Regulatory Impact Statement for the addition of section 323.2 of Title 12 NYCRR

1. Statutory Authority: Workers’ Compensation Law (WCL) §117(1) and 142 authorizes the Chair of the Workers’ Compensation Board (Board) to adopt reasonable rules consistent with, and supplemental to, the provisions of the WCL.

2. Legislative Objectives:

In keeping with the goals and powers of the New York State Workers’ Compensation Board (Board) to provide quality and efficient care to injured workers, the emergency adoption and permanent proposal seeks to add sacroiliac joint (SIJ) fusion and peripheral nerve stimulation (PNS) to the list of Special Services requiring prior authorization.

3. Needs and benefits: The emergency adoption and permanent proposal is necessary for the health and safety of injured workers because, while these procedures are clinically indicated and necessary in highly select patients, they do carry with them multiple inherent risks, and it is imperative to guard against exposure of patients to these risks in the context of having these procedures performed unnecessarily. The prior authorization process allows the procedures to be performed when they are clinically indicated and ensures that they are medically necessary. The Medical Treatment Guidelines will reflect this, as well.

4. Costs: The Board anticipates that there should be no added costs, as the proposal is simply changing the mechanism for how these surgeries are requested. The change utilizes an existing mechanism to provide injured workers access to procedures that they have largely not had access to previously.

5. Local government mandates: The proposed amendments do not impose any additional program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district – they simply add SIJ fusion and peripheral nerve stimulation to the list of Special Services.
6. Paperwork: The regulatory proposal requires additional paperwork in that SIJ fusion and peripheral nerve stimulation are being added to the list of Special Services requiring prior authorization, so providers will need to fill out a prior authorization request (PAR) for these procedures when medically necessary.

7. Duplication: The proposal does not duplicate other regulatory initiatives.

8. Alternatives: An alternative would be to leave the current regulations in place and not add these procedures to the list of Special Services. However, the Board believes that the clarity as to how these requests will be reviewed is necessary to ensure that only injured workers who need the procedures get them. The proposal also serves to ensure that injured workers who need the procedures are not prevented from receiving them.

9. Federal standards. There are no applicable Federal Standards.

10. Compliance schedule: The emergency adoption takes effect immediately upon filing to ensure that injured workers are protected and that these procedures are not performed unnecessarily, and to provide a mechanism for these procedures to be performed when prior authorization is obtained.