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Notice: This document is not the authenticated version.

1000 DEPARTMENT OF LABOR
1300 Division of Industrial Affairs
1340 The Office of Workers' Compensation

1341 Workers' Compensation Regulations

1.0 Purpose and Scope

- 1.1 Section 2322B, Chapter 23, Title 19, **Delaware Code** authorizes and directs the Department of Labor to adopt a Health Care Payment System by regulation after promulgation by the Workers' Compensation Oversight Panel.
- 1.2 Section 2322B, Chapter 23, Title 19, **Delaware Code**, authorizes and directs the Workers' Compensation Oversight 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 fee schedule framework for hospitals, ambulatory surgery centers, and professional services based upon Resource Based Relative Value Scale (RBRVS), Medical Severity Diagnosis Related Group (MS-DRG), Ambulatory Payment Classification (APC) or other equivalent scale used by the Centers for Medicare and Medicaid Services, and Delaware geographic adjustments.
 - 1.3.1 The Delaware workers' compensation health care payment system (HCPS) has moved towards an RBRVS, MS-DRG, and APC based system. While the Workers' Compensation Oversight Panel ("Panel") used these tools to form the foundation of the HCPS, Delaware has not adopted by default Medicare rules for workers' compensation. The Panel developed these Delaware specific rules and regulations to govern the HCPS. The HCPS does not support health care service or payment denials based on Medicare rules. The Delaware workers' compensation health care practice guidelines remain in effect and care is presumed compensable when followed. These regulations do not define compensable care, but rather a maximum allowable reimbursement (MAR).
 - 1.3.2 The Delaware workers' compensation regulations supersede when a conflict exists with the Centers for Medicare and Medicaid (CMS) rules.
- 1.4 Section 2322B(5), Chapter 23, Title 19, **Delaware Code** authorizes the Workers' Compensation Oversight Panel to establish the amount of reimbursement for a procedure, treatment or service to be a percentage reduction from 85% of the actual charge, if a specific fee is not set forth in the Fee Schedule Amounts. Facility billed codes identified as Add-On and listed as percent of charge shall not be reimbursed more than the reimbursement for the primary code billed by the Facility.
- 1.5 Section 2322B(9), Chapter 23, Title 19, **Delaware Code** authorizes and directs the Workers' Compensation Oversight Panel to adopt, recommend, and maintain a formulary and fee methodology for pharmacy services, prescription drugs, and other pharmaceuticals.
- 1.6 The fees to be established in Sections 2322B shall be promulgated and recommended by the Workers' Compensation Oversight Panel to the Department before the effective date of the regulation.
- 1.7 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

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Provider Certification approved and proposed by the Workers' Compensation Oversight Panel.

- 1.8 Section 2322E, Chapter 23, Title 19, **Delaware Code**, authorizes and directs the Workers' Compensation Oversight Panel to approve, propose, and recommend to the Department the adoption by regulation of consistent forms for the health care providers and employers ("Forms").

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

17 DE Reg. 322 (09/01/13)

18 DE Reg. 577 (01/01/15)

19 DE Reg. 1100 (06/01/16)

27 DE Reg. 614 (02/01/24)

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"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.

"CPT" means Current Procedural Terminology, copyright American Medical Association (AMA). CPT codes are also known as Healthcare Common Procedure Coding System (HCPCS) Level 1 and is the numeric medical coding system used in the HCPCS for the professional services, as well as hospital outpatient, and ambulatory surgery centers fee schedules.

"Department" means the Department of Labor.

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

"Forms" means the standard health care provider and employer forms for the provision of health care services set forth in 19 **Del.C.** §2322E.

"Geozip" means the geographical area used to determine the "Delaware specific geographically adjusted factor" mandated in 19 **Del.C.** §2322B(a).

"HCPCS" means Healthcare Common Procedure Coding System. HCPCS level 1 consists of the American Medical Association's Current Procedure Terminology (CPT). HCPCS level II codes are alphanumeric and primarily include non-physician services, items, and supplies not covered by the Level 1 (CPT) codes.

"Health Care Payment System" means the comprehensive fee schedule promulgated by the Workers' Compensation Oversight 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

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that pre-authorization of each health care procedure, office visit or health care service to be provided to the employee is not required.

“**MAR**” means maximum allowable reimbursement.

“**Not Addressed**” means when a code or service that is not present in the Delaware Fee Schedule. The code or service shall be reimbursed as a percent of charge per the applicable fee schedule.

“**Not Covered**” means that a fee is represented by \$0.00 on the Delaware Fee Schedule. When a 0% is displayed in either the professional or technical component percentage of the professional fee schedule, the service is considered 100% of the other component. The component with the 0% is not reimbursed Percentage of Charge (POC).

“**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**.

“**Workers’ Compensation Oversight Panel**” or “**Panel**” means the 24 members appointed or serving by virtue of position, pursuant to 19 **Del.C.** §2322A, to carry out the provisions of 19 **Del.C.** Ch. 23.

13 DE Reg. 1558 (06/01/10)

18 DE Reg. 577 (01/01/15)

27 DE Reg. 614 (02/01/24)

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 shall not be subject to the requirement of Certification.

3.1.3 The provisions of Section 3.0 of this regulation shall apply to all treatment of workers 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.** §2322D, certification is required for a health care provider to provide treatment to a worker, 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 in an inpatient hospital setting" specifically includes physicians, chiropractors and physical therapists providing treatment to an injured worker during the worker's period of inpatient hospitalization; all other personnel employed by a hospital providing treatment to an injured worker during the worker's period of inpatient hospitalization are excluded from the Certification requirements of subsection 3.1.4 of this regulation. With regard to any hospital facility providing inpatient and/or outpatient services, to be Certified in accordance with the provisions of §2322D so

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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 worker, 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 shall not be subject to the requirement of Certification. The provisions of §2322D shall apply to all treatments to workers provided after the effective date of the rule/regulation provided by subsection 3.1.4 of this regulation 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 2 years from the last date the health care provider renewed his or her Delaware professional license. Out of state health care providers, who are not licensed in Delaware, must complete State-approved continuing education courses in workers' compensation every 2 years from the date of the out of state 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, 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 completed and the date of completion, in accordance with the above;

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- 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 30 days of the health care provider's knowledge or receipt of notice of any and all such changes.
- 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 subsection 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 §2322D of Title 19, Delaware Code, 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:
State of Delaware Department of Labor
Office of Workers' Compensation
4425 N. Market Street
Wilmington, DE 19802
- 3.3 Instructions and provisions for completing the Certification Form online will be published on the Office of Workers' Compensation website when available.

14 DE Reg. 1375 (06/01/11)

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17 DE Reg. 322 (09/01/13)

18 DE Reg. 577 (01/01/15)

19 DE Reg. 1102 (06/01/16)

27 DE Reg. 614 (02/01/24)

4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

4.1 Introduction and Purpose

4.1.1 The intent of the General Assembly in authorizing a health care payment system is to reduce overall medical expenditures for the treatment of workers' compensation related injuries by 33% by January 31, 2017, and to reduce said expenditures by 20% by January 31, 2015.

4.1.2 For purposes of the Workers' Compensation Act, the Delaware specific geographically adjusted factor 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 as 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 geographically adjusted factor for a specific procedure, treatment or service, the Workers' Compensation Oversight Panel may in its discretion combine data from Delaware's 2 geozips for a specific procedure, treatment, or service, in order to determine a Delaware conversion factor.

4.1.3 This regulation, 19 **DE Admin. Code** 1341, 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.

4.1.4 The physician, as well as hospital outpatient and ambulatory surgery center fee schedules include fee amounts for specific medical services and procedures as identified using the following:

4.1.4.1 Level 1 HCPCS (CPT) numeric identifying codes and modifiers for reporting medical services and procedures as established by the current year of the 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.

4.1.4.2 Level 2 HCPCS alphanumeric codes primarily representing items and supplies, which are not covered by CPT codes (Level 1 HCPCS).

4.1.5 The inpatient hospital fee schedule includes fee amounts for specific groupings of medical services and procedures as identified using the Medical Severity Diagnosis Related Group (MS-DRG) used by the Centers for Medicare and Medicaid Services.

4.2 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.

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4.2.1 The maximum allowable reimbursement for individual reimbursement codes is generally separable into 11 distinct sections – Evaluation and Management (E&M); Anesthesia; Surgery; Radiology; Pathology and Laboratory; General Medicine; Physical Therapy; Hospital Outpatient; Ambulatory Surgery Center; Inpatient Hospital; and HCPCS – 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. For each procedure, the fee schedule table includes the following details (if applicable):

- 4.2.1.1 Year;
- 4.2.1.2 Category;
- 4.2.1.3 Geozip;
- 4.2.1.4 Code or Group – 5 digit CPT, HCPCS, or MS-DRG;
- 4.2.1.5 Modifier;
- 4.2.1.6 Maximum allowable reimbursement (MAR) - professional non-facility;
- 4.2.1.7 Maximum allowable reimbursement (MAR) - professional facility;
- 4.2.1.8 Follow-up days in FUD column;
- 4.2.1.9 Professional Component (modifier 26); and
- 4.2.1.10 Technical Component (modifier TC).

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

4.2.3 For anesthesia fee amounts, anesthesia services provided to employees pursuant to this chapter shall be paid, pursuant to subsection 4.20 of this regulation.

4.2.4 General Medical Services Categories CPT Codes

| | |
|-------------------------|--------------------------|
| Evaluation & Management | 99091, 99202–99499 |
| Anesthesia | 00100–01999, 99100–99140 |
| Surgery | 10004–69990 |
| Radiology | 70010–79999 |
| Pathology & Laboratory | 80047-89398 |

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|-------------------|-----------------------------------------------------------------------------|
| General Medicine | 90281–96999, 97802–97804, 98960–99082, 99151-99199, 99500-99607 |
| Physical Medicine | 97010–97799, 97810–98943 |
| HCPCS | A0021-V5364 |

4.2.4.1 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.

4.2.4.2 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. Fees for health care services or treatment not covered in the HCPCS shall be paid at a percentage reduction from 85% of the actual charge.

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

4.2.5.1 *Current Procedural Terminology*, copyright, American Medical Association, 515 N. State St., Chicago, IL 60610, Chicago, current year;

4.2.5.2 *HCPCS Level II*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Baltimore, current year;

4.2.5.3 *National Correct Coding Policy Manual in Comprehensive Code Sequence for Part B Medicare Carriers*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Baltimore, current year;

4.2.5.4 Medical Severity Diagnosis-Related Group (MS-DRG) classification system, Centers for Medicare and Medicaid Services (CMS), *Federal Register*, Vol. 70, No. 155, current year; and

4.2.5.5 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), current year.

4.3 HCPCS (Healthcare Common Procedure Coding System). The health care payment system requires that services be reported with the Healthcare Common Procedural Coding System Level 2 ("HCPCS Level 2"), HCPCS Level 1, also known as CPT (Current Procedural

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Terminology), or CDT (Current Dental Terminology) codes that most comprehensively describe the services performed. Proprietary bundling edits more restrictive than the current National Correct Coding Policy Manual in Comprehensive Code Sequence for Part B Medicare Carriers, U.S. Department of Health and Human Services, Centers for Medicare and Medicare Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, shall be prohibited.

4.4 Professional Services/CPT Code Set

4.4.1 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, current year.

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

4.4.3 For codes that are deleted and bundled, the remaining/new code will be adjusted to reflect the value of the previously unbundled/deleted codes, so the charge is revenue neutral. For example, if multiple procedures that are bundled into a new code, the new code will include the total value of the previously segregated codes in the preceding year Fee Schedule. The Department of Labor will publish to its web site additional special instructions associated with the revenue neutral fee conversion, where applicable. Once revenue neutral fees are established, they will adjust with the annual CPI-U adjustment referenced in 19 **Del.C.** §2322(5).

4.5 Physician/Health Care Provider Services

4.5.1 The maximum allowable payment for health care treatment and procedures shall be the lesser of the health care provider's actual charges or the fee set in the health care payment system. 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.

4.5.2 The Workers' Compensation Oversight Panel shall establish a fee schedule for all Delaware workers' compensation funded procedures, treatment and services based on the Resource Based Relative Value Scale ("RBRVS") or equivalent scale used by the Centers for Medicare and Medicaid Services. The RBRVS or other equivalent factor shall be multiplied by a Delaware specific geographically adjusted factor to ensure adequate participation by providers. The fee schedule shall result in a reduction of 20% in aggregate workers' compensation medical expenses – inpatient hospital facility, outpatient hospital facility, ambulatory surgery center and other health care providers (professional services) – by the year beginning January 31, 2015, an additional reduction of 5% of workers' compensation medical expenses by the year beginning January 31, 2016, and an additional reduction of 8% of workers' compensation medical expenses by the year beginning January 31, 2017. Resulting in a total reduction of 33% of workers' compensation medical expenses. The aggregate workers compensation medical expenses required by this paragraph shall be attained through reimbursement reductions of equal percentages among hospitals (inpatient and outpatient), ambulatory surgical centers, and other health care providers (professional services); therefore, by January 31, 2015, the fee schedule shall reflect a reduction of 20% in workers' compensation medical expenses paid to hospitals (inpatient and outpatient), a reduction of 20% in workers compensation medical expenses paid to ambulatory surgical centers, and a reduction of 20% in workers compensation medical expenses paid to other health care providers (professional services). This formula shall also be used for the 5% reduction required by January 31, 2016 and the 8% reduction required by January 31, 2017. By January 31, 2017, no individual procedure in Delaware paid for through the workers'

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compensation system (as identified by HCPCS level 1 or level 2 code) shall be reimbursed at a rate greater than 200% of that reimbursed by the federal Medicare system, provided that radiology services may be reimbursed at up to 250% of the federal Medicare reimbursement and surgery services may be reimbursed at up to 300% of the federal Medicare reimbursement.

4.5.3 To ensure that no individual procedure is more than 300% of Medicare for Surgery, 250% of Medicare for Radiology and 200% of Medicare for other professional services by January 2017 the following service area percent of Medicare for the other professional services will be used as guidelines to help obtain the 33% overall reduction: 200% of Medicare for Laboratory and Medicine procedures, 160% of Medicare for Physical Medicine procedures, 130% of Medicare for Evaluation and Management procedures and 100% of Medicare for HCPCS Level II codes. For the years 2015 (20% of 2014 expenses) and 2016 (additional 5% of 2014 expenses) the percent of Medicare by service area will be adjusted accordingly and in a similar ratio to obtain the yearly goals.

4.5.4 The Panel will review changes within RBRVS and CMS conversion factors throughout the transition years and may adjust or override accordingly for procedures that may increase or decrease due to CMS interpretation changes or CPT description changes.

4.5.5 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 a percentage reduction from 85% of the actual charge.

4.5.6 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).

4.6 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 2-digit number placed after the usual procedure code. If more than 1 modifier is needed, place modifier 99 after the procedure code to indicate that 2 or more modifiers will follow.

4.6.1 No reductions in payment will be made when the modifiers below are billed, unless otherwise specified in 19 **DE Admin. Code** 1341 and 1342A-1342G.

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, severity of patient's condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

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 Service by the Same Physician or Other Qualified Health Care Professional During a Postoperative Period: The physician or other qualified health care professional may need to indicate that an E/M service was performed during a postoperative period for a reason unrelated to the original procedure. This circumstance may be reported by adding modifier 24 to the appropriate level of E/M service.

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25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician or other qualified Health Care Professional 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 above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately identifiable 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 services on the same date. This circumstance may be reported by adding modifier 25 to the appropriate level of 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.

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

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.

32 Mandated Services: Services related to mandated consultation and/or related services (e.g., 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.

50 Bilateral Procedure: Unless otherwise identified in the listings, bilateral procedures that are performed at the same session, should be identified by adding modifier 50 to the appropriate 5 digit code.

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Note: This modifier should not be appended to designated "add-on" codes (see Appendix D of CPT).

State Note: There will be no reductions to the procedures billed with the modifier 50.

State Note: Procedure performed bilaterally are reported as two-line items and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

51 Multiple Procedures: When multiple procedures, other than E/M services, Physical Medicine and Rehabilitation services or provision of supplies (e.g., vaccines), are performed at the same session by the same individual, 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 (see Appendix D of CPT).

State Note: There will be no reductions to the procedures billed with the modifier 51.

52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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 of CPT).

53 Discontinued Procedure: Under certain circumstances, the physician or other qualified health care professional 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 individual 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 of CPT).

54 Surgical Care Only: When 1 physician or other qualified health care professional 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 1 physician or other qualified health care professional performed the postoperative management and

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another physician performed the surgical procedure, the postoperative component may be identified by adding modifier 55 to the usual procedure number.

56 Preoperative Management Only: When 1 physician or other qualified health care professional performed the preoperative care and evaluation and another physician performed 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 or Other Qualified Health Care Professional 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 maybe 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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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/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 is available, and the 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.

State Note: There will be no reductions to procedures billed with modifier 59.

62 Two Surgeons: When 2 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 also be reported with modifier 62 added. **Note:** If a co-surgeon acts as an assistant in the performance of additional procedure(s), other than those reported with the modifier 62, during the same surgical session, those services may be reported using separate procedure code(s) with modifier 80 or modifier 82 added, as appropriate.

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

73 Discontinued Outpatient 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 canceled 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 Outpatient 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 or Other Qualified Health Care Professional: It may be necessary to indicate that a procedure or service was repeated by the same physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

77 Repeat Procedure by Another Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a basic procedure or service was repeated by another physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 77 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

78 Unplanned Return to the Operating Room/Procedure Room by the Same Physician or Other Qualified Health Care Professional 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 requires the use of the

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operating/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 or Other Qualified Health Care Professional During the Postoperative Period: The individual 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).

90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician or other qualified health care professional, 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 and 87389). 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 in itself determinative of the use of this modifier.

93 Synchronous Telemedicine Service Rendered Via Telephone or Other Real-Time Interactive Audio-Only Telecommunications System: Synchronous telemedicine service is defined as a real-time interaction between a physician or other qualified health care professional and a patient who is located away at a distant site from the physician or other qualified health care professional. The totality of the communication of information exchanged between the physician or other qualified health care professional and the patient during the course of the synchronous telemedicine service must be of an amount and nature that is sufficient to meet the key components or requirements of the same service when rendered via a face-to-face interaction.

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95 Synchronous Telemedicine Service Rendered Via a Real-Time Interactive Audio and Video Telecommunications System: Synchronous telemedicine service is defined as a real-time interaction between a physician or other qualified health care professional and a patient who is located at a distant site from the physician or other qualified health care professional. The totality of the communication of information exchanged between the physician or other qualified health care professional and patient during the course of the synchronous telemedicine service must be of an amount and nature that would be sufficient to meet the key components or requirements of the same service when rendered via a face-to-face interaction. Modifier 95 may only be appended to the services listed in Appendix P (of CPT). Appendix P is the list of CPT codes for services that are typically performed face-to-face, but may be rendered via real-time (synchronous) interactive audio and video telecommunications system.

96 Habilitative Services: When a service or procedure that may be either habilitative or rehabilitative in nature is provided for habilitative purposes, the physician or other qualified health care professional may add modifier 96 to the service or procedure code to indicate that the service or procedure provided was a habilitative service. Habilitative services help an individual learn skills and functioning for daily living that the individual has not yet developed, and then keep or improve those learned skills. Habilitative services also help an individual keep, learn, or improve skills and functioning for daily living.

97 Rehabilitative Services: When a service or procedure that may be either habilitative or rehabilitative in nature is provided for rehabilitative purposes, the physician or other qualified health care professional may add modifier 97 to the service or procedure code to indicate that the service or procedure provided was a rehabilitative service. Rehabilitative services help an individual keep, get back, or improve skills and functioning for daily living that have been lost or impaired because the individual was sick, hurt, or disabled.

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 by a physician or clinic, the service may be identified by adding modifier TC to the usual procedure number.

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.

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

AD Medical Supervision by a Physician: More Than 4 Concurrent Anesthesia Procedures: Report modifier AD when the anesthesiologist supervises more than 4 concurrent anesthesia procedures.

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G8 Monitored Anesthesia Care (MAC) for Deep, Complex, Complicated or Markedly Invasive Surgical Procedures: Report modifier G8 when monitored anesthesia care is required for deep, complex, complicated, or markedly invasive surgical procedures.

G9 Monitored Anesthesia Care for Patient Who Has a History of Severe Cardiopulmonary Condition: Report modifier G9 when monitored anesthesia care is required for a patient who has a history of severe cardiopulmonary condition.

QK Medical Direction of 2, 3, or 4 Concurrent Anesthesia Procedures Involving Qualified Individuals: Report modifier QK when the anesthesiologist supervises 2, 3, or 4 concurrent anesthesia procedures.

QS Monitored Anesthesia Care Service: The QS modifier is for informational purposes.

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

QY Medical Supervision of One CRNA by an Anesthesiologist: Report modifier QY when the anesthesiologist supervises one CRNA.

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

- 4.7 Hospital Outpatient and Ambulatory Surgical Treatment Methodology
- 4.7.1 Hospital Outpatient and Ambulatory Surgery Centers shall be reimbursed pursuant to 19 **Del.C.** §2322B(3).
- 4.7.2 The Centers for Medicare and Medicaid Services (CMS) has established the Hospital Outpatient Prospective Payment System (OPPS) for reimbursement of hospital outpatient services. The OPPS Rules and Guidelines shall be followed for hospital outpatient and ambulatory surgery center (ASC) services unless otherwise indicated in 19 **DE Admin. Code** 1341 and 1342A-1342G. Specific exceptions are indicated in the sections for Hospital Outpatient/ASC or in the General Guidelines. The Health Care Payment System (HCPS) guidelines shall apply if there is a difference between the OPPS guidelines and the HCPS.
- 4.7.3 Reimbursement shall be made at the lesser of the maximum allowable or billed charges notwithstanding the contract provision in 19 **Del.C.** §2322B(6). Rules regulating payment of hospital outpatient and ASC fees are primarily from OPPS. Reimbursement for hospital outpatient and ASCs shall be in compliance to The Code of Federal Regulations (CFR) Part 4.19 et seq. of Title 42. OPPS reimbursement incorporates Ambulatory Payment Classification (APC) groups. Procedure codes (HCPCS Level I and II) are assigned an APC group based on clinical characteristics and cost similarities. CMS assigns relative weights to the APC groups. CPT Category II and III codes may fall in an APC, they are not recognized in the HCPS.
- 4.7.4 The maximum allowable reimbursement for hospital outpatient services shall be based on the CMS relative weight and status indicators for each APC group multiplied by an appropriately calculated conversion factor for hospital outpatient as published on the Department of Labor web site and relative weight and status indicators listed in Addendum B - Final OPPS Payment by HCPCS Code for CY January 1, 2015. New codes will use the relative weights and status indicator for the year the codes

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incorporated. Link to Addendum B: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Addendum-A-and-Addendum-B-Updates.html>

- 4.7.5 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 the American Association for the Accreditation of Ambulatory Surgery Facilities (AAA).
- 4.7.6 The maximum allowable reimbursement for ASC services shall be based on the CMS relative weight and status indicators for each APC group multiplied by an appropriately calculated conversion factor for ASCs as published on the Department of Labor web site and relative weight listed in Addendum B - Final OPSS Payment by HCPCS Code for CY January 1, 2015.
- 4.7.7 Hospital Outpatient and Ambulatory Surgery Center (ASC) Fee Schedule Methodology:
- 4.7.7.1 ASC and hospital outpatient charge data was submitted and consolidated.
- 4.7.7.2 The 2014 Medicare outpatient prospective payment system weights were applied and a total weight for each CPT/HCPCS code was calculated.
- 4.7.7.3 ASC and hospital outpatient payments were estimated.
- 4.7.7.4 The weights of all codes and the payments were summed.
- 4.7.7.5 Total payment was divided by the total weight to produce an "effective current conversion factor."
- 4.7.7.6 The fee schedule shall result in a reduction of 20% in aggregate workers' compensation medical expenses – inpatient hospital facility, outpatient hospital facility, ambulatory surgery center and other health care providers (professional services) – by the year beginning January 31, 2015, an additional reduction of 5% of workers' compensation medical expenses by the year beginning January 31, 2016, and an additional reduction of 8% of workers' compensation medical expenses by the year beginning January 31, 2017.
- 4.7.7.7 This methodology shall include a geographic adjustment based on Delaware geozips.
- 4.7.7.8 CPT and HCPCS medical codes for treatment in an ambulatory surgery center and not addressed in this schedule shall be reimbursed a percentage of actual charge for geozip 197 and for geozip 199.
- 4.8 Dental Services
- 4.8.1 Whenever the health care payment system does not address a particular dental code, service or treatment in the fee schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge.
- 4.9 Emergency Department of a Hospital. Emergency services in a hospital shall be reimbursed pursuant to 19 **Del.C.** §2322B(3).
- 4.10 Inpatient Hospital
- 4.10.1 Hospital fees shall be reimbursed pursuant to 19 **Del.C.** §2322B(3).

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4.10.2 Definition.

A hospital (other than psychiatric) means an institution which is primarily engaged in providing, by or under the supervision of physicians, to inpatients, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. To be eligible to participate in Medicare, a hospital must also be an institution which:

- 4.10.2.1 Maintains clinical records on all patients;
 - 4.10.2.2 Has bylaws in effect with respect to its staff of physicians;
 - 4.10.2.3 Has a requirement that every patient must be under the care of a physician;
 - 4.10.2.4 Provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times;
 - 4.10.2.5 Has in effect a hospital utilization review plan;
 - 4.10.2.6 Is licensed or is approved by the State or local licensing agency as meeting the standards established for such licensing; and
 - 4.10.2.7 Meets other health and safety requirements found necessary by the Secretary of Health, and Human Services. (These additional requirements may not be higher than comparable ones prescribed for accreditation by the Joint Commission on Accreditation of Hospitals with exceptions specified in the law).
- 4.10.3 MS-DRGs and discharge date shall be used to determine the maximum allowable reimbursement for Inpatient hospital services. The dollar amount shall be calculated by using the CMS MS-DRG 2015 relative weights multiplied by a base rate of an appropriately calculated conversion factor as published on the Department of Labor web site. The maximum allowable reimbursement is payment in full. New DRGs will be based on year incorporated. MS-DRGs not covered in this schedule shall be reimbursed at a percentage reduction of the actual charge.
- 4.10.4 The hospital fee schedule methodology is as follows:
- 4.10.4.1 Hospital data was submitted and consolidated.
 - 4.10.4.2 The 2014 Medicare inpatient weights were applied and a total weight for each MS-DRG was calculated.
 - 4.10.4.3 Hospitals supplied payment amounts.
 - 4.10.4.4 The weights of all codes and the payments were summed.
 - 4.10.4.5 The total payments were divided by the total weight to produce an "effective current conversion factor."
 - 4.10.4.6 The fee schedule shall result in a reduction of 20% in aggregate workers' compensation medical expenses – inpatient hospital facility, outpatient hospital facility, ambulatory surgery center and other health care providers (professional services) – by the year beginning January 31, 2015, an additional reduction of 5% of workers' compensation medical expenses by the year beginning January 31, 2016, and an additional reduction of 8% of workers' compensation medical expenses by the year beginning January 31, 2017.

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- 4.10.4.7 This methodology shall include a geographic adjustment based on Delaware geozips.
- 4.10.5 Other Inpatient Facility Fees
 - 4.10.5.1 Services provided at specialty hospitals (such as rehabilitation hospitals) shall be reimbursed using the current version Medicare pricer tool for the appropriate specialty hospital found at www.cms.gov/PCPricer/. The maximum reimbursement shall be the pricer tool's Grand Total Amount multiplied by the average percentage of acute care hospitals above Medicare, as published on the Department of Labor web site.
 - 4.10.5.2 Payment shall be made within 30 days after the specialty hospital provides the required medical and billing information.
- 4.10.6 Inpatient Care
 - 4.10.6.1 Definition.

For purposes of this fee schedule, "inpatient" means being admitted to a hospital setting for 24 hours or more. An inpatient admission does not require official admission to the hospital.
 - 4.10.6.2 Billing and Reimbursement Rules for Inpatient Care
 - 4.10.6.2.1 Facilities must submit the bill for inpatient services within 30 days after discharge. For those cases involving extended hospitalization, interim bills must be submitted every 30 days.
 - 4.10.6.2.2 Reimbursement for acute inpatient hospital services shall be the maximum reimbursement allowance fixed by the rules set forth in this section of the Fee Schedule, regardless of the total charge.
 - 4.10.6.2.3 Non-covered charges include but are not necessarily limited to:
 - 4.10.6.2.3.1 Convenience items;
 - 4.10.6.2.3.2 Charges for services not related to the work injury/illness;
 - 4.10.6.2.3.3 Services that were not certified by the payer or their representative as medically necessary.
 - 4.10.6.2.4 When reviewing surgical claims the following apply:
 - 4.10.6.2.4.1 Most of the following operative procedures require cardiopulmonary monitoring either by the physician performing the procedure or an anesthesiologist/anesthetist. Because these services are integral to the operating room environment, these are considered as part of the OR fee and are not separately reimbursed:
 - 4.10.6.2.4.1.1 Cardiac monitors;
 - 4.10.6.2.4.1.2 Oximetry;
 - 4.10.6.2.4.1.3 Blood pressure monitor
 - ;
 - 4.10.6.2.4.1.4 Lasers
 - ;
 - 4.10.6.2.4.1.5 Microscopes

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- ;
- 4.10.6.2.4.1.6 Video equipment
- ;
- 4.10.6.2.4.1.7 Set up fees
- ;
- 4.10.6.2.4.1.8 Additional OR staff
- ;
- 4.10.6.2.4.1.9 Gowns;
- 4.10.6.2.4.1.10 Gloves
- ;
- 4.10.6.2.4.1.11 Drapes
- ;
- 4.10.6.2.4.1.12 Towels
- ;
- 4.10.6.2.4.1.13 Mayostand covers
- ;
- 4.10.6.2.4.1.14 On-call or call-back fees
- ;
- 4.10.6.2.4.1.15 After-hours fees
- .
- 4.10.6.2.5 Billing for surgery packs as well as individual items in the packs is not separately reimbursed.
- 4.10.6.2.6 A majority of invasive procedures requires availability of vascular and/or airway access; therefore, the work associated with obtaining this access is included in the cost of the service, i.e., anesthesia—airway access is associated with general anesthesia and is included in the anesthesia charges.
- 4.10.6.2.7 Implants, Durable Medical Equipment, and Supplies. Generally, durable medical equipment and supplies provided or administered in a hospital setting are not separately reimbursed since they are included in the payment reimbursement.
- 4.10.7 Observation Services
 - 4.10.7.1 Definition. Observation services are those services furnished by a hospital on the hospital's premises, and include use of a bed and periodic monitoring by a hospital's staff. The service must be reasonable and necessary to evaluate a patient's condition or to determine need for inpatient admission. To qualify for observation status, the patient needs observation due to an unforeseen circumstance or has a medical condition with a significant degree of instability.
 - 4.10.7.2 General Guidelines

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- 4.10.7.2.1 Observation begins when the patient monitoring begins and ends when the order for discharge is written or given verbally by the physician.
- 4.10.7.2.2 On rare occasions, an observation stay may be extended to 48 hours. In such cases, medical necessity must be established and pre-authorization must be given for payment by the payer.
- 4.10.7.2.3 Services which are NOT considered necessary for observation are as follows:
 - 4.10.7.2.3.1 Services that are not reasonable and necessary for the diagnosis and treatment of the work related injury, but are provided for convenience of the patient, family, or physician
 - ;
 - 4.10.7.2.3.2 Any substitution of an outpatient observation for a medically appropriate inpatient admission
 - 4.10.7.2.3.3 Services ordered as inpatient by the physician but billed as outpatient by the facility
 - 4.10.7.2.3.4 Standing orders for observation following outpatient surgery
 - 4.10.7.2.3.5 Test preparation for a surgical procedure
 - 4.10.7.2.3.6 Continued care of a patient who has had a significant procedure as identified with OPPTS indicator S or T
- 4.10.7.2.4 Observation is not reimbursable for routine preparation furnished prior to an outpatient service or recovery after an outpatient service. Please refer to the criteria for observation services.

4.11 Other Qualified Health Care Professional

- 4.11.1 An Other Qualified 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 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.
- 4.11.2 Notwithstanding language to the contrary, service provided by a CRNA when the QZ modifier applies shall be reimbursed at the same rate as if the services had been performed by an anesthesiologist.

4.12 Independently Operated Diagnostic Testing Facility

- 4.12.1 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.

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- 4.12.2 In the event that the professional services and HCPCS Level II health care payment system is not addressed, the fee for reimbursement of independent diagnostic testing facility services shall be a percentage reduction from 85% of the actual charge.
- 4.12.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5) for a procedure, treatment or service in effect in January of that year.
- 4.13 Pathology
- 4.13.1 The maximum allowable reimbursement for pathology will be determined pursuant to 19 **Del.C.** §2322B.
- 4.13.2 Whenever the health care payment system does not address a pathology service or procedure in the schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge. When a professional component is displayed as 0%, the service is 100% technical. The professional service is \$0.00 and not reimbursed as POC.
- 4.13.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5) for a procedure, treatment or service in effect in January of that year.
- 4.14 Pharmacy
- 4.14.1 Prescribed drugs are capped at the lesser of the provider's usual charge; a negotiated contract amount; or the Average Wholesale Price (AWP) for the National Drug Code (NDC) for the prescription drug or medicine on the day it was dispensed minus a percentage reduction set by the Workers' Compensation Oversight Panel plus a dispensing fee set by the Workers' Compensation Oversight Panel for brand-name drugs or medicines and generic drugs or medicines. The Workers' Compensation Oversight Panel shall be authorized to set different percent reductions and dispensing fees for brand drugs or medicines and generic drugs or medicines. Absent a contract, which is governed by 19 **Del.C.** §2322B(4), the actual charge is the maximum allowed, if it is less than the amount specified in this regulation. Physicians dispensing drugs from their office do not receive the dispensing fee referenced above.
- 4.14.2 Definitions:
- The following words and terms, when used in this regulation, have the following meaning:
- "Average Wholesale Price"** or **"AWP"** means the average wholesale price of a prescription drug as provided in the most current release of the Medi-Span Master Drug Database by Wolters Kluwar Health on the day a prescription drug is dispensed or other nationally recognized drug pricing index adopted by the Workers' Compensation Oversight Panel.
- "Brand name drug"** means a drug for which an application is approved under the Federal Food, Drug, and Cosmetic Act Section 505(c).
- "Generic drug"** means a drug for which an application is approved under the Federal Food, Drug, and Cosmetic Act Section 505(j).
- 4.14.3 Notwithstanding any other provision, if a prescription drug or medicine has been repackaged, the Average Wholesale Price used to determine the maximum reimbursement in controverted and uncontroverted cases shall be the Average Wholesale Price for the underlying drug product, as identified by its national drug code, from the original labeler.
- 4.14.4 Compounding includes the preparation, mixing, assembling, packaging, or labeling of a drug or device as the result of a practitioner-patient-pharmacist relationship

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in the course of professional practice. Compound drugs shall be billed by listing each drug included in the compound and separately calculating the charge for each drug, using national drug codes (NDC). When compounding, a single compounding fee of \$10 per prescription shall be added to the calculated total.

- 4.14.5 As of the effective date of this regulation, Oxycontin as well as oxycodone extended release; and Actiq, as well as transmucosal fentanyl, are not on the Preferred or Non-Preferred Medication List and may only be used with prior written approval of the employer or its insurance carrier. However, an employee on a stable dose of Oxycontin prior to the effective date of this regulation may continue the use of this medication after the effective date of this regulation.
- 4.14.6 The Fee Schedule created by this regulation shall not apply to prescription drugs or medicines provided as part of treatment subject to the inpatient Fee Schedule set forth in 19 **Del.C.** §2322B(3). No separate payment for pharmacy is authorized in an inpatient hospital setting.
- 4.14.7 Pursuant to this regulation, the "Preferred Agents" and "Non-Preferred Agents" categories, as set forth on the Department of Labor (DOL) web site is hereby adopted. The Workers' Compensation Oversight Panel shall review on an annual basis, beginning July 1, 2014, those portions of the Preferred Drug List (PDL) referenced in subsection 4.14.2 through 4.14.6.
- 4.14.8 When a brand name drug is prescribed to treat an injury for which a carrier or self-insured employer is liable, the pharmacist or medical provider dispensing the drug or medication shall substitute a preferred/generic drug pursuant to this regulation as set forth in subsection 4.14.2 through 4.14.6. A physician may prescribe and a pharmacist must dispense a non-preferred/brand name drug or medication only upon the physician's or other authorized individual's completion of the "Justification For Use Of Non-Preferred Medication" form, approved by the Workers' Compensation Oversight Panel and set forth on the Department of Labor (DOL) web site. A provider may prescribe a medication from the Non-Preferred Agent list if the patient has trialed the use of 2 preferred agents and the trials have failed due to lack of efficacy or unacceptable side effects. Preferred agent trials should be documented in the medical record.
- 4.15 Total Component/Professional Component, Technical Component
- 4.15.1 A total physician 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 in subsections 4.15.2 and 4.15.3. 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 in the professional fee schedule.
- 4.15.2 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. Percentages 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.
- 4.15.3 Technical Component: The technical component includes charges made by the physician or clinic to cover the technical services performed. The technical component is displayed in professional services fee schedule by the percentage in the

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TC Amount column. To identify a charge for a technical component only, use of the five-digit code followed by HCPCS Level II modifier TC. Reimbursement for technical services provided by a facility are listed under the Hospital, ASC or Hospital Outpatient fee schedule.

- 4.16 Billing and Payment for Health Care Services
 - 4.16.1 19 **Del.C.** §2322F provides provisions for billing and payment of health care services.
 - 4.16.2 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.
 - 4.16.3 Payment Rates for Physicians, Ambulatory Surgery Centers, and Hospitals (Fee Schedules) will be available on the Department of Labor's website.
- 4.17 Fees for Non-Clinical Services
 - 4.17.1 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 Workers' Compensation Oversight Panel to reflect changes in the cost of providing such services:
 - 4.17.1.1 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:
 - 4.1.17.1.1.1 \$25 for search and retrieval;
 - 4.1.17.1.1.2 \$1.25 per page for first 20 pages;
 - 4.1.17.1.1.3 \$.90 per page for pages 21 through 60;
 - 4.1.17.1.1.4 \$.30 per page for pages 61 and thereafter.
 - 4.17.1.2 Testimony by a physician for non-video deposition shall not exceed \$2,000; for video deposition: \$500 additional;
 - 4.17.1.3 Live testimony by a physician at any hearing or proceeding shall not exceed \$3,500;
 - 4.17.1.4 Completion and transmission of any statutorily required report, form or document by a physician/health care provider: Code 99080 is listed on the professional fee schedule.
- 4.18 Effective Date
 - 4.18.1 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.
 - 4.18.2 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.
- 4.19 General Rules
 - 4.19.1 Definitions

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The following words and terms, when used in this regulation, have the following meaning:

“**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).

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“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 movable body part.

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

“Other Qualified Health Care Professional” (OQHP) means the following professionals (please note this list is not all inclusive): nurse practitioner (NP), certified registered nurse anesthetist (CRNA), certified registered nurse (CRN), clinical nurse specialist (CNS), and physician assistant (PA).

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

“Payer” means the employer or self-insured employer 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 Health Care Payment System 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.

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“**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.

4.19.2 Injections

4.19.2.1 The State of Delaware payment system for Workers’ Compensation has moved towards an RBRVS and APC based system. While we have used these tools to form the foundation of our reimbursement system, Delaware has not adopted, by default, Medicare Rules for Workers Compensation. We have developed Delaware Specific rules and regulations that govern our payment system. The HCPS does not support health care service or payment denials based on Medicare Rules.

4.19.2.2 The Delaware Workers’ Compensation Health Care Practice Guidelines remain in effect and care is presumed compensable when followed. It is the intent of these regulations that care that was allowed under the previous billing system is still compensable, and under no circumstances is the new billing system defining what care is acceptable, but rather a maximum allowable reimbursement.

4.19.2.3 The Delaware Workers’ Compensation Health Care Practice Guidelines specifically allow the use of provocative discography to identify normal and abnormal motion segments and reimbursed per level. Applicable for both the professional and facility reimbursement.

4.19.2.4 Multiple procedures performed on the spine on the same day at different levels remain reimbursable, as do bilateral procedures. Applicable for both professional and facility reimbursements. Facility services shall be reimbursed at a percent reduction from 85% of charges.

4.19.2.5 Fluoroscopy used as a tool to guide the placement of spinal injection needles remains a separately billable and reimbursable charge for the licensed facility. Reimbursement for the facility shall be a percent reduction from 85% of charges. The reading of the fluoroscopic image is included in the professional billing for the actual procedure.

4.19.2.6 Billing for intravenous conscious sedation during a spinal injection procedure remains separately compensable, as long as that service is provided by a certified registered nurse anesthetist, anesthesiologist or a physician, who has additional formal training and is certified in conscious sedation as well as Advanced Cardiac Life Support (ACLS) certified. The service must also be performed in a facility certified by Medicare or accredited by Accreditation Association for Ambulatory Health Care (AAAHC). Sedation directed by the physician performing the procedure is not compensable.

4.19.2.7 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.

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

4.19.2.9 When multiple drugs are administered from the same syringe, reimbursement will be for a single injection.

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- 4.19.2.10 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.
- 4.19.2.11 Anesthetic agents for local infiltration must not be billed separately; this is included in the reimbursement for the procedure.
- 4.19.2.12 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.
- 4.19.3 General Ground Rules
 - 4.19.3.1 Multiple Procedures. It is appropriate to designate more than one procedure that is 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.
 - 4.19.3.2 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.
 - 4.19.3.3 Separate Procedures
 - 4.19.3.3.1 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.
 - 4.19.3.3.2 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).
 - 4.19.3.4 Concurrent/Coordinating Care. Providing similar service (e.g., hospital visits by more than 1 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.
 - 4.19.3.5 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

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individually for the services each person rendered and in accordance with the Medical Fee Schedule.

4.19.3.6 Ground Rules for Physician Assistants (PA) and Nurse Practitioners (NP)

4.19.3.6.1 Physician Supervision. The term "supervise," for billing purposes, encompasses the following supervision requirement:

4.19.3.6.1.1 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.

4.19.3.6.1.2 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.

4.19.3.6.1.2.1 In this instance, reimbursement should be made at the normal physician payment level as if the physician had provided the service.

4.19.3.6.1.2.2 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.

4.19.3.6.2 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.

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

4.19.3.6.3.1 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.

4.19.3.6.3.2 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.

4.19.3.6.3.3 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).

4.19.6.3.4 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.

4.19.6.3.5 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"

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are used. Modifier 83, AS, is used to identify assistant at surgery services provided by a physician assistant or nurse practitioner.

4.20 Evaluation and Management

4.20.1 Payment Ground Rules for E/M Category

4.20.1.1 General Guidelines

4.20.1.1.1 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 2 or more subcategories of E/M services. For example, there are two subcategories of office visits (new patient and established patient) and there are 2 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.

4.20.1.1.2 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.

4.20.1.2 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.

4.20.1.2.1 New and Established Patient

4.20.1.2.1.1 Except as provided herein, a new patient is one who has not received any professional services from a physician/qualified health care provider or another physician/qualified health care provider of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years. Each time an injured worker has a new compensable workers' compensation injury, the initial evaluation shall be coded as a new patient.

4.20.1.2.1.2 An established patient is one who has received professional services from a physician (or other qualified health care provider) or another physician (or other qualified health care provider) of the same specialty who belongs to the same group practice, within the past three years.

4.20.1.2.2 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.

4.20.1.2.3 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.

4.20.1.2.4 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.

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

4.20.1.2.5.1 Diagnostic results, impressions, and/or recommended diagnostic studies;

4.20.1.2.5.2 Prognosis;

4.20.1.2.5.3 Risks and benefits of management (treatment) options;

4.20.1.2.5.4 Instructions for management (treatment) and/or follow-up;

4.20.1.2.5.5 Importance of compliance with chosen management (treatment) options;

4.20.1.2.5.6 Risk factor reduction;

4.20.1.2.5.7 Injured employee and family education.

4.20.1.2.6 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 conditions, the injured employee becomes an "established patient" (rather than follow-up consultation) under the care of the consulting physician.

4.20.1.2.7 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.

4.20.2 Payment Modifiers for E/M Category

4.20.2.1 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 2-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.

4.20.2.2 The modifiers listed in subsection 4.20.2.2 of this regulation 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:

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24 Unrelated Evaluation and Management Service by the Same Physician or Other Qualified Health Care Professional during a Postoperative Period: The physician or other qualified health care professional 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 or other qualified Health Care Professional 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 above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately identifiable 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 on the same date. This circumstance may be reported by adding modifier 25 to the appropriate level of E/M service. Note: This modifier is not used to report and 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.

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

52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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).

53 Discontinued Procedure: Under certain circumstances, the physician or other qualified health care professional 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 individual 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).

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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.

93 Synchronous Telemedicine Service Rendered Via Telephone or Other Real-Time Interactive Audio-Only Telecommunications System: Synchronous telemedicine service is defined as a real-time interaction between a physician or other qualified health care professional and a patient who is located away at a distant site from the physician or other qualified health care professional. The totality of the communication of information exchanged between the physician or other qualified health care professional and the patient during the course of the synchronous telemedicine service must be of an amount and nature that is sufficient to meet the key components or requirements of the same service when rendered via a face-to-face interaction.

95 Synchronous Telemedicine Service Rendered Via a Real-Time Interactive Audio and Video Telecommunications System: Synchronous telemedicine services is defined as a real-time interaction between a physician or other qualified health care professional and a patient who is located at a distant site from the physician or other qualified health care professional. The totality of the communication of information exchanged between the physician or other qualified health care professional and the patient during the course of the synchronous telemedicine service must be of an amount and nature that would be sufficient to meet the key components and/or requirements of the same service when rendered via a face-to-face interaction. Modifier 95 may only be appended to the services listed in Appendix P (of CPT). Appendix P is the list of CPT codes for services that are typically performed face-to-face, but may be rendered via real-time (synchronous) interactive audio and video telecommunications system.

99 Multiple Modifiers: Under certain circumstances, 2 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.

4.21 Anesthesia

4.21.1 Introduction

4.21.1.1 The formula to calculate anesthesia services provided to employees pursuant to 19 **Del.C.** §2322B(7) shall be as follows: CMS base units + time units + physical status modifier + qualifying circumstances multiplied by the Conversion Factor.

4.21.1.2 A time unit is a 15 minute increment.

Partial units are rounded: 5 minutes or less round down to the previous unit; or more than 5 minutes round up to the next unit.

4.21.1.3 "Conversion Factors" shall be set by the Workers' Compensation Oversight Panel for each geozip. When applicable, the annual CPI-U adjustment to these "Conversion Factors" shall be published on the Department of Labor website.

4.21.2 Special Circumstances

4.21.2.1 Physical Status Modifiers

4.21.2.1.1 Physical status modifiers are represented by the initial letter P followed by a single digit from 1 to 6 representing these Status Description Units:

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- 4.21.2.1.1.1 P1 A normal healthy patient 0
- 4.21.2.1.1.2 P2 A patient with mild systemic disease
0
- 4.21.2.1.1.3 P3 A patient with severe systemic
disease 1
- 4.21.2.1.1.4 P4 A patient with severe systemic
disease that is a constant threat to life 2
- 4.21.2.1.1.5 P5 A moribund patient who is not
expected to survive without the operation 3
- 4.21.2.1.1.6 P6 A patient declared brain-dead whose
organs are being removed for donor purposes 0
- 4.21.2.1.2 The 6 levels in subsections 4.21.2.1.1 - 4.21.2.1.6
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.
- 4.21.2.2 Qualifying Circumstances
- 4.21.2.2.1 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.
- 4.21.2.2.1.1 More than one qualifying circumstance may be selected.
- 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.)
2.
- 4.21.2.2.1.2 The circumstances and value units in
subsection 4.20.2.2.1.1 are consistent with the American Society of
Anesthesiologists (ASA) circumstances and values.
- 4.21.2.2.2 Payers must utilize their medical consultants
when there is a question regarding modifiers and/or special circumstances
for anesthesia charges.

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- 4.21.3 Monitored Anesthesia Care. Monitored anesthesia care occurs when the attending physician requests that an anesthesiologist or certified nurse anesthetist be present during a procedure. This may be to ensure compliance with accepted procedures of the facility. Monitored anesthesia care includes pre-anesthesia exam and evaluation of the patient. The anesthesiologist or certified nurse anesthetist must participate or provide medical direction for the plan of care. The anesthesiologist, resident, or certified 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.
- 4.21.4 Reimbursement for Anesthesia Services
- 4.21.4.1 Criteria for Reimbursement. Anesthesia services may be billed for any 1 of the 3 following circumstances:
- 4.21.4.1.1 An anesthesiologist provides total and individual anesthesia service.
- 4.21.4.1.2 An anesthesiologist directs a CRNA.
- 4.21.4.1.3 Anesthesia provided by a CRNA working independent of an anesthesiologist's supervision is covered under the following conditions:
- 4.21.4.1.3.1 The service falls within the CRNA's scope of practice and scope of license as defined by law.
- 4.21.4.1.3.2 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.
- 4.21.4.2 Reimbursement
- 4.21.4.2.1 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.
- 4.21.4.2.2 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.
- 4.21.4.2.3 When it is necessary to have a second anesthesiologist, the necessity should be substantiated.
- 4.21.4.2.4 Payment for covered anesthesia services is as follows:
- 4.21.4.2.4.1 When the anesthesiologist provides an anesthesia service directly, payment will be made in accordance with the billing reimbursement rules of this Fee Schedule.
- 4.21.4.2.4.2 When an anesthesiologist provides medical direction to the CRNA providing the anesthesia service, then the reimbursement will be divided between the 2 of them at 50%.

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4.21.4.2.4.3 When the CRNA provides the anesthesia service directly, then payment will be the lesser of the actual charge or the amount listed in the Fee Schedule for that procedure.

4.21.4.2.5 Anesthesiologists, CRNAs 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 4 concurrent anesthesia procedures.

QK Medical direction of 2, 3, or 4 concurrent anesthesia procedures involving qualified individuals (CRNA) by an anesthesiologist.

QX CRNA service: with medical direction by a physician.

QY Medical direction of 1 certified registered nurse anesthetist (CRNA) by an anesthesiologist.

QZ CRNA service: without medical direction by an anesthesiologist.

4.21.5 Anesthesia Modifiers. All anesthesia services are reported by using the anesthesia five-digit procedure codes. The 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.

4.21.5.1 Modifiers commonly used in anesthesia are as follows:

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, severity of patient's condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

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 (e.g., 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.

53 Discontinued Procedure: Under certain circumstances the physician or other qualified health care professional may elect to terminate a surgical or diagnostic

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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 individual 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).

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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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, 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.

AA Anesthesia Services Performed Personally by 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.

G8 Monitored Anesthesia Care (MAC) for Deep, Complex, Complicated or Markedly Invasive Surgical Procedures: Report modifier G8 when monitored anesthesia care is required for deep, complex, complicated, or markedly invasive surgical procedures.

G9 Monitored Anesthesia Care for Patient Who Has a History of Severe Cardiopulmonary Condition: Report modifier G9 when monitored anesthesia care is required for a patient who has a history of severe cardiopulmonary condition.

QK Medical Direction of 2, 3, or 4 Concurrent Anesthesia Procedures Involving Qualified Individuals: Report modifier QK when the anesthesiologist supervises 2, 3, or 4 concurrent anesthesia procedures.

QS Monitored Anesthesia Care Service: The QS modifier is for informational purposes.

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

QY Medical Supervision of One CRNA by an Anesthesiologist (Modified by State): Report modifier QY when the anesthesiologist supervises one CRNA.

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QZ CRNA Service without Medical Direction by a Physician (Modified by State):

Regional or general anesthesia provided by the CRNA without medical direction by a physician may be reported by adding modifier QZ.

- 4.21.6 Moderate (Conscious) Sedation
 - 4.21.6.1 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.
 - 4.21.6.2 Moderate sedation does not include minimal sedation (anxiolysis), deep sedation or monitored anesthesia care (00100-01999).
 - 4.21.6.3 When providing moderate sedation, the following services are included and NOT reported separately:
 - 4.21.6.3.1 Assessment of the patient (not included in intraservice time);
 - 4.21.6.3.2 Establishment IV access and fluids to maintain patency, when performed;
 - 4.21.6.3.3 Administration of agent(s);
 - 4.21.6.3.4 Maintenance of sedation;
 - 4.21.6.3.5 Monitoring of oxygen saturation, heart rate and blood pressure; and
 - 4.21.6.3.6 Recovery (not included in intraservice time).
 - 4.21.6.4 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.
 - 4.21.6.5 Do not report 99151-99157 in conjunction with 94760-94762.
 - 4.21.6.6 As a result, moderate sedation has been removed from the services in which it was previously inherently included. To further demonstrate the intended use, the moderate sedation symbol (~) has been removed from all services that previously included moderate sedation, and the Appendix G listing has been removed from the code set. Moderate sedation is no longer considered inherent in CPT codes.
- 4.22 Surgery
 - 4.22.1 General Guidelines
 - 4.22.1.1 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. Global reimbursement includes:
 - 4.22.1.1.1 The operation per se;
 - 4.22.1.1.2 Local infiltration, metacarpal/metatarsal/digital block or topical anesthesia;

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- 4.22.1.1.3 Immediate postoperative care, including dictating operative notes, talking with the family and other physicians;
- 4.22.1.1.4 Writing orders;
- 4.22.1.1.5 Evaluating the patient in the post anesthesia recovery area;
- 4.22.1.1.6 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.
- 4.22.1.1.7 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.
- 4.22.1.1.8 Follow-up days listed are for 0, 10, or 90 days and are listed in the Fee Schedule as 000, 010, or 090.
- 4.22.1.2 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.
- 4.22.1.3 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.
- 4.22.1.4 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.
- 4.22.1.5 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.
- 4.22.1.6 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.
- 4.22.1.7 Suture Removal. Billing for suture removal by the operating surgeon is not appropriate as this is considered part of the global fee.
- 4.22.1.8 Supplies and Materials. Supplies and materials provided by the physician (e.g., sterile trays/drugs) over and above those usually included

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with the office visit may be listed separately using CPT code 99070 or specific HCPCS Level II codes.

- 4.22.1.9 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.
- 4.22.1.10 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.
- 4.22.1.11 Surgical Assistant
 - 4.22.1.11.1 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 20% of the maximum reimbursement allowance (MRA) for the procedures.
 - 4.22.1.11.2 Registered Nurse Surgical Assistant or Physician Assistant
 - 4.22.1.11.2.1 A physician assistant (PA), or registered nurses (RN) who have completed an approved first assistant training course, may be allowed a fee when assisting a surgeon in the operating room (O.R.).
 - 4.22.1.11.2.2 The maximum reimbursement allowance for the physician assistant or the registered nurse first assistant (RNFA) is 20% of the surgeon's fee for the procedure(s) performed.
 - 4.22.1.11.2.3 Under no circumstances will a fee be allowed for an assistant surgeon and a physician assistant or RNFA at the same surgical encounter.
 - 4.22.1.11.2.4 Registered nurses on staff in the O.R. of a hospital, clinic, or outpatient surgery center do not qualify for reimbursement as an RNFA.
- 4.22.1.12 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.
- 4.22.1.13 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.
- 4.22.1.14 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

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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 injections of single or multiple trigger points in 1 or 2 muscles or 20553 when 3 or more muscles are involved.

4.22.1.15 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.

4.22.1.16 Therapeutic/Diagnostic Injections. Injections are considered incidental to the procedure when performed with a related invasive procedure.

4.22.1.17 Intervertebral Biomechanical Device(s) and Use of Codes 22853, 22854, and 22895. Codes 22853, 22854, and 22859 describe the application of an intervertebral biomechanical device to a vertebral defect or interspace. Codes 22853, 22854, or 22859 should be listed in conjunction with a primary procedure without the use of modifier 51. The use of Codes 22853, 22854, or 22859 are limited to 1 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 dependent 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 codes 22853, 22854, or 22859 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.)

4.22.1.18 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.

4.22.1.19 Modifiers for Surgery

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, severity

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of patient's condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician or other qualified Health Care Professional 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 above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately identifiable 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 services on the same date. This circumstance may be reported by adding modifier 25 to the appropriate level of 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.

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

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.

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

Note: This modifier should not be appended to designated "add-on" codes (see Appendix D of CPT).

State Note: There will be no reductions to the procedures billed with the modifier 50.

State Note: Procedures performed bilaterally are reported as two line items and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

51 Multiple Procedures: When multiple procedures, other than E/M services, physical medicine and rehabilitation services, or provision of supplies (e.g., vaccines) are performed at the same session by the same individual, 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 (see Appendix D of CPT).

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State Note: There will be no reductions to the procedures billed with the modifier 51.

52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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 (of CPT)).

53 Discontinued Procedure: Under certain circumstances, the physician or other qualified health care professional 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 individual 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 (of CPT)).

54 Surgical Care Only: When 1 physician or other qualified health care professional 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 1 physician or other qualified health care professional performed the postoperative management and another physician performed the surgical procedure, the postoperative component may be identified by adding modifier 55 to the usual procedure number.

56 Preoperative Management Only: When 1 physician or other qualified health care professional performed the preoperative care and evaluation and another physician performed 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 or Other Qualified Health Care Professional 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

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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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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/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 is available, and the 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.

State Note: There will be no reductions to the procedures billed with the modifier 59.

62 Two Surgeons: When 2 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 also be reported with modifier 62 added. **Note:** If a co-surgeon acts as an assistant in the performance of additional procedure(s), other than those reported with the modifier 62, during the same surgical session, those services may be reported using separate procedure code(s) with modifier 80 or modifier 82 added, as appropriate.

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

76 Repeat Procedure or Service by Same Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a procedure or service was repeated by the same physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated

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procedure or service. **Note:** This modifier should not be appended to an E/M service.

77 Repeat Procedure by Another Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a basic procedure or service was repeated by another physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 77 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

78 Unplanned Return to the Operating Room/Procedure Room by the Same Physician or Other Qualified Health Care Professional 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 requires the use of the operating/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 or Other Qualified Health Care Professional During the Postoperative Period: The individual 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).

99 Multiple Modifiers: Under certain circumstances, 2 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.

4.23 Hospital Outpatient and Ambulatory Surgery Centers

4.23.1 Definitions

4.23.1.1

For purposes of subsection 4.23 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

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facility. For purposes of Workers' Compensation reimbursement to ASCs, the facility must be an approved Medicare ASC, or accredited by Accreditation Association for Ambulatory Health Care, Inc. (AAAHC).

4.23.1.2 For purposes of subsection 4.23 of the fee schedule, "outpatient services" means services provided to a patient who is not admitted for inpatient or residential care.

4.23.1.3 The maximum allowable reimbursement for hospital outpatient and ASC services shall be based on the CMS relative weight and status indicators for each APC group multiplied by an appropriately calculated ASC conversion factor as published on the Department of Labor web site and relative weight and status indicators listed in Addendum B - Final OPPI Payment by HCPCS Code for CY January 1, 2015. New codes will use the relative weights and status indicator for the year the codes incorporated.

4.23.2 Coding and Billing Rules

4.23.2.1 Facility fees for ambulatory surgery must be billed on the UB-04 form.

4.23.2.2 The CPT/HCPCS codes of the procedures performed determines the reimbursement for the facility fee. Report all procedures performed.

4.23.2.3 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:

4.23.2.3.1 Nursing and technician services;

4.23.2.3.2 Use of the facility;

4.23.2.3.3 Drugs, biologicals, surgical dressings, splints, casts and equipment directly related to the provision of the surgical procedure;

4.23.2.3.4 Materials for anesthesia;

4.23.2.3.5 Administration, record keeping and housekeeping items and services.

4.23.2.4 Disposable injection supplies under \$75 are included in the facility fee. Those over \$75 are reimbursed at 85% of the ASC charge for the item.

4.23.2.5 Separate payment is not made for the following services that are directly related to the surgery:

4.23.2.5.1 Pharmacy;

4.23.2.5.2 Medical/surgical supplies other than those designated in subsection 4.22.2.4;

4.23.2.5.3 Sterile supplies;

4.23.2.5.4 Operating room services;

4.23.2.5.5 Ambulatory surgical care;

4.23.2.5.6 Recovery room;

4.23.2.5.7 Treatment or Observation room.

4.23.2.6 Facility fees do not include physician services, x-rays, diagnostic procedures, laboratory procedures, CRNA or anesthesia physician

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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.

4.23.3 National Correct Coding Initiative (NCCI) Edits - Hospital CCI Edits. CMS developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment in Part B claims. CMS developed its coding policies based on coding conventions defined in the American Medical Association's CPT Manual, national and local policies and edits, coding guidelines developed by national societies, analysis of standard medical and surgical practices, and a review of current coding practices. The purpose of the NCCI edits is to prevent improper payment when incorrect code combinations are reported. The Hospital CCI Edit link is found at <http://www.cms.gov/Medicare/Coding/NationalCorrectCodInitEd/NCCI-Coding-Edits.html>

4.23.4 Physical Therapy
 . Physical therapy services performed in a hospital outpatient setting shall be reimbursed according to the guidelines outlined in the professional services fee schedule.

4.23.5 Status Indicators (SI).
 4.23.5.1 Indicator Item/Code/Service OPPS Payment Status
 . Services furnished to a hospital outpatient that are paid under a fee schedule or payment system other than OPPS - for example, not paid under OPPS, paid by fiscal intermediaries/MACs under a fee schedule or payment system other than OPPS - are subject to deductible or coinsurance unless indicated.

4.23.5.2 The following is a list of the accepted status indicators (SI) for use with hospital OPPS:

| Indicators | Item/Code/Service | OPPS Payment Status |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | Services furnished to a hospital outpatient that are paid under a fee schedule or payment system other than OPPS, for example: <ul style="list-style-type: none"> • Ambulance Services • Separately Payable Clinical Diagnostic Laboratory Services • Non-Implantable Prosthetic and Orthotic Devices • EPO for ESRD Patients • Physical, Occupational, and Speech Therapy • Diagnostic Mammography • Screening Mammography | Not paid under OPPS. Paid by fiscal intermediaries/MACs under a fee schedule or payment system other than OPPS. Services are subject to deductible or coinsurance unless indicated otherwise. Not subject to deductible or coinsurance. Not subject to deductible or coinsurance. State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule. |

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| B | Codes that are not recognized by OPSS when submitted on an outpatient hospital Part B bill type (12x and 13x). | <p>Not paid under OPSS.</p> <ul style="list-style-type: none"> • May be paid by fiscal intermediaries/MACs when submitted on a different bill type, for example, 75x (CORF), but not paid under OPSS. • An alternate code that is recognized by OPSS when submitted on an outpatient hospital Part B bill type (12x and 13x) may be available. <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| C | Inpatient Procedures | <p>Not paid under OPSS. Admit patient. Bill as inpatient.</p> <p>State Note: Reimburse as POC.</p> |
| D | Discontinued Codes | <p>Not paid under OPSS or any other Medicare payment system.</p> |
| E | <p>Items, Codes, and Services:</p> <ul style="list-style-type: none"> • That are not covered by any Medicare outpatient benefit based on statutory exclusion. • That are not covered by any Medicare outpatient benefit for reasons other than statutory exclusion • That are not recognized by Medicare for outpatient claims but for which an alternate code for the same item or service may be available. • For which separate payment is not provided on outpatient claims | <p>Not paid by Medicare when submitted on outpatient claims (any outpatient bill type).</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| F | Corneal Tissue Acquisition; Certain CRNA Services and Hepatitis B Vaccines | <p>Not paid under OPSS. Paid at reasonable cost.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |

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| G | Pass-Through Drugs and Biologicals | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| H | Pass-Through Device Categories | <p>Separate cost-based pass-through payment; not subject to copayment.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| K | Non Pass-Through Drugs and Non implantable Biologicals, Including Therapeutic Radiopharmaceuticals | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| L | Influenza Vaccine; Pneumococcal Pneumonia Vaccine | <p>Not paid under OPPS. Paid at reasonable cost; not subject to deductible or coinsurance.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| M | Items and Services Not Billable to the Fiscal Intermediary/MAC | <p>Not paid under OPPS.</p> <p>State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule.</p> |
| N | Items and Services Packaged into APC Rates | <p>Paid under OPPS; payment is packaged into payment for other services. Therefore, there is no separate APC payment.</p> <p>State Note: No payment unless otherwise specified/identified as POC on the hospital outpatient or ASC fee schedule.</p> |
| P | Partial Hospitalization | <p>Paid under OPPS; per diem APC payment.</p> <p>State Note: Reimburse as POC.</p> |

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| Q1 | STV-Packaged Codes | <p>Paid under OPPS; Addendum B displays APC assignments when services are separately payable.</p> <p>(1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator "S," "T," "V," or "X."</p> <p>(2) In other circumstances, payment is made through a separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values. But payment may be packaged or adjusted per rules.</p> |
| Q2 | T-Packaged Codes | <p>Paid under OPPS; Addendum B displays APC assignments when services are separately payable.</p> <p>(1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator T.</p> <p>(2) In other circumstances, payment is made through a separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values. But payment must be packaged or adjusted per rules.</p> |

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| Q3 | Codes That May Be Paid Through a Composite APC | <p>Paid under OPPS; Addendum B displays APC assignments when services are separately payable.</p> <p>Addendum M displays composite APC assignments when codes are paid through a composite APC.</p> <p>(</p> <p>1) Composite APC payment based on OPPS composite-specific payment criteria. Payment is packaged into a single payment for specific combinations of services.</p> <p>(2) In other circumstances, payment is made through a separate APC payment or packaged into payment for other services.</p> <p>State Note: Values are displayed in fee schedule per APC values. But payment may be packaged or adjusted per rules.</p> |
| R | Blood and Blood Products | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values.</p> |
| S | Procedure or Service, Not Discounted When Multiple | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values.</p> |
| T | Procedure or Service | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values. Multiple procedure reductions do not apply.</p> |
| U | Brachytherapy Sources | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values.</p> |
| V | Clinic or Emergency Department Visit | <p>Paid under OPPS; separate APC payment.</p> <p>State Note: Values are displayed in fee schedule per APC values.</p> |

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| X | Ancillary Services | Paid under OPPS; separate APC payment. State Note: No codes have Status Indicator of X. |
| Y | Non-Implantable Durable Medical Equipment | Not paid under OPPS. All institutional providers other than home health agencies bill to DMERC. State Note: Fee schedule currently incorporates the professional fee schedule amount or POC if not in professional schedule. |

4.23.6 Payment Modifiers for Outpatient Services – Hospital Outpatient and ASC. 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 2-digit modifier should be placed after the usual procedure number. If more than 1 modifier is used, place the “Multiple Modifiers” code 99 immediately after the procedure code to indicate that additional modifier codes will follow. Place the additional modifiers after modifier 99. Only certain modifiers in each of the categories (Evaluation and Management, Anesthesia, Surgery, Pathology and Laboratory, Radiology, General Medicine, Physical Medicine, Hospital and Hospital Outpatient/ASC Services) will be recognized for reimbursement purposes. The following modifiers will be recognized for reimbursement by the fee schedule for Hospital Outpatient and ASC services codes:

25 Significant, Separately Identifiable Evaluation and Management Service by the Same Physician or Other Qualified Health Care Professional 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 above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed. A significant, separately identifiable 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 services on the same date. This circumstance may be reported by adding modifier 25 to the appropriate level of 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.

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

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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 session should be identified by adding modifier 50 to the appropriate 5-digit code.

State Note: This modifier should not be appended to designated "add-on" codes (see Appendix D (of CPT)).

State Note: There will be no reductions to the procedures billed with the modifier -50.

State Note: Procedures performed bilaterally are reported as 2 line items and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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 (of CPT)).

58 Staged or Related Procedure or Service by the Same Physician or Other Qualified Health Care Professional 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/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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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

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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 individual. 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. **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.

State Note: There will be no reductions to procedures billed with modifier 59.

73 Discontinued Outpatient 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 canceled 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 Outpatient 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 or Other Qualified Health Care Professional: It may be necessary to indicate that a procedure or service was repeated by the same physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

77 Repeat Procedure by Another Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a basic procedure or service was repeated by another physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 77 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

78 Unplanned Return to the Operating/Procedure Room by the Same Physician or Other Qualified Health Care Professional Following Initial Procedure for a Related Procedure During the Postoperative Period: It may be necessary to indicate that another procedure was performed during the

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postoperative period of the initial procedure (unplanned procedure following initial procedure). When this procedure is related to the first, and requires the use of an operating/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 or Other Qualified Health Care Professional During the Postoperative Period: The individual 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.

E1 Upper left, eyelid

E2 Lower left, eyelid

E3 Upper Right, eyelid

E4 Lower right, eyelid

F1 Left hand, second digit

F2 Left hand, third digit

F3 Left hand, fourth digit

F4 Left hand, fifth digit

F5 Right hand, thumb

F6 Right hand, second digit

F7 Right hand, third digit

F8 Right hand, fourth digit

F9 Right hand, fifth digit

FA Left hand, thumb

GG Performance and payment of a screening mammogram and diagnostic mammogram on the same patient, same day

GH Diagnostic mammogram converted from screening mammogram on same day

LC Left circumflex coronary artery

LD Left anterior descending coronary artery

LM Left main coronary artery

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LT Left side (used to identify procedures performed on the left side of the body)

QM Ambulance service provided under arrangement by a provider of services

QN Ambulance service furnished directly by a provider of services

RC Right coronary artery

RI Ramus intermedius coronary artery RT Right side (used to identify procedures performed on the right side of the body)

T1 Left foot, second digit

T2 Left foot, third digit

T3 Left foot fourth digit

T4 Left foot, fifth digit

T5 Right foot, great toe

T6 Right foot, second digit

T7 Right foot, third digit

T8 Right foot, fourth digit

T9 Right foot, fifth digit

TA Left foot, great toe

4.24 Multiple Procedures for Professional and Facility Procedures

4.24.1 Multiple Procedure Reimbursement Rules. More than 1 procedure performed during the same operative session at the same operative site are reimbursed as follows:

4.24.1.1 100% of the allowable fee for the primary procedure

4.24.1.2 100% of the allowable fee for the second and subsequent procedures

4.24.2 Bilateral Procedure Reimbursement Rule

4.24.2.1 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.

4.24.2.2 There will be no reduction to the procedures billed with the modifier 50, RT or LT.

4.24.3 Multiple Procedure Billing Rules for Professional and Facility Procedures

4.24.3.1 The primary procedure, which is defined as the procedure with the highest RVU, must be billed with the applicable CPT code.

4.24.3.2 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 59, or qualifies as an add-on code.

4.25 Repair of Wounds

4.25.1 Definitions

The following words and terms, when used in 19 **DE Admin. Code** 1341 and 1342 PART A-PART G, have the following meaning.

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“Simple repair” means 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.

“Intermediate repair” means 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.

“Complex repair” means 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.

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

4.25.2.1 The repaired wounds should be measured and recorded in centimeters, whether curved, angular, or stellate.

4.25.2.2 When multiple wounds are repaired, add together the lengths of those in the same classification as defined in subsection 4.25.1 and anatomical grouping and report as a single item. When more than 1 classification of wound is repaired, list the more complicated as the primary procedure and the less complicated as the secondary procedure using modifier 51.

4.25.2.3 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).

4.25.2.4 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.

4.25.2.5 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.

4.25.2.6 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.

4.25.2.7 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.

4.26 Musculoskeletal System

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- 4.26.1 Casting and Strapping. This applies to severe muscle sprains or strains that require casting or strapping.
- 4.26.1.1 Initial (new patient) treatment for soft tissue injuries must be billed under the appropriate office visit code.
 - 4.26.1.2 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.
 - 4.26.1.3 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.
 - 4.26.1.4 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.
- 4.26.2 Fracture Care
- 4.26.2.1 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.
 - 4.26.2.2 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.
 - 4.26.2.3 The phrase “with manipulation” describes reduction of a fracture.
 - 4.26.2.4 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.
 - 4.26.2.5 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.
- 4.26.3 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.
- 4.26.3.1 Diagnostic arthroscopy should be billed at 50% when followed by open surgery.
 - 4.26.3.2 Diagnostic arthroscopy is not billed when followed by arthroscopic surgery.

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- 4.26.3.3 If there are only minor findings that do not confirm a significant preoperative diagnosis, the procedure should be billed as a diagnostic arthroscopy.
- 4.26.4 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.
- 4.26.5 External Spinal Stimulators Post Fusion. The following criteria are established for the medically accepted standard of care when determining applicability for the use of an external spinal stimulator.
 - 4.26.5.1 Patient has had a previously failed spinal fusion; and/or
 - 4.26.5.2 Patient is scheduled for revision or repair of pseudo arthrosis; and/or
 - 4.26.5.3 The patient smokes greater than a pack of cigarettes per day and is scheduled for spinal fusion;
 - 4.26.5.4 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.
 - 4.26.5.5 Pre certification is required for use of the external spinal stimulator if the planned use falls outside the above indications.
- 4.26.6 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:
 - 4.26.6.1 Surgical approach;
 - 4.26.6.2 Isolation of neurovascular structures;
 - 4.26.6.3 Video imaging;
 - 4.26.6.4 Stimulation of nerves for identification;
 - 4.26.6.5 Application of dressing, splint, or cast;
 - 4.26.6.6 Tenolysis of flexor tendons;
 - 4.26.6.7 Flexor tenosynovectomy;
 - 4.26.6.8 Excision of lipoma of carpal canal;
 - 4.26.6.9 Division of transverse carpal ligament;
 - 4.26.6.10 Use of endoscopic equipment;
 - 4.26.6.11 Placement and removal of surgical drains or suction device;
 - 4.26.6.12 Closure of wound.
- 4.27 Radiology
 - 4.27.1 Payment Ground Rules for Diagnostic and Therapeutic Radiological Services
 - 4.27.1.1 General Guidelines

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- 4.27.1.1.1 The maximum allowable reimbursement for radiology will be determined pursuant to 19 **Del.C.** §2322B. 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 address a procedure, treatment or service in the schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge.
- 4.27.1.1.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).
- 4.27.1.1.4 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 on the professional fee schedule. 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 when rendered by the physician or clinic. Identification of a procedure without modifier 26 or TC indicates that the charge includes both the “professional” and the “technical” components.
- 4.27.1.1.5 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.
- 4.27.1.1.6 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” percent amount appears in the PC column, the procedure is assumed to be purely technical in nature and no PC charge will be allowed.
- 4.27.1.1.7 The TC includes the charges for personnel, materials, including ionic contrast media and drugs, film or xerography, space, equipment, and other facility resources when charged by the facility. The technical component maximum allowable reimbursement (MAR) excludes radioisotope cost. To identify a charge for the TC only, use the procedure code followed by modifier TC.
- 4.27.1.1.8 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.
- 4.27.1.2 Definitions and items unique to radiology are listed below:
- 4.27.1.2.1 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

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encounter due to substandard quality, only 1 unit of service for the code can be billed.

4.27.1.2.2 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.

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

4.27.1.3.1 Supervision and Interpretation. When 2 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.

4.27.1.3.2 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.

4.27.1.3.3 Written Report(s). A written report, signed by the interpreting physician, should be considered an integral part of a radiological procedure or interpretation.

4.27.1.3.4 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.

4.27.1.3.5 Injection Procedure

4.27.1.3.5.1 Fees include all usual pre- and post-injection 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.

4.27.1.3.5.2 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

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followed by contrast”), and the appropriate imaging guidance code for needle placement for contrast injection.

4.27.1.3.5.3 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. 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.”

4.27.2 Payment Modifiers for Diagnostic and Therapeutic Radiological 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 the appropriate modifier following the procedure code. When 2 modifiers are applicable to a single code, indicate each modifier on the bill. If more than 1 modifier is used, place the “Multiple Modifiers” modifier 99 immediately after the procedure code. This indicates that 1 or more additional modifier codes will follow.

4.27.2.2 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 in subsection 4.27.2.3 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.

4.27.2.3 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, severity of patient’s condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

26 Professional Component: Certain procedures are a combination of a physician or other qualified health care professional component and a technical component. When the physician or other qualified health care professional 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 session should be identified by adding modifier 50 to the appropriate five-digit code. **Note:** This modifier should not be appended to designated “add-ons” (see Appendix D (of CPT)).

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State Note: There will be no reductions to the procedures billed with the modifier 50.

State Note: Procedures performed bilaterally are reported as two line items, and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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 (of CPT)).

53 Discontinued Procedure: Under certain circumstances, the physician or other qualified health care professional 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 individual 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 modifier 73 and 74 (see modifiers approved for ASC hospital outpatient use (of CPT)).

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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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, 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.

State Note: There will be no reductions to procedures bills with modifier 59.

76 Repeat Procedure or Service by Same Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a

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procedure or service was repeated by the same physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 76 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

77 Repeat Procedure by Another Physician or Other Qualified Health Care Professional: It may be necessary to indicate that a basic procedure or service was repeated by another physician or other qualified health care professional subsequent to the original procedure or service. This circumstance may be reported by adding modifier 77 to the repeated procedure or service. **Note:** This modifier should not be appended to an E/M service.

99 Multiple Modifiers: Under certain circumstances, 2 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 by the physician or clinic, the service may be identified by adding modifier TC to the usual procedure number.

- 4.28 Laboratory and Pathology
 - 4.28.1 Payment Ground Rules for Pathology and Laboratory Services
 - 4.28.1.1 General Guidelines
 - 4.28.1.1.1 Laboratory and Pathology health care treatment and procedures shall be paid pursuant to 19 **Del.C.** §2322B(3). 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.
 - 4.28.1.1.2 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 a percentage reduction from 85% of the actual charge.
 - 4.28.1.1.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).
 - 4.28.1.1.4 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.
 - 4.28.1.1.5 The maximum number of times that drug screening, testing, or the like, may occur is 4 samples per year absent written pre-authorization by the employer or its insurance carrier. If the point of care testing is not consistent with that which the prescriber expected based on the drug or medicine prescribed, then, and only then, will confirmatory testing be

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permitted and subject to payment. A maximum charge of \$100 for point of care testing, or the provider's actual charge, whichever is less, shall be permitted, regardless of the number of drugs being screened for and/or the number of dip sticks, testing instruments, materials, or the like, used.

- 4.28.1.2 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.
- 4.28.1.3 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.
- 4.28.1.4 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.
- 4.28.1.5 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.
 - 4.28.1.5.1 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 36591. For handling, see CPT codes 99000 and 99001.
 - 4.28.1.5.2 Only the physician or laboratory drawing the blood or obtaining the specimen is entitled to a collection and handling fee.
 - 4.28.1.5.3 Relative value units for specimen collection, handling, and patient administrative service are assigned in relation to the complexity of the process.
 - 4.28.1.5.4 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.
 - 4.28.1.5.5 When collection and handling are performed at the testing facility (laboratory), the laboratory may include separate charges for these services.

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- 4.28.1.6 Professional Component. The maximum allowable reimbursement (MAR) includes the professional component (PC) plus the technical component (TC) when performed by the physician or clinic. 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.
- 4.28.1.6.1 Identification of a procedure by the 5-digit CPT code without modifier 26 or TC 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 5-digit CPT code followed by modifier 26.
- 4.28.1.6.2 The technical component includes the charges for personnel, materials, space, equipment, and other facilities, and should be reported using modifier TC when billed by physician, clinic or lab. 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 on the professional fee schedule.
- 4.28.1.7 Separate or Multiple Procedures. It is appropriate to designate more than 1 procedure that is rendered at the same session by separate entries.
- 4.28.1.8 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 in subsection 4.28.1.10.
- 4.28.1.9 Unlisted Service or Procedure. When an unlisted service or procedure is provided, the values used should be substantiated by special report detailed in subsection 4.28.1.10. Identify by name or description.
- 4.28.1.10 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:
- 4.28.1.10.1 Complexity of symptoms;
 - 4.28.1.10.2 Final diagnosis;
 - 4.28.1.10.3 Pertinent physical findings;
 - 4.28.1.10.4 Diagnostic and therapeutic procedures;
 - 4.28.1.10.5 Concurrent problems;
 - 4.28.1.10.6 Follow-up care.
- 4.28.2 Payment Modifiers for Pathology and Laboratory Services

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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 use of the appropriate modifier following the procedure code. When 2 modifiers are applicable to a single code, indicate each modifier on the bill. If more than 1 modifier is used, place the "Multiple Modifiers" code 99 immediately after the procedure code. This indicates that 1 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.

4.28.2.2 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.

4.28.2.3 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, severity of patient's condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

26 Professional Component: Certain procedures are a combination of a physician or other qualified health care professional component and a technical component. When the physician or other qualified health care professional 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 or other qualified health care professional 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 individual 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 modifier 73 and 74 (see modifiers approved for ASC hospital outpatient use (of CPT)).

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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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, or

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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 is available, and the 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.

90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician or other qualified health care professional, 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 and 87389). 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 in itself determinative of the use of this modifier.

99 Multiple Modifiers: Under certain circumstances, 2 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 performed by physician or clinic. When the technical component is reported separately, the service may be identified by adding modifier TC to the usual procedure number.

4.29 Physical Medicine

4.29.1 Payment Ground Rules for Physical Medicine Services

4.29.1.1 General Guidelines

4.29.1.1.1 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

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provided. Chiropractic and physical therapy service reimbursements are explained in this section.

- 4.29.1.1.2 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.
- 4.29.1.2 Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists
 - 4.29.1.2.1 CPT codes 97161-97163, Physical therapy evaluation, is a one-time-only charge per episode of care. CPT code 97164, 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 97164 code shall not exceed once per month unless unusual and/or unforeseen circumstances exist.
 - 4.29.1.2.2 CPT codes 97165-97167, Occupational therapy evaluation, is a one-time-only charge per episode of care. CPT code 97168, 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 97168 code shall not exceed once per month unless unusual and/or unforeseen circumstances exist.
- 4.29.1.3 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.
- 4.29.1.4 Manipulation Codes
 - 4.29.1.4.1 Manipulation performed by physical therapists is billed under the 97140 (manual therapy) CPT code and there is no special modifier necessitated with the use of the 97140 code.
 - 4.29.1.4.2 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.
- 4.29.1.5 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

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and prosthetics are exempt from the medical supplies reimbursement formula; however, 19 **Del.C.** §2322B(5) will apply or by agreement of the parties. Additional medical supplies may not exceed medical supplies reimbursement formula.

4.29.1.6 TENS Units. TENS units (transcutaneous electrical nerve stimulation) must be prescribed by the authorized treating physician. Rental equipment is subject to 19 **Del.C.** §2322B(5) or by agreement. Rental equipment is exempt from the reimbursement formula. The purchase of such units will be subject to the appropriate durable/medical supplies reimbursement explained in that section of these fee schedule instructions and guidelines.

4.29.1.7 Hot/Cold Packs shall be reimbursed per the fee schedule and will adjust each year, pursuant to 19 **Del.C.** §§2322B(5).

4.29.2 Payment Modifiers for Physical Medicine Services

4.29.2.1 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 2 modifiers are applicable to a single code, indicate each modifier on the bill. If more than 1 modifier is used, place the "Multiple Modifiers" modifier 99 immediately after the procedure code. This indicates that 1 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.

4.29.2.2 The modifiers listed in subsection 4.29.2.3 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.

4.29.2.3 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, severity of patient's condition, and physical and mental effort required). **Note:** This modifier should not be appended to an E/M service.

24 Unrelated Evaluation and Management Service by the Same Physician or Other Qualified Health Care Professional During a Postoperative Period: The physician or other qualified health care professional 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.

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

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52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the discretion of the physician or other qualified health care professional. 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 (of CPT)).

53 Discontinued Procedure: Under certain circumstances, the physician or other qualified health care professional 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 individual 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 (of CPT)).

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 performed on the same day. Modifier 59 is used to identify procedures/services, other than 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, 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 is available, and the 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.

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.

4.30 Durable Medical Equipment and Supplies

4.30.1 Whenever the health care payment system does not address a procedure, treatment or service in the schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge.

4.30.2 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).

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4.30.3 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.

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

13 DE Reg. 1558 (06/01/10)

14 DE Reg. 1375 (06/01/11)

15 DE Reg. 1761 (06/01/12)

16 DE Reg. 1080 (04/01/13)

17 DE Reg. 322 (09/01/13)

17 DE Reg. 858 (02/01/14)

17 DE Reg. 1085 (05/01/14)

18 DE Reg. 577 (01/01/15)

18 DE Reg. 675 (03/01/15)

18 DE Reg. 787 (04/01/15)

19 DE Reg. 416 (11/01/15)

19 DE Reg. 1100 (06/01/16)

19 DE Reg. 1102 (06/01/16)

27 DE Reg. 614 (02/01/24)

5.0 Utilization Review

5.1 Pursuant to 19 **Del.C.** §2322F(j), 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, without the employer or its insurance carrier obtaining legal representation, or incurring the costs associated with legal involvement in the utilization review process.

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 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 Workers' Compensation Oversight Panel.

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

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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 Workers' Compensation Oversight 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 In the instance of a compensable claim where the treatment is outside the applicable Practice Guideline for which the health care provider requests pre-authorization but the employer/carrier advises that it does not pre-authorize treatment, such response should be interpreted as tantamount to a denial of such treatment so that the claimant may file a Petition with the IAB to determine whether the treatment is compensable.
- 5.4.4 In the instance of a compensable claim in which open surgery is recommended by the health care provider and stated by the provider to be within the applicable Practice Guideline, the following procedure may be followed by the operating surgeon to facilitate resolution of payment for such treatment: The operating surgeon must specify the particular surgery to be performed and must certify in writing that:
 - 5.4.4.1 The surgery is causally related to the work accident; and
 - 5.4.4.2 The surgery is within the Practice Guideline, with specific reference to the Practice Guideline provision relied upon.
 - 5.4.4.3 The information set forth above must be set forth by the operating surgeon in a separate written report, not through a copy of office notes and/or records. The employer/carrier must within 30 days from receipt of the above either accept/pre-authorize or deny such treatment. If the treatment is denied as non-compliant with the Practice Guidelines, it must be referred to Utilization Review within 15 days of date of denial in accordance with §2322F(h)(j). If the treatment is denied as not causally related to the compensable work accident, the claimant may file a Petition with the Industrial Accident Board to determine whether the treatment is compensable. If the employer/carrier neither accepts/pre-authorizes nor denies the treatment within the 30-day period referenced above, then the treatment will be deemed compensable if performed.
- 5.4.5 All past, prospective and concurrent health care decisions must be reviewed and a Utilization Review determination made no later than 3 working days from receipt of the aforementioned information by the company performing the review, for emergency care, but no later than 15 calendar days from receipt of the aforementioned information by the company performing the review.
- 5.5 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 claimant's attorney of record, the health care provider in question, and the employer or its insurance carrier.
 - 5.5.1 If a party disagrees with the findings following utilization review, a petition may be filed with the Industrial Accident Board for *de novo* review.

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5.5.2 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.

15 DE Reg. 1761 (06/01/12)

17 DE Reg. 322 (09/01/13)

18 DE Reg. 577 (01/01/15)

27 DE Reg. 614 (02/01/24)

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(s) _____
4. Claimant's Name _____
Age _____ Sex _____
Address _____ Tel. No. _____
City _____ State _____ Zip _____
5. Employer _____
6. Party Requesting Review _____
Primary Contact at Party's Office _____
Email Address _____
Address _____ Tel. No. _____
City _____ State _____ Zip _____
7. Name of Claimant's Attorney _____
Address _____
- 8(a). Health Care Provider to be Reviewed _____
Specialty (if applicable) _____
Date of first treatment _____
Address _____ Tel. No. _____
City _____ State _____ Zip _____
- 8(b). Health Care Provider to be Reviewed _____
Specialty (if applicable) _____
Date of first treatment _____
Address _____ Tel. No. _____
City _____ State _____ Zip _____
- 8(c). Additional Health Care Providers to be reviewed (list name, specialty, address, etc. on a separate sheet)
- 8(d). Health Care Facility Impacted (e.g. hospital, ambulatory surgery center, etc.) by this retrospective review (list name, address, etc. on a separate sheet)
9. Treatment to be reviewed: Specify the health care service to be reviewed and the timeframe within

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which the treatment was or will be rendered.

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; (c) the bill denial for the treatment subject to this review was sent within 30 days of receiving the provider's bill; and (d) 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**

**FOR REQUIRED CONTENT, PRESENTATION AND BINDING METHOD
FOR ALL MATERIALS SUBMITTED FOR UTILIZATION REVIEW**

In accordance with 19 **Del.C.** §2322 F(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.

If applicable, a list containing 1) names, addresses, etc. of the health care facilities impacted by this review; and 2) additional health care providers 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

Section 1. All reports, notes, etc., from provider being reviewed from the date of injury or the 2 year period immediately preceding the treatment to be reviewed, whichever is shorter, and the time frame within which the treatment to be reviewed was or will be rendered, as submitted to the requesting party.

Section 2. All reports, notes, etc., of other treating providers from the date of injury or the 1 year period immediately preceding the treatment to be reviewed, whichever is shorter, as submitted to the requesting party.

Section 3. All diagnostic test results from the date of injury or the 2 year period immediately preceding the treatment to be reviewed, whichever is shorter, 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 must be presented in chronological order.

REQUIRED PRESENTATION AND BINDING METHOD FOR ALL SUBMITTED MATERIALS

1. If submitting via US Mail, courier or overnight mail service:
 - a. All submitted material must be presented in 1 bound copy.

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- 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 19802
302-761-8200

2. If submitting electronically:
Email to hcpaymentquestions@delaware.gov

15 DE Reg. 1167 (02/01/12)

27 DE Reg. 614 (02/01/24)

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) and complete instructions on completing the form will be available on the Department of Labor web site.
- 6.3 The Employer's Modified Duty Availability Report and Instructions (Employers' Form) must be completed, pursuant to 19 **Del.C.** §2322E(d). If the employee has returned to full duty, the employer need not complete the form. The Employers' Form and complete instructions will be available on the Department of Labor web site.

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

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

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

14 DE Reg. 1375 (06/01/11)

15 DE Reg. 365 (09/01/11)

15 DE Reg. 1761 (06/01/12)

17 DE Reg. 322 (09/01/13)

17 DE Reg. 1085 (05/01/14)