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Chief Legislative Counsel

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and Managing Director

Zina Cary.
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for Governmental Affairs

RAZA ALI
Legislative Associate

MIRIAM HARDIN, Ph.D
Manager, Continuing Education

September 10, 2021

Heather MacMaster, Esq.
Office of General Counsel
New York State Workers Compensation Board
328 State Street
Schenectady, NY 12305

RE: WCB-28-21-00009-P - Telehealth

Dear Ms. MacMaster:

Thank you for the opportunity to comment on the above-referenced proposed regulations to set forth in coverage for injured workers access to health care services delivered by telehealth. We thank the Workers Compensation Board for its efforts to continue coverage for health care services for injured workers delivered by telehealth, including audio-only coverage, even as the state emergency order has been lifted but the significant spread of Covid has remained with the rise of the delta variant. However, we have concerns with various aspects of this proposal that have been raised by neurosurgeons, psychiatrists and orthopedic surgeons, physician specialists who regularly treat injured worker patients.

First, we have heard substantial concerns from a large neurosurgical group and the New York State Neurological Society regarding the proposed 325-1.13 (10) and (11) which provides that "(10) Supervision of surgical assistants by remote intra-operative monitoring is not permitted under the WCL and thus may not be performed by telehealth ." and "(11) Providers who are not capable of authorization and provide medical care under the direct supervision of an authorized medical provider pursuant to section 13-b (2)(b) of the workers' compensation law may not provide such care by telehealth."

They note that this remote monitoring is now routine for most brain and spine operations, and makes the surgery much safer. They stated that "a tech is present in the OR and the information is related remotely to a neurologist who specializes in IOM. There are few such neurologists and they routinely work remotely and monitor multiple cases at one time." They are very concerned that, if this change were to go forward, it "will become nearly impossible to find anyone willing to monitor these services. Furthermore, it wouldn't be hard to see private insurers extending this bad idea to private payers as well." They also raise concerns that in-suite monitoring is not available at many hospitals.

Second, we have heard significant concerns from physicians with the proposed requirement that both an initial encounter and every third encounter be an in-

person assessment regardless of the clinical circumstances and planned treatment regimen. The New York State Psychiatric Association notes that there is no generally accepted psychiatric standard in place mandating any such frequency of face-to-face meetings. Furthermore, the proposed in-person treatment requirements for telehealth patient services is not required for other coverage including Medicare, Medicaid, and commercial health insurance requirements in New York. A decision to pursue treatment via telehealth should be based solely on clinical factors, as determined by the treating physicians, and patient need. In many cases, adequate care and treatment can be provided solely via telehealth and the needs of the patient should be paramount to ensure full access to necessary care and treatment.

Furthermore, we are concerned with the proposed with proposed section 325-1.13 (b)(3) requiring the initial medical provider to be required to also provide treatment and care at any subsequent telehealth encounter. As noted by New York State Society of Orthopedic Surgeons, current standards of care for musculoskeletal injuries encourage a collaborative process that often consists of a team led by a physician working in close coordination with another physician, a nurse practitioner and/or physician assistant from the same practice and/or group who are familiar with the patient. Moreover, we are very concerned that the proposal could be interpreted to not permit other practitioners within the same group to provide telehealth service to an injured worker patient when the initial treating practitioner is not available. This could result in unnecessary visits to emergency rooms and urgent care settings, potentially creating a burden for the both the patient and the provider.

The team approach ensures continuity of care and facilitates effective patient monitoring and timely follow-up care. Therefore, we urge that the proposed regulation be amended provide flexibility so that a provider from the same practice or group may provide follow-up care via telehealth.

Finally, we urge that the proposal be amended to require that telehealth services be paid under the Workers Compensation program on the same basis, at the same rate, and to the same extent that the WCB for service when provided through in-person diagnosis, consultation or treatment. Parity in reimbursement is an essential component in ensuring needed access to necessary care and treatment for those injured workers covered by the WCB. Telehealth visits have grown exponentially during the COVID-19 pandemic, particularly for mental health care services, and have been proven beneficial where in-person care and treatment has not been possible for a variety of reasons, including efforts to contain transmission of the virus, public health and safety, lack of child care and a lack of transportation. Telehealth services clearly advance both short and long-term treatment goals for injured workers in need of physical and behavioral health care. Telehealth has also substantially reduced the rate of missed appointments. An investment in ensuring fair payment for telehealth services will better enable injured workers to return to work sooner by facilitating greater adherence to treatment plans and medication regimens which will facilitate injured workers recovering sooner.

Thank you for your attention to our comments. Again, we very much support the goal of the proposal to continue comprehensive access to telehealth services for injured workers, but we have concerns with aspects of the proposal. We look forward to the opportunity to discuss these concerns with you at your earliest convenience.

Respectfully submitted,

MORRIS M. AUSTER, ESQ.

ONE COMMERCE PLAZA, SUITE 408, ALBANY, NY 12210 •TELEPHONE (518) 465-8085•FAX (518) 465-0976•E-MAIL
albany@mssny.org