: Modifier 59 should not be appended to an E/M service with a non-E/M service with a non-E/M service performed on the same date, see modifier 25.

**99 Multiple Modifiers:** Under certain circumstances, two or more modifiers may be necessary to completely delineate a service. In such situations modifier 99 should be added to the basic procedure, and other applicable modifiers may be listed as part of the description of the service.

#### 4.29 Durable Medical Equipment and Supplies

- 4.29.1 The maximum allowable payment for health care treatment and procedures shall be the lesser of the health care provider's actual charges or ninety percent (90%) of the 75<sup>th</sup> percentile of actual charges within the geozip where the service or treatment is rendered, utilizing information contained in employers' and insurance carriers' national databases. If an employer or insurance carrier contracts with a provider for the purpose of providing services under the Act, the rate negotiated in such contract shall prevail.
- 4.29.2 Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85"), which actual charge will be fixed as of 10/31/06 and subsequent to such date will be subject to verification, audit and/or review by the Department of Insurance.



Reasonable costs of such review or audit shall be reimbursed to the Department of Insurance by the health care provider whose billing is audited.

4.29.3 The payment system will be adjusted yearly ~~from the date the Health Care Advisory Panel recommended adoption of the fee schedule, November 14, 2007, based on percentage changes to the Consumer Price Index—Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics pursuant to 19 Del.C. §2322B(14).~~

4.29.4 Certain supplies and materials are to be provided by the physician that are usually included with the visit or other services performed. Fees covering ordinary dressings, materials or drugs used in diagnosis and treatment shall not be charged for separately, but shall be included in the amount for the office or hospital treatment. If the record of the case shows that it was necessary to use an extraordinary amount of dressing material or drugs, these will be paid for using – HCPCS Level II Codes.

4.30 The OWC Preferred Drug List

OWC PREFERRED DRUG LIST	
<p>Use the formulary below only for NSAID analgesics, opioid analgesics, skeletal muscle relaxants. Physicians are encouraged to prescribe generic drugs. If the physician feels it is medically necessary to prescribe a non-preferred drug and there is no generic equivalent then it can be done without prior authorization. Please note that the Reference Trade Name listed below is used only as an example of the generic drug.</p> <p>The use of sustained release/controlled release medication may be used when a continuous around-the-clock analgesic is needed for moderate to severe pain requiring treatment for an extended period of time.</p>	
ANALGESICS: NSAIDs	
PREFERRED DRUG	Reference Trade Name
DICLOFENAC POTASSIUM 50MG TABLET ORAL	CATAFLAM 50 MG TABLET
DICLOFENAC SODIUM 100MG TAB.SR 24H ORAL	VOLTAREN-XR 100 MG TABLET
DICLOFENAC SODIUM 25MG TABLET DR ORAL	VOLTAREN 25 MG TABLET EC
DICLOFENAC SODIUM 50MG TABLET DR ORAL	VOLTAREN 50 MG TABLET EC
DICLOFENAC SODIUM 75MG TABLET DR ORAL	VOLTAREN 75 MG TABLET EC
DIFLUNISAL 250MG TABLET ORAL	DOLOBID 250MG TABLET
DIFLUNISAL 500MG TABLET ORAL	DOLOBID 500 MG TABLET
ETODOLAC 200MG CAPSULE ORAL	LODINE 200 MG CAPSULE
ETODOLAC 300MG CAPSULE ORAL	LODINE 300 MG CAPSULE
ETODOLAC 400MG TAB.SR 24H ORAL	LODINE XL 400MG TABLET SA
ETODOLAC 400MG TABLET ORAL	LODINE 400 MG TABLET
ETODOLAC 500MG TAB.SR 24H ORAL	LODINE XL 500 MG TABLET SA
ETODOLAC 500MG TABLET ORAL	LODINE 500MG TABLET
ETODOLAC 600MG TAB.SR 24H ORAL	LODINE XL 600MG TABLET SA
FENOPROFEN CALCIUM 200MG CAPSULE ORAL	NALFON 200 MG PULVULE
FENOPROFEN CALCIUM 300MG CAPSULE ORAL	NALFON 300 MG CAPSULE
FENOPROFEN CALCIUM 600MG TABLET ORAL	NALFON 600MG TABLET
FLURBIPROFEN 100MG TABLET ORAL	ANSAID 100 MG TABLET
FLURBIPROFEN 50MG TABLET ORAL	ANSAID 50MG TABLET
IBUPROFEN 100MG TAB CHEW ORAL	ADVIL 100 MG TABLET CHEW

IBUPROFEN 100MG TABLET ORAL	MOTRIN 100MG CAPLET
IBUPROFEN 100MG/5ML GEL ORAL	ELIXSURE IB SUSPENSION
IBUPROFEN 100MG/5ML ORAL SUSP ORAL	MOTRIN 100 MG/5 ML SUSPENSION
IBUPROFEN 200MG CAPSULE ORAL	ADVIL MIGRAINE 200 MG CAPSULE
IBUPROFEN 200MG TABLET ORAL	MOTRIN IB 200 MG CAPLET
IBUPROFEN 300MG TABLET ORAL	MOTRIN 300 MG TABLET
IBUPROFEN 400MG TABLET ORAL	MOTRIN 400 MG TABLET
IBUPROFEN 40MG/ML DROPS SUSP ORAL	MOTRIN 40MG/ML SUSP DROPS
IBUPROFEN 50MG TAB CHEW ORAL	MOTRIN 50MG TABLET CHEWABLE
IBUPROFEN 600MG TABLET ORAL	MOTRIN 600 MG TABLET
IBUPROFEN 800MG TABLET ORAL	MOTRIN 800 MG TABLET
INDOMETHACIN 25MG CAPSULE ORAL	INDOCIN 25MG CAPSULE
INDOMETHACIN 25MG/5ML ORAL SUSP ORAL	INDOCIN 25 MG/5 ML SUSPENSION
INDOMETHACIN 50MG CAPSULE ORAL	INDOCIN 50MG CAPSULE
INDOMETHACIN 50MG RECTAL SUPPOSITORY	INDOCIN 50 MG SUPPOSITORY
INDOMETHACIN 75MG CAPSULE SA ORAL	INDOCIN SR 75MG CAPSULE SA
KETOPROFEN 100MG PELLETTED 24HR CAPSULE ORAL	ORUVAIL 100MG CAPSULE SA
KETOPROFEN 12.5MG TABLET ORAL	ORUDIS KT 12.5 MG TABLET
KETOPROFEN 150MG PELLETTED 24HR CAPSULE ORAL	ORUVAIL 150MG CAPSULE SA
KETOPROFEN 200MG PELLETTED 24HR CAPSULE ORAL	ORUVAIL 200 MG CAPSULE SA
KETOPROFEN 25MG CAPSULE ORAL	ORUDIS 25MG CAPSULE
KETOPROFEN 50MG CAPSULE ORAL	ORUDIS 50MG CAPSULE
KETOPROFEN 75MG CAPSULE ORAL	ORUDIS 75MG CAPSULE
KETOROLAC TROMETHAMINE 10MG TABLET ORAL	TORADOL 10 MG TABLET
MECLOFENAMATE SODIUM 100MG CAPSULE ORAL	MECLOMEN 100MG CAPSULE
MECLOFENAMATE SODIUM 50MG CAPSULE ORAL	MECLOMEN 50MG CAPSULE
NABUMETONE 500MG TABLET ORAL	RELAFEN 500 MG TABLET
NABUMETONE 750MG TABLET ORAL	RELAFEN 750 MG TABLET
NAPROXEN 125MG/5ML ORAL SUSP ORAL	NAPROSYN 125 MG/5 ML SUSPENSION
NAPROXEN 250MG TABLET ORAL	NAPROSYN 250 MG TABLET
NAPROXEN 375MG TABLET DELAYED-RELEASE ORAL	EC-NAPROSYN 375 MG TABLET
NAPROXEN 375MG TABLET ORAL	NAPROSYN 375 MG TABLET
NAPROXEN 500MG TABLET DELAYED-RELEASE ORAL	EC-NAPROSYN 500 MG TABLET
NAPROXEN 500MG TABLET ORAL	NAPROSYN 500 MG TABLET
NAPROXEN SODIUM 220MG TABLET ORAL	ALEVE 220 MG TABLET
NAPROXEN SODIUM 275MG TABLET ORAL	ANAPROX 275 MG TABLET
NAPROXEN SODIUM 550MG TABLET ORAL	ANAPROX DS 550 MG TABLET
NAPROXEN SODIUM 550MG TABLET SA ORAL	NAPRELAN 500 TABLET SA

OXAPROZIN 600MG TABLET ORAL	DAYPRO 600 MG CAPLET
PIROXICAM 10MG CAPSULE ORAL	FELDENE 10 MG CAPSULE
PIROXICAM 20MG CAPSULE ORAL	FELDENE 20MG CAPSULE
PREDNISONE TAB5 MG	STERAPRED 5MG UNIPACK
PREDNISONE TAB10 MG	STERAPRED DS UNIPACK
SALSALATE 500MG, 750MG CAPSULE/TABLET	DISALCID CAPSULE/TABLET
SULINDAC 150MG TABLET ORAL	CLINORIL 150MG TABLET
SULINDAC 200MG TABLET ORAL	CLINORIL 200 MG TABLET
TOLMETIN SODIUM 200MG TABLET ORAL	TOLECTIN 200MG TABLET
TOLMETIN SODIUM 400MG CAPSULE ORAL	TOLECTIN DS 400MG CAPSULE
TOLMETIN SODIUM 600MG TABLET ORAL	TOLECTIN 600MG TABLET
<b>SKELETAL MUSCLE RELAXANTS</b>	
<b>PREFERRED DRUG</b>	<b>Reference Trade Name</b>
BACLOFEN 10MG TABLET ORAL	LIORESAL 10MG TABLET
BACLOFEN 20MG TABLET ORAL	LIORESAL 20MG TABLET
CHLORZOXAZONE 250MG TABLET ORAL	REMULAR-S 250MG TABLET
CHLORZOXAZONE 500MG TABLET ORAL	PARAFON FORTE DSC 500MG CAPSULE
CYCLOBENZAPRINE HCL 10MG TABLET ORAL	FLEXERIL 10 MG TABLET
DIAZEPAM 5 MG TABLET ORAL	VALIMUM 5 MG TABLET
METHOCARBAMOL 500MG TABLET ORAL	ROBAXIN 500 MG TABLET
METHOCARBAMOL 750MG TABLET ORAL	ROBAXIN-750 TABLET
METHOCARBAMOL/ASPIRIN 400-325MG TABLET ORAL	ROBAXISAL TABLET
ORPHENADRINE CITRATE 100MG TABLET SA ORAL	NORFLEX 100 MG TABLET SA
ORPHENADRINE/ASPIRIN/CAFFEINE 25-385-30 TABLET ORAL	NORGESIC TABLET
ORPHENADRINE/ASPIRIN/CAFFEINE 50-770-60 TABLET ORAL	NORGESIC FORTE TABLET
TIZANIDINE HCL 2MG TABLET ORAL	ZANAFLEX 2 MG TABLET
TIZANIDINE HCL 4MG TABLET ORAL	ZANAFLEX 4 MG TABLET
<b>OPIOID ANALGESICS</b>	
<b>PREFERRED DRUG</b>	<b>Reference Trade Name</b>
BUTORPHANOL TARTRATE 10MG/ML SPRAY NASAL	STADOL NS 10MG/ML SPRAY
CODEINE PHOS 15MG/5ML SOLUTION ORAL	N/A
CODEINE PHOS 30MG TABLET SOL ORAL	N/A
CODEINE PHOS 60MG TABLET SOL ORAL	N/A
CODEINE PHOS/ACETAMINOPHEN 12-120MG/5 ELIXIR ORAL	TYLENOL W/CODEINE ELIXIR
CODEINE PHOS/ACETAMINOPHEN 12-120MG/5 ORAL SUSP ORAL	CAPITAL W/CODEINE ORAL SUSPENSION
CODEINE PHOS/ACETAMINOPHEN 15-300MG TABLET ORAL	TYLENOL W/CODEINE #2 TABLET

CODEINE PHOS/ACETAMINOPHEN 30-300MG TABLET ORAL	TYLENOL W/CODEINE #3 TABLET
CODEINE PHOS/ACETAMINOPHEN 30-650MG TABLET ORAL	PHENAPHEN-650 W/CODEINE TABLET
CODEINE PHOS/ACETAMINOPHEN 60-300MG TABLET ORAL	TYLENOL W/CODEINE #4 TABLET
CODEINE PHOS/ASPIRIN 30-325MG TABLET ORAL	EMPIRIN W/CODEINE 30MG TABLET
CODEINE PHOS/ASPIRIN 60-325MG TABLET ORAL	EMPIRIN W/CODEINE 60MG TABLET
CODEINE SULF 15MG TABLET ORAL	N/A
CODEINE SULF 30MG TABLET ORAL	N/A
CODEINE SULF 60MG TABLET ORAL	N/A
CODEINE/APAP/CAFFEIN/BUTALB 30MG CAPSULE ORAL	FIORICET W/CODEINE CAPSULE
CODEINE/ASA/CAFFEINE/BUTALB 30MG CAPSULE ORAL	FIORINAL/CODEINE #3 CAPSULE
HYDROCODONE BIT/ACETAMINOPHEN 10-250MG TABLET ORAL	STAGESIC-10 CAPLET
HYDROCODONE BIT/ACETAMINOPHEN 10-325MG TABLET ORAL	NORCO 10/325 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 10-500MG TABLET ORAL	LORTAB 10/500 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 10-650MG TABLET ORAL	LORCET 10/650 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 10-660MG TABLET ORAL	VICODIN HP TABLET
HYDROCODONE BIT/ACETAMINOPHEN 10-750MG TABLET ORAL	MAXIDONE 10/750 MG TABLET
HYDROCODONE BIT/ACETAMINOPHEN 2.5-167/5 ELIXIR ORAL	LORTAB ELIXIR
HYDROCODONE BIT/ACETAMINOPHEN 2.5-167/5 SOLUTION ORAL	N/A
HYDROCODONE BIT/ACETAMINOPHEN 2.5-500MG TABLET ORAL	LORTAB 2.5/500 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 5-325MG TABLET ORAL	NORCO 5/325 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 5-500MG CAPSULE ORAL	LORCET HD CAPSULE
HYDROCODONE BIT/ACETAMINOPHEN 5-500MG TABLET ORAL	VICODIN 5/500 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 7.5-325MG TABLET ORAL	NORCO 7.5/325 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 7.5-500MG TABLET ORAL	LORTAB 7.5/500 TABLET
HYDROCODONE BIT/ACETAMINOPHEN 7.5-650MG TABLET ORAL	LORCET PLUS TABLET

HYDROCODONE BIT/ACETAMINOPHEN 7.5-750MG TABLET ORAL	VICODIN ES TABLET
HYDROCODONE BIT/ASPIRIN 5-500MG TABLET ORAL	LORTAB ASA TABLET
HYDROMORPHONE HCL 1MG/ML LIQUID ORAL	DILAUDID-5 1 MG/ML LIQUID
HYDROMORPHONE HCL 2MG TABLET ORAL	DILAUDID 2 MG TABLET
HYDROMORPHONE HCL 4MG TABLET ORAL	DILAUDID 4 MG TABLET
HYDROMORPHONE HCL 8MG TABLET ORAL	DILAUDID 8 MG TABLET
IBUPROFEN/HYDROCODONE BIT 200-7.5MG TABLET ORAL	VICOPROFEN TABLET
MEPERIDINE HCL 100MG TABLET ORAL	DEMEROL 100MG TABLET
MEPERIDINE HCL 50MG TABLET ORAL	DEMEROL 50 MG TABLET
MEPERIDINE HCL 50MG/5ML SYRUP ORAL	DEMEROL 50 MG/5 ML SYRUP
MEPERIDINE HCL/PROMETH HCL 50-25MG CAPSULE ORAL	MEPROZINE 50/25 CAPSULE
METHADONE HCL 10MG TABLET ORAL	DOLOPHINE HCL 10 MG TABLET
<b>OPIOID ANALGESICS</b>	
<b>PREFERRED DRUG</b>	<b>Reference Trade Name</b>
METHADONE HCL 10MG/5ML SOLUTION ORAL	N/A
METHADONE HCL 10MG/ML ORAL CONC. ORAL	METHADOSE 10 MG/ML ORAL CON
METHADONE HCL 40MG TABLET SOL ORAL	METHADOSE 40 MG TABLET DISP
METHADONE HCL 5MG TABLET ORAL	DOLOPHINE HCL 5 MG TABLET
METHADONE HCL 5MG/5ML SOLUTION ORAL	N/A
MORPHINE SULFATE 10MG RECTAL SUPPOSITORY	ROXANOL 10MG SUPPOSITORY
MORPHINE SULFATE 10MG SOLUBLE TABLET	N/A
MORPHINE SULFATE 10MG/5ML SOLUTION ORAL	MSIR 10 MG/5 ML ORAL SOLUTION
MORPHINE SULFATE 15MG SOLUBLE TABLET	N/A
MORPHINE SULFATE 15MG TABLET ORAL	MSIR 15MG TABLET
MORPHINE SULFATE 20MG RECTAL SUPPOSITORY	ROXANOL 20MG SUPPOSITORY
MORPHINE SULFATE 20MG/5ML SOLUTION ORAL	MSIR 20 MG/5 ML ORAL SOLUTION
MORPHINE SULFATE 20MG/ML SOLUTION ORAL	ROXANOL 20 MG/ML SOLUTION
MORPHINE SULFATE 30MG RECTAL SUPPOSITORY	ROXANOL 30MG SUPPOSITORY
MORPHINE SULFATE 30MG SOLUBLE TABLET	N/A
MORPHINE SULFATE 30MG TABLET ORAL	MSIR 30MG TABLET
MORPHINE SULFATE 5MG RECTAL SUPPOSITORY	ROXANOL 5MG SUPPOSITORY
OXYCODONE HCL 15MG TABLET ORAL	ROXICODONE 15 MG TABLET
OXYCODONE HCL 20MG/ML ORAL CONC. ORAL	OXYFAST 20 MG/ML SOLUTION
OXYCODONE HCL 30MG TABLET ORAL	ROXICODONE 30 MG TABLET
OXYCODONE HCL 5MG CAPSULE ORAL	OXYIR 5 MG CAPSULE
OXYCODONE HCL 5MG TABLET ORAL	ROXICODONE 5 MG TABLET
OXYCODONE HCL 5MG/5ML SOLUTION ORAL	ROXICODONE 5 MG/5 ML SOLUTION

OXYCODONE HCL/ACETAMINOPHEN 10-325MG TABLET ORAL	PERCOCET 10/325 MG TABLET
OXYCODONE HCL/ACETAMINOPHEN 10-650MG TABLET ORAL	PERCOCET 10/650 MG TABLET
OXYCODONE HCL/ACETAMINOPHEN 2.5-325MG TABLET ORAL	PERCOCET 2.5/325 MG TABLET
OXYCODONE HCL/ACETAMINOPHEN 5-325/5ML SOLUTION ORAL	ROXICET 5/325 ORAL SOLUTION
OXYCODONE HCL/ACETAMINOPHEN 5-325MG TABLET ORAL	PERCOCET 5/325 MG TABLET
OXYCODONE HCL/ACETAMINOPHEN 5-500MG CAPSULE ORAL	TYLOX 5/500 CAPSULE
OXYCODONE HCL/ACETAMINOPHEN 7.5-325MG TABLET ORAL	PERCOCET 7.5/325 MG TABLET
OXYCODONE HCL/ACETAMINOPHEN 7.5-500MG TABLET ORAL	PERCOCET 7.5/500 MG TABLET
OXYCODONE/ASPIRIN 4.88-325MG TABLET ORAL	PERCODAN TABLET
OXYMORPHONE HCL 5MG RECTAL SUPPOSITORY	NUMORPHAN 5 MG SUPPOSITORY
PENTAZOCINE/ACETAMINOPHEN CAPLET	TALACEN CAPLET
PENTAZOCINE/NALOXONE TABLET	TALWIN NX TABLET
PROPOXYPHENE HCL 65MG CAPSULE ORAL	DARVON 65 MG PULVULE
PROPOXYPHENE HCL/ACETAMINOPHEN 65-650MG TABLET ORAL	WYGESIC 65/650 TABLET
PROPOXYPHENE HCL/ASA/CAFFEINE 32-389-32 CAPSULE ORAL	DARVON COMPOUND-32 PULVULE
PROPOXYPHENE HCL/ASA/CAFFEINE 65-389 CAPSULE ORAL	DARVON COMPOUND-65 PULVULE
PROPOXYPHENE NAPSYL 100MG TABLET ORAL	DARVON-N 100 MG TABLET
PROPOXYPHENE/ACETAMINOPHEN 100-325MG TABLET ORAL	TRYCET 100/325 MG TABLET
PROPOXYPHENE/ACETAMINOPHEN 100-650MG TABLET ORAL	DARVOCET-N 100 TABLET
PROPOXYPHENE/ACETAMINOPHEN 50-325MG TABLET ORAL	DARVOCET-N 50 TABLET
TRAMADOL HCL 50MG TABLET ORAL	ULTRAM 50 MG TABLET
TRAMADOL HCL/ACETAMINOPHEN 37.5-325MG TABLET ORAL	ULTRACET TABLET
<b>ADJUVANTS</b>	
<b>PREFERRED DRUG</b>	<b>Reference Trade Name</b>
AMITRIPTYLINE HCL 10MG, 25MG, 50MG, 75MG, 100MG	ELAVIL TABLETS
DESYREL TABLETS 50MG, 100MG	TAZADONE HCL
GABAPENTIN CAPSULES 100MG, 300MG, 400MG	NEURONTIN CAPSULES
NORTRIPTYLINE HCL CAPSULES 10MG, 25MG, 50MG, 75MG	PAMELOR CAPSULES

## 5.0 Utilization Review

- 5.1 Pursuant to chapter 101, title 29 of the **Delaware Code**, the Department of Labor has developed a utilization review program with the intent of providing reference for employers, insurance carriers, and health care providers for evaluation of health care and charges. The intended purpose of utilization review services is to provide prompt resolution of issues related to treatment and/or compliance with the health care payment system or practice guidelines for those claims which have been acknowledged to be compensable.
- 5.2 An employer or insurance carrier may engage in utilization review to evaluate the quality, reasonableness and/or necessity of proposed or provided health care services for acknowledged compensable claims. Any person conducting a utilization review program for workers' compensation shall be required to contract with the Office of Workers' Compensation once every two (2) years and certify compliance with Workers' Compensation Utilization Management Standards or Health Utilization Management Standards of Utilization Review Accreditation Council ("URAC") sufficient to achieve URAC accreditation or submit evidence of accreditation by URAC.
- 5.3 At this time, Utilization Review is limited to health care recommendations subject to practice guidelines developed by the HCAP.
- 5.4 An employer or insurance carrier may request utilization review by complying with all the terms and conditions set forth on the forms attached hereto. Upon completion and submission of the forms, information package and medical records package by the employer or insurance carrier, the designated utilization review company will review treatment to determine if it is in compliance with the practice guidelines developed by the Health Care Advisory Panel and adopted and implemented by the Department of Labor. (See Appendix A)
  - 5.4.1 The utilization review company shall be randomly selected by the Department of Labor. The utilization review company first assigned to the case will remain with that case throughout its duration. The Department of Labor will collect all documentation required to be submitted pursuant to the utilization review process and send such documentation for review to the utilization review company.
  - 5.4.2 If the claim is denied by an employer or insurance carrier for non-compliance with any applicable Practice Guideline, only the first bill for such treatment, and not all subsequent bills for the same service, need be denied and referred to utilization review.
  - 5.4.3 All past, prospective and concurrent health care decisions must be reviewed and a Utilization Review determination made no later than three (3) working days from receipt of the aforementioned information, for emergency care, but no later than 15 calendar days from the date of the treatment recommended by the physician or less if set forth in URAC guidelines.
- 5.5 If a party disagrees with the findings following utilization review, a petition may be filed with the Industrial Accident Board for *de novo* review.
  - 5.5.1 The decision of the utilization review company shall be forwarded by the Department of Labor, by Certified Mail, Return Receipt Requested, to the claimant, the health care provider in question, and the employer or its insurance carrier. A decision of the utilization review company shall be final and conclusive between the parties unless within 45 days from the date of receipt of the utilization review decision any interested party files a petition with the Industrial Accident Board for *de novo* review.
- 5.6 If there are no current practice guidelines applicable to the health care provided, a party may file a petition with the Industrial Accident Board seeking a determination of the appropriateness of treatment.

## APPENDIX A

### DELAWARE DEPARTMENT OF LABOR MEDICAL UTILIZATION REVIEW PROGRAM

## REQUEST FOR UTILIZATION REVIEW

(Pursuant to 19 Del.C. §2322 F(j))

**PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION.** All information and addresses must be verified as current and accurate.

1. Date of Request \_\_\_\_\_
2. WC Number(s) \_\_\_\_\_ Date(s) of injury \_\_\_\_\_
3. Nature of injury/Practice Guideline \_\_\_\_\_
4. Claimant's Name \_\_\_\_\_  
Age \_\_\_\_\_ Sex \_\_\_\_\_ Marital Status \_\_\_\_\_  
Address \_\_\_\_\_ Tel No \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Attorney's Name \_\_\_\_\_  
Address \_\_\_\_\_ Tel No \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
5. Employer \_\_\_\_\_ Occupation \_\_\_\_\_ Job Title \_\_\_\_\_
6. Party Requesting Review \_\_\_\_\_  
Primary Contact at Party's Office \_\_\_\_\_  
Address \_\_\_\_\_ Tel No \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
  
Attorney's Name \_\_\_\_\_  
Address \_\_\_\_\_ Tel No \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
7. Health Care Provider to be Reviewed \_\_\_\_\_  
Specialty (if applicable) \_\_\_\_\_  
Address \_\_\_\_\_ Tel No \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
8. Attach copies of all admissions and/or orders filed or entered in this case.

My signature certifies the following: a) all names and addresses on this form have been verified as current and accurate; b) two identical copies of associated medical material are being submitted for review; and c) all items listed in the table of contents are in each copy of the medical material.

\_\_\_\_\_  
Print Name of Requester

\_\_\_\_\_  
Signature of Requester

**COPY THIS FORM OR REPRODUCE EXACTLY IN APPEARANCE AND CONTENT  
SEE INSTRUCTIONS ON BACK**

Rev. \_\_\_\_\_

1 of 2

**REQUIRED CONTENT, PRESENTATION AND BINDING METHOD**



## FOR ALL MATERIALS SUBMITTED FOR UTILIZATION REVIEW

In accordance with **19 Del.C. §2322F(j)** and the regulations adopted pursuant thereto, all information and medical records submitted to the Department of Labor, Office of Workers' Compensation must represent all of the facts of this case.

### INFORMATION PACKAGE - REQUIRED CONTENT

Completed and signed Request for Utilization Review Form.

A list containing the full names and medical specialties of all providers under review and individuals who performed defense medical examinations relevant to the matter under review.

Proof of date of issuance of claim denial (so the Department of Labor is able to verify that Utilization Review was requested within 15 days of the date of the claim denial).

### MEDICAL RECORDS PACKAGE - REQUIRED CONTENT

**1. Case Report** - The case report shall contain the following:

- a. Name, discipline of care and specialty of the Provider under review; date the provider first treated the claimant.
- b. Claimant's standard demographic information (age, sex, marital status, etc.).
- c. Claimant's employer and occupation/job title.
- d. Date(s) and nature of claimant's work-related injury/exposure.
- e. Date of initial treatment, a brief chronological history of treatment to the present date, and any significant contributing factors which may have had a direct effect on the length of treatment (e.g., diabetes).
- f. Treatment to be reviewed (specify each treatment modality to be reviewed).

**2. Table of Contents**

- Section 1. A copy of the Employer's First Report of Injury.
- Section 2. All reports, notes, etc., from provider being reviewed as submitted to the requesting party.
- Section 3. All reports, notes, etc., of other treating providers as submitted to the requesting party.
- Section 4. All reports resulting from referrals, consultations, DME's and second opinions as submitted to the requesting party.
- Section 5. All diagnostic test results as submitted to the requesting party.
- Section 6. All medical management reports as submitted to the requesting party.
- Section 7. All hospital/clinic records related to the injury as submitted to the requesting party.

**NOTE** Do not include copies of any billing statements or comments/instructions directed to the Utilization Review panel. All material **must** be presented in identified sections; each section's content presented in chronological order.

### REQUIRED PRESENTATION AND BINDING METHOD FOR ALL SUBMITTED MATERIALS

INFORMATION PACKAGE - SUBMIT ONE COPY ONLY -- staple in upper-left-hand corner.

MEDICAL RECORDS PACKAGE - SUBMIT TWO (2) COPIES

- a. All submitted material must be presented in two (2) identical bound copies.
- b. If tabs are used for the sections, they must be positioned to the right side of the document.

Mail or Deliver to: **Department of Labor**

Office of Workers' Compensation  
4425 N. Market St.  
Wilmington, DE 19809  
**302-761-8200**

**6.0 Forms**

- 6.1 The Physician's Report of Workers' Compensation Injury "Progress" Report is to be completed by the health care provider and provided to the employee, the employer and the employer's insurance carrier, if applicable, upon any material change in the employee's physical capability which impacts the employee's return to work status. The "Progress" Report need not be completed by the health care provider upon each and every visit, but rather only in the instance of any material change in the injured employee's physical capability which impacts the employee's return to work status. "Progress" Reports provided in contravention of the above will not be subject to any charge for completion and submission.
- 6.2 The Physicians Report of Workers' Compensation Injury "Progress" Report and Instructions (Physicians Form) follow.

**PHYSICIAN'S FORM  
INSTRUCTIONS/DEFINITIONS**

**The use of this form is required by the Delaware Workers' Compensation Statute, 19 Del.C. §2322E, to report all information specific to this workers' compensation injury.**

**Complete all applicable fields. Your office notes and records do not replace this form.**

1. **Report Type:** Check "Initial" if this is the first visit related to this described injury. Check "Progress" when there has been any material change in the injured employee's physical capability which impacts the employee's return to work status. Check "Closing" if: injured worker is discharged from care.
2. **Case Information:**
  - **Injured Worker's Name:** Name of the injured worker.
  - **Date of Birth:** The injured worker's date of birth.
  - **Date of Injury:** Date of this injury.
  - **Exam Date:** Date of office visit if applicable.
  - **Physician's Phone/Fax:** The telephone and fax numbers of the physician completing this form.
  - **Employer Name:** The name of the employer associated with the claim.
  - **Employer Phone/Fax:** The telephone and fax numbers of the employer.
  - **Insurer Name:** The name of the insurance carrier associated with the claim, if known.
  - **Insurer Claim #:** The claim number assigned by the insurance carrier or self-insured employer, if known.
  - **Insurer Phone/Fax:** The telephone and fax numbers of the insurance carrier associated with the claim, if known.
3. **Initial Visit:** Relate in injured worker's words description of accident/injury.
4. **Work Related Medical Diagnosis(es):** State the injured worker's work related medical diagnosis(es).
5. **Treatment Plan:** Complete all applicable portions regarding treatment. Indicate frequency and duration.
  - **Diagnostic tools/tests:** EMG, MRI, CT-scan, etc.
  - **Procedures:** Any medical procedure including surgical procedures, castings, etc.
  - **Therapy:** Physical therapy, occupational therapy, home exercise, etc., including plan specifications.
  - **Medications:** Antibiotics, analgesics, anti-inflammatory drugs, etc.
  - **Other:** Any treatment not covered above.

6. **Hours Per Day Patient Can Work:** Circle the number of hours applicable to this patient.
7. **D.O.T. Classification of Work:** Circle the classification of work applicable to this patient.
8. **Work Postures/Positional Tolerances:** Comment as appropriate in the space provided regarding the patient's abilities/limitations for the postures/positions listed.
9. **Comments:** To be used to explain/clarify any information required by this form.
10. **Restrictions:** Check applicable category.
11. **Return to Work:** Provide regular duty/modified duty start date.
12. **Reevaluation Date:** Provide date of next evaluation.
13. **Physician Information:** Type or print the name of the physician and circle "yes" or "no" as to whether the physician is a Certified Provider. The health care provider most responsible for the treatment of the employee's work-related injury must sign and date the report.

**THE HEALTH CARE PROVIDER MOST RESPONSIBLE FOR THE TREATMENT OF THE EMPLOYEE'S WORK-RELATED INJURY SHALL COMPLETE AND SUBMIT, AS EXPEDITIOUSLY AS POSSIBLE AND NOT LATER THAN 10 DAYS AFTER THE DATE OF FIRST EVALUATION OR TREATMENT, A REPORT OF EMPLOYEE CONDITION AND LIMITATIONS, ON A FORM ADOPTED FOR THAT PURPOSE PURSUANT TO THIS SECTION, AND SHALL EXPEDITIOUSLY PROVIDE COPIES OF THE REPORT OF EMPLOYEE CONDITION AND LIMITATIONS TO THE EMPLOYEE, THE EMPLOYER AND THE EMPLOYER'S INSURANCE CARRIER, IF APPLICABLE, AS REQUIRED BY 19 DEL. C. §2322E(B).**

DELAWARE WORKERS' COMPENSATION  
PHYSICIAN'S REPORT OF WORKER'S COMPENSATION INJURY

**A COPY OF THIS REPORT MUST BE SENT TO THE INJURED WORKER, EMPLOYER AND THE INSURER**

REPORT TYPE \_\_\_ Initial \_\_\_ Progress \_\_\_ Closing

WORKER'S NAME \_\_\_\_\_

Employer Name \_\_\_\_\_

DOB \_\_\_\_\_ Employer Phone/Fax \_\_\_\_\_

Date of Injury \_\_\_\_\_ Insurer Name \_\_\_\_\_

EXAM DATE \_\_\_\_\_ Insurer Claim No. \_\_\_\_\_

Physician's Phone/Fax \_\_\_\_\_ Insurer Phone/Fax \_\_\_\_\_

INITIAL VISIT ONLY

Injured worker's description of accident/injury \_\_\_\_\_

WORK RELATED MEDICAL DIAGNOSIS (ES) \_\_\_\_\_

TREATMENT PLAN:

Diagnostic Tests \_\_\_\_\_

Procedures \_\_\_\_\_

Therapy \_\_\_\_\_  
Medications \_\_\_\_\_

Hrs. per day patient can work: (circle one)      8   6   4   2   0

**D.O.T. Classification of Work (Circle one)**

**Sedentary** Exerting up to 10 lbs. of force occasionally and/or a negligible amount of force frequently to lift, carry, push, pull or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time.

**Light** Exerting up to 20 lbs. of force occasionally and/or up to 10 lbs. of force frequently and/or negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work.

**Medium** Exerting 20 to 50 lbs. of force occasionally and/or 10 to 25 lbs. of force frequently and or greater than negligible up to 10 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

**Heavy** Exerting 50 to 100 lbs. of force occasionally and/or 25 to 50 lbs. of force frequently and/or 10 to 20 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

**Very Heavy** Exerting in excess of 100 lbs. of force occasionally and/or in excess of 50 lbs. of force frequently and/or in excess of 20 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work.

**Definitions:**

**Occasionally:** activity or condition exists up to 1/3 of the time

**Frequently:** activity or condition exists from 1/3 to 2/3 of the time

**Constantly:** activity or condition exists 2/3 or more of the time

Work Postures/Positional tolerances: Comment **as appropriate** in the space provided regarding the patient's abilities/limitations for the following Postures/Positions. (e.g. Sitting: No more than 30 minutes continuously)

Sitting: \_\_\_\_\_ Squatting: \_\_\_\_\_  
Standing: \_\_\_\_\_ Crawling: \_\_\_\_\_  
Walking: \_\_\_\_\_ Climbing: \_\_\_\_\_  
Driving: \_\_\_\_\_ Repeated arm motions: \_\_\_\_\_  
Bending: \_\_\_\_\_ Repetitive use of wrist/hands: \_\_\_\_\_  
Turn/Twist: \_\_\_\_\_ Reaching up above shoulder: \_\_\_\_\_  
Kneeling: \_\_\_\_\_ Foot controls: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

Above safe work capacities are: temporary \_\_\_\_\_ permanent \_\_\_\_\_ anticipate full duty release \_\_\_\_\_  
Return to work modified duty start date: \_\_\_\_\_

RELEASE TO FULL DUTY WITH NO RESTRICTIONS (Please Circle) YES (Start date \_\_\_\_\_) NO

Physician Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Physician Name: (Please print)\_\_\_\_\_ Certified Provider::YESNO

**PROVIDER FORM**

Revised 05/2009

6.3 The Employer's Modified Duty Availability Report and Instructions (Employers' Form) follow.

**EMPLOYER'S FORM  
INSTRUCTIONS/DEFINITIONS**

**The use of this form is required by the Delaware Workers' Compensation Statute, 19 Del.C. §2322E, to report all information specific to this workers' compensation injury.**

***Complete all applicable fields.***

**1. Case Information:**

- **Employer Name:** The name of the employer associated with the claim.
- **Employee Name:** Name of the injured worker.
- **Modification Duty Information:** Complete all applicable fields
- **Employer Fax:** The telephone and fax numbers of the employer.
- **Job Title:** Provide job title for position available.
- **Job Description:** Provide description of physical requirements of job duties for position available.
- **Environment/Working Conditions:** Identify any environmental factors relevant to position available.

**2. Hours Per Day Job Available:** Circle the number of hours applicable.

**3. Additional Information:** Circle the applicable work status categories for the position available, and comment as appropriate in the space provided regarding the work postures/positional requirements for the modified duty job available.

**4. Employer:** Provide job availability date.

**5. Comments:** To be used to explain/clarify any information required by this form.

**6. Employer Information:** The person responsible for completing this form on behalf of the employer must sign and date this form.

**WITHIN FOURTEEN (14) DAYS OF RECEIVING A NOTICE OF INJURY, THE EMPLOYER SHALL PROVIDE THIS FORM TO THE INJURED WORKER'S HEALTH CARE PROVIDER/PHYSICIAN AND THE EMPLOYER'S INSURANCE CARRIER AS REQUIRED BY 19 DEL.C. §2322E(d).**

**THE HEALTH CARE PROVIDER/PHYSICIAN MUST COMPLETE HIS/HER PORTION OF THIS FORM AND SIGN AND RETURN IT TO THE EMPLOYER WITHIN FOURTEEN (14) DAYS OF THE NEXT DATE OF SERVICE AFTER THE PHYSICIAN'S RECEIPT OF THE FORM FROM THE EMPLOYER, BUT NOT LATER THAN TWENTY-ONE (21) DAYS FROM THE PHYSICIAN'S RECEIPT OF SUCH FORM.**

DELAWARE WORKERS' COMPENSATION  
EMPLOYER'S MODIFIED DUTY AVAILABILITY REPORT

DATE: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_ EMPLOYEE: \_\_\_\_\_

IS MODIFIED DUTY AVAILABLE: \_\_\_\_ Yes \_\_\_\_ No EMPLOYER FAX #: \_\_\_\_\_

IF AVAILABLE, FOR WHAT PERIOD OF TIME: \_\_\_\_ Weeks \_\_\_\_ Indefinite

JOB TITLE: \_\_\_\_\_

JOB DESCRIPTION: \_\_\_\_\_

ENVIRONMENT/WORKING CONDITIONS (e.g., Temperature): \_\_\_\_\_

Hrs. per day job available: (circle minimum and maximum) 8 6 4 2 0

**D.O.T. Classification of Work** (Circle one)

Sedentary Exerting up to 10 lbs. of force occasionally and/or a negligible amount of force frequently to lift, carry, push, pull or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time.

Light Exerting up to 20 lbs. of force occasionally and/or up to 10 lbs. of force frequently and/or negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work.

Medium Exerting 20 to 50 lbs. of force occasionally and/or 10 to 25 lbs. of force frequently and or greater than negligible up to 10 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

Heavy Exerting 50 to 100 lbs. of force occasionally and/or 25 to 50 lbs. of force frequently and/or 10 to 20 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

Very Heavy Exerting in excess of 100 lbs. of force occasionally and/or in excess of 50 lbs. of force frequently and/or in excess of 20 lbs. of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work.

**Definitions:**

**Occasionally:** activity or condition exists up to 1/3 of the time

**Frequently:** activity or condition exists from 1/3 to 2/3 of the time

**Constantly:** activity or condition exists 2/3 or more of the time

Work Postures/Positional requirements: Comment as appropriate in the space provided regarding the following Postures/Positions for the modified duty job available.

Sitting: \_\_\_\_\_ Squatting: \_\_\_\_\_

Standing: \_\_\_\_\_ Crawling: \_\_\_\_\_

Walking: \_\_\_\_\_ Climbing: \_\_\_\_\_

Driving: \_\_\_\_\_ Repeated arm motions: \_\_\_\_\_

Bending: \_\_\_\_\_ Turn/Twist: \_\_\_\_\_

Kneeling: \_\_\_\_\_ Foot controls: \_\_\_\_\_

Reaching up above shoulder: \_\_\_\_\_ Repetitive use of wrist/hands: \_\_\_\_\_

Comments: \_\_\_\_\_

EMPLOYER: Date job is available: \_\_\_\_\_

Comments: \_\_\_\_\_

Employer \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

PHYSICIAN: I approve the job described above. ( ) Yes. ( ) No.

If no, reasons for disapproval/recommended modifications: \_\_\_\_\_

---

Physician Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Physician Name (Please print) \_\_\_\_\_ Certified provider: YES NO

The Health Care Provider/Physician MUST complete his/her portion of this form and SIGN and RETURN it to the EMPLOYER within fourteen (14) days of the next date of service after the HC Provider/Physician's receipt of the form from the employer, but not later than twenty-one (21) days from the HC Provider/Physician's receipt off such form.

**EMPLOYER FORM**

Revised 05/2009

**11 DE Reg. 1661 (06/01/08)**

**12 DE Reg. 67 (07/01/08)**

**12 DE Reg. 1515 (06/01/09)**

**1342 Health Care Practice Guidelines**

**PART D Low Back Treatment Guidelines**

***(Break in Continuity of Sections)***

**6.0 Therapeutic Procedures - Operative**

All operative interventions must be based upon positive correlation of clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic condition(s). It is important to consider non-physiologic modifiers of pain presentation or non-operative conditions mimicking radiculopathy or instability prior to consideration of elective surgical intervention.

While sufficient time allowances for non-operative treatment are required to determine the natural cause and response to non-operative treatment of low back pain disorders, timely decision making for operative intervention is critical to avoid de-conditioning and increased disability (exclusive of "emergent" or urgent pathology such as cauda equina syndrome or associated rapidly progressive neurologic loss).

In general, if the program of non-operative treatment fails, operative treatment is indicated when:

Improvement of the symptoms has plateaued and the residual symptoms of pain and functional disability are unacceptable at the end of active treatment, or at the end of longer duration of non-operative programs for debilitated patients with complex problems; and/or Frequent recurrences of symptoms cause serious functional limitations even if a non-operative active treatment program provides satisfactory relief of symptoms, and restoration of function on each recurrence. Mere passage of time with poorly guided treatment is not considered an active treatment program.

Surgical evaluation for simple decompression of patients with herniated nucleus pulposus and sciatica should occur within 6 to 12 weeks after injury at the latest, within the above stated contingencies. For patients with true, refractory mechanical low back pain in whom fusion is being considered, it is recommended that a surgical evaluation or interventions occur within 4 months following injury.

Spinal decompression surgeries and fusion have re-operation rates of approximately 10% or more over the following five years. Re-operation is indicated only when the outcome following the re-operation is expected to be better, within a reasonable degree of certainty, than the outcome of other non-invasive or less invasive treatment procedures. "Outcomes" refer to the patient's ability to improve functional tolerances such as sitting, standing, walking, strength, endurance, and/or vocational status and pain level. While timely surgical decision-making is critical to avoid de-conditioning and increased disability, a time limited trial of reconditioning may be tried prior to re-operation.

Every post-operative patient should be involved in an active treatment program. The non-surgical rehab guidelines listed above do not apply to post-operative rehabilitation and work conditioning. Interdisciplinary interventions should be strongly considered post-operatively in any patient not making functional progress within expected time frames.

#### 6.1 **DISCECTOMY AND NERVE ROOT DECOMPRESSION**

- 6.1.1 **Description:** To enter into and partially remove the disc and/or Decompress Nerve Root.
- 6.1.2 **Surgical Indications:** May include any of the following: Primary radicular symptoms, radiculopathy on exam, correlating imaging study, and failure of non-surgical care.
- 6.1.3 **Post-Operative Therapy:** A formal physical therapy program should be implemented post-operatively. Active treatment, which patients should have had prior to surgery, will frequently require a repeat of the visits previously ordered. The non-surgical rehab guidelines listed above do not apply to post-operative rehabilitation and work conditioning

#### 6.2 **PERCUTANEOUS DISCECTOMY**

- 6.2.1 **Description:** An invasive operative procedure to accomplish partial removal of the disc through a needle which allows aspiration of a portion of the disc trocar under imaging control.
- 6.2.2 **Surgical Indications:** Percutaneous discectomy is indicated only in cases of suspected septic discitis in order to obtain diagnostic tissue. The procedure is not recommended for contained disc herniations or bulges with associated radiculopathy due to lack of evidence to support long-term improvement.

#### 6.3 **LAMINOTOMY/LAMINECTOMY/FORAMENOTOMY/FACETECTOMY**

- 6.3.1 **Description:** These procedures provide access to produce neural decompression by partial or total removal of various parts of vertebral bone.
- 6.3.2 **Surgical Indications:** May include all of the following: Primary radicular symptoms, radiculopathy on exam, correlating imaging study, and failure of non-surgical care.
- 6.3.3 **Post-Operative Therapy:** A formal rehab program should be implemented post-operatively. Active treatment, which patients should have had prior to surgery, will frequently require a repeat of the visits previously ordered. The implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-operative week is appropriate in uncomplicated post-surgical cases. Some patients may benefit from several occupational therapy visits to improve performance of ADLs. Participation in an active therapy program which includes restoration of ROM, core stabilization, strengthening, and endurance is recommended. The goals of the therapy program should include instruction in a long-term home based exercise program. The non-surgical physical therapy guidelines listed above do not apply to post-operative rehabilitation and work conditioning.

#### 6.4 **SPINAL FUSION**

- 6.4.1 **Description:** Production of a rigid connection between two or more adjacent vertebrae.
- 6.4.2 **Surgical Indications:** A timely decision-making process is recommended when considering patients for possible fusion. For chronic low back problems, fusion should not be considered within the first 4 months of symptoms, except for fracture, dislocation, recurrent herniation, or gross instability

Indications for spinal fusion may include:

- 6.4.2.1 Neural arch defect – Spondylolytic spondylolisthesis, congenital unilateral neural arch hypoplasia.
- 6.4.2.2 Segmental Instability - Excessive motion, as in degenerative spondylolisthesis, surgically induced segmental instability.
- 6.4.2.3 Primary Mechanical Back Pain/Functional Spinal Unit Failure - Multiple pain generators objectively involving two or more of the following: (a) internal disc disruption (poor success rate if more than two disc involved), (b) painful motion segment, as in annular tears, (c) disc resorption, (d) facet syndrome, and or (e) ligamentous tear. (f) Degenerative disc disease.



- 6.4.2.4 Revision surgery for failed previous operation(s) if significant functional gains are anticipated.
- 6.4.2.5 History of multiple recurrent herniated discs.
- 6.4.3 **Pre-operative Surgical Indications:** Required pre-operative clinical surgical indications for spinal fusion include all of the following:
  - 6.4.3.1 Planned fusion to exceed two levels requires confirmatory second opinion.
  - 6.4.3.2 For any potential fusion surgery, it is recommended that the injured worker be encouraged to refrain from smoking for at least six weeks prior to surgery and during the period of fusion healing. Because smokers have a higher risk of non-union and higher post-operative costs, it is recommended that insurers cover a smoking cessation program peri-operatively.
- 6.4.4 **Post-operative Therapy:** A formal rehab program should be implemented post-operatively. Active treatment, which patients should have had prior to surgery, will frequently require a repeat of the visits previously ordered. The implementation of a gentle aerobic reconditioning program (e.g., walking), and back education within the first post-operative week is appropriate in uncomplicated post-surgical cases. Some patients may benefit from several occupational therapy visits to improve performance of ADLs. Participation in an active therapy program which includes core stabilization, strengthening, and endurance is recommended the goals of the therapy program should include instruction in a long-term home-based exercise program. The non-surgical physical therapy guidelines listed above do not apply to post-operative rehabilitation and work conditioning
- 6.4.5 **Return-to-Work:** Barring complications, patients responding favorably to spinal fusion may be able to return to sedentary-to-light work within 6 to 12 weeks post-operatively, light-to-medium work within 6 to 9 months post-operatively and medium-to-medium/heavy work within 6 to 12 months post-operatively. Patients requiring fusion whose previous occupation involved heavy-to-very-heavy labor should be considered for vocational assessment as soon as reasonable restrictions can be predicted. The practitioner should release the patient with specific physical restrictions and should obtain a clear job description from the employer, if necessary. Once an injured worker is off work greater than 6 months, the functional prognosis with or without fusion becomes guarded for that individual.
- 6.5 **SACROILIAC JOINT FUSION**
  - 6.5.1 **Description:** Use of bone grafts, sometimes combined with metal devices, to produce a rigid connection between two or more adjacent vertebrae providing symptomatic instability as a part of major pelvic ring disruption.
  - 6.5.2 **Surgical Indications:** Sacroiliac (SI) joint fusion may be indicated for stabilization of a traumatic severe disruption of the pelvic ring. This procedure has limited use in minor trauma and would be considered only on an individual case-by-case basis. In patients with typical mechanical low back pain, this procedure is considered to be investigational. Until the efficacy of this procedure for mechanical low back pain is determined by an independent valid prospective outcome study, this procedure is not recommended for mechanical low back pain.
- 6.6 **IMPLANTABLE SPINAL CORD STIMULATORS** are reserved for those low back pain patients with pain of greater than 6 months duration who have not responded to the standard non-operative or operative interventions previously discussed within this document. Refer to Division's Chronic Pain Disorder Medical Treatment Guidelines.
- 6.7 **INTRADISCAL ELECTROTHERMAL ANNULOPLASTY (IDEA) (more commonly called IDET, or Intradiscal Electrothermal therapy)**
  - 6.7.1 **Description:** An outpatient non-operative procedure. A wire is guided into the identified painful disc using fluoroscopy. The wire is then heated at the nuclear annular junction within the disc. Physicians performing this procedure must have been trained in the procedure and should have performed at least 25 prior discograms. Prior authorization is required for IDET.
  - 6.7.2 **Surgical Indications:** Failure of conservative therapy including physical therapy, medication management, or therapeutic injections. Indications may include those with chronic low back pain,

disc related back pain, or pain lasting greater than 6 months. There is conflicting evidence regarding its effectiveness. In one of the most recent studies only approximately 40% of patients had greater than 50% relief of pain. Patients should be aware of these percentages. Strict adherence to the indications is recommended.

The candidate should meet the following criteria:

- 6.7.2.1 Age not above 60 or under 18; and
- 6.7.2.2 Normal neurological exam; and
- 6.7.2.3 No evidence of nerve root compression on MRI; and
- 6.7.2.4 Concordant pain reproduced with provocation discography (low pressure); and
- 6.7.2.5 Functionally limiting low back pain far in excess of leg pain for at least 6 months; and
- 6.7.2.6 No evidence of inflammatory arthritis, spinal conditions mimicking low back pain, moderate to severe spinal stenosis, spinal instability, disc herniation, or medical or metabolic diseases precluding follow-up rehabilitation; and
- 6.7.2.7 Disc height greater than 50% of adjacent normal disc; and
- 6.7.2.8 No previous IDET procedure at the same level.

- 6.7.3 **Post-Procedure Therapy:** Some cases may require epidural injection after the IDET procedure has been performed. A corset should be used for the first 6 weeks. Sitting upright is limited to 30 to 45 minutes for the first two weeks. A formal physical therapy program should be implemented post-operatively. Some patients may benefit from several occupational therapy visits to improve performance of ADLs. Rehabilitation may take as long as 6 months and include stretching during the first month, floor exercises in the second month, 3 to 5 consecutive months of progressive exercise program, and sport activities in the 5th and 6th months as tolerated. The goals of the therapy program should include instruction in a long-term home-based exercise program. The non-surgical physical therapy guidelines listed above do not apply to post-operative rehabilitation and work conditioning

**Return to Work:** Barring complications, may be able to return to limited duty after one to two weeks. A corset should be used for the first six weeks. Sitting upright is limited to 30 to 45 minutes for the first two weeks. Zero to 10 pounds lifting limits for first 6 weeks post-procedure. If successful, patients may return to medium work category (20 to 50 pounds per DOT standards) at 4 to 6 months.

- 6.8 **LASER DISCECTOMY** involves the delivery of laser energy into the center of the nucleus pulposus using a fluoroscopically guided laser fiber under local anesthesia. The energy denatures protein in the nucleus, causing a structural change which is intended to reduce intradiscal pressure. Its effectiveness has not been shown. Laser discectomy is not recommended.

## 6.9 **ARTIFICIAL LUMBAR DISC REPLACEMENT**

- 6.9.1 **Description:** involves the insertion of a prosthetic device into an intervertebral space from which a degenerated disc has been removed, sparing only the peripheral annulus. The endplates are positioned under intraoperative fluoroscopic guidance for optimal placement in the sagittal and frontal planes. The prosthetic device is designed to distribute the mechanical load of the vertebrae in a physiologic manner and maintain range of motion.

General selection criteria for lumbar disc replacement includes symptomatic ~~one-level~~ degenerative disc disease. The patient must also meet fusion surgery criteria, and if the patient is not a candidate for fusion, a disc replacement procedure should not be considered. Additionally, the patient should be able to comply with pre-and post-surgery protocol.

The theoretical advantage of total disc arthroplasty is that it preserves range of motion and physiologic loading of the disc. This could be an advantage for adults who are physically active. Studies do not demonstrate a long-term advantage of measured function or pain over comparison groups undergoing fusion. The longevity of this prosthetic device has not yet been determined. Significant technical training and experience is required to perform this procedure successfully. Surgeons must be well-versed in anterior spinal techniques and should have attended appropriate training courses, or have undergone training during a fellowship. Mentoring and proctoring of

procedures is highly recommended. Reasonable pre-operative evaluation may include an angiogram to identify great vessel location. The angiogram may be either with contrast or with magnetic resonance imaging. An assistant surgeon with anterior access experience is required. ~~It is intended that if the FDA approves TDA for multiple levels then the HCAP will modify the treatment guidelines to reflect this change.~~

6.9.2 **Surgical Indications:**

Symptomatic ~~one-level~~ degenerative disc disease established by objective testing (CT or MRI scan followed by positive provocation discogram, if necessary).

Symptoms unrelieved after ~~six~~ four months of active non-surgical treatment, including ~~P~~physical medicine and manual therapy interventions ~~are completed~~ Spine pathology limited to one level

6.9.3 **Contraindications:**

Significant spinal deformity/scoliosis Facet joint arthrosis Spinal instability Deficient posterior elements Infection Any contraindications to an anterior abdominal approach (including multiple prior abdominal procedures) Previous compression or burst fracture at the surgical level Spinal canal stenosis Spondylolysis Spondylolisthesis greater than 3 mm Osteoporosis or any metabolic bone disease Chronic steroid use or use of other medication known to interfere with bone or soft tissue healing Autoimmune disorder Allergy to device components/materials Morbid obesity (e.g., body/mass index [BMI] of greater than 40, over 100 pounds overweight) Active malignancy

6.9.4 **Post-operative Therapy:** Bracing may be appropriate. A formal ~~physical~~ therapy program should be implemented post-operatively. Active treatment, which patients ~~should~~ may have had prior to surgery, will frequently require a repeat of the visits previously ordered. The implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-operative week is appropriate in uncomplicated post-surgical cases. Some patients may benefit from several occupational therapy visits to improve performance of ADLs. Participation in an active therapy program which includes restoration of ROM, core stabilization, strengthening, and endurance is recommended to be initiated at the discretion of the surgeon. Lifting and bending are usually limited for several months at least. Sedentary duty may be able to begin within six weeks in uncomplicated cases. The goals of the therapy program should include instruction in a long-term home based exercise program. The non-surgical ~~physical~~ therapy guidelines listed above do not apply to post-operative rehabilitation and work conditioning

6.10 **KYPHOPLASTY**

6.10.1 **Description:** A surgical procedure for the treatment of symptomatic thoracic or lumbar vertebral compression fractures, most commonly due to osteoporosis or other metabolic bone disease, and occasionally with post-traumatic compression fractures and minor burst fractures that do not significantly compromise the posterior cortex of the vertebral body. Pain relief can be expected in approximately 90% of patients. Vertebral height correction is inconsistent, with approximately 35% to 40% of procedures failing to restore height or kyphotic angle.

6.10.2 **Operative Treatment:** Kyphoplasty involves the percutaneous insertion of a trocar and inflatable balloon or expanding polymer into the vertebral body, which re-expands the body, elevating the endplates and reducing the compression deformity. Polymethylmethacrylate (PMMA) bone cement is injected under low pressure into the cavity created by the balloon inflation. In contrast to vertebroplasty, which introduces PMMA cement under high pressure, the space created by balloon inflation allows a higher viscosity PMMA to be injected under lower pressure, which may reduce the risks associated with extravertebral extravasation of the material. There may be an advantage to performing the procedure within one month of the fracture, since the elevation of the endplates may be more readily achieved than when the procedure is delayed.

6.10.3 **Surgical Indications:** Kyphoplasty is an accepted treatment for the following indications:

Compression fracture vertebral height loss between 20% and 85% Vertebral height restoration.

Kyphoplasty is more likely to increase vertebral height if performed within 30 days of fracture occurrence

6.10.4 **Contraindications:**

The presence of neurologic compromise related to fracture  
High-velocity fractures with a significant burst component  
Significant posterior vertebral body wall fracture  
Severe vertebral collapse (vertebra plana)  
Infection, and  
Coagulopathy

#### 6.11 VERTEBROPLASTY

6.11.1 **Description:** a procedure for the treatment of painful thoracic and lumbar vertebral compression fractures caused by osteoporosis or other metabolic bone disease. Polymethylmethacrylate (PMMA) bone cement is injected with high pressure into the vertebral body via an 11- to 13-gauge needle, with the goal of stabilizing the spine and relieving pain. The procedure does not correct spinal deformity. Pain relief can be expected in approximately 90% of patients. Vertebral height correction is inconsistent, with approximately 35% to 40% of procedures failing to restore height or kyphotic angle.

6.11.2 **Indications:**

Compression fracture of preferably less than 30 days  
Vertebral height loss between 20% and 85%  
Intact posterior wall

6.11.3 **Contraindications:**

The presence of neurologic compromise related to the fracture; High velocity fractures with a significant burst component. Posterior vertebral body wall fracture; Severe vertebral collapse (vertebra plana); and Infection; and Coagulopathy

6.12 **PERCUTANEOUS RADIOFREQUENCY DISC DECOMPRESSION** is an investigational procedure which introduces a 17 gauge cannula under local anesthesia and fluoroscopic guidance into the nucleus pulposus of the contained herniated disc, using radiofrequency energy to dissolve and remove disc material. Pressure inside the disc is lowered as a result. There have been no randomized clinical trials of this procedure at this time. Percutaneous radiofrequency disc decompression is not recommended.

6.13 **NUCLEUS PULPOSUS REPLACEMENT** involves the introduction of a prosthetic implant into the intervertebral disc, replacing the nucleus while preserving the annulus fibrosus. It is limited to investigational use in the United States at this time. It is not recommended.

6.14 **EPIDUROSCOPY AND EPIDURAL LYSIS OF ADHESIONS** (Refer to Injections-Therapeutic).

6.15 **INTRAOPERATIVE MONITORING** is a common intraoperative electrodiagnostic technique that may include somatosensory evoked potentials (SSEP), motor evoked potentials (MEP), or pedicle screw monitoring. The monitoring procedure may be used to evaluate spinal cord integrity and screw placement during the operative procedure. The use of intraoperative monitoring can be anticipated to become more common as percutaneous spinal procedures gain greater acceptance.