

Assessment of Public Comment

During the public comment period, the Board received one written comment.

The comment requested that the Board expand the policy goal of the emergency adoption for all procedures and not just the procedures addressed in the emergency adoption. The procedures addressed were identified by the Board and its stakeholders as being in particular need of attention and were therefore prioritized with this set of regulatory updates. The process is an ongoing dynamic one, and other procedures may be addressed in the future, but no change has been made in response to this comment.

The comment also requested an explanation for why the Board revised only the procedures listed in the emergency adoption (mostly orthopedic procedures) and not others, and requested the ability to suggest additional procedures be added to the list to improve access to outpatient surgical services. The procedures addressed were identified by the Board and its stakeholders as being in particular need of attention and were therefore prioritized with this set of regulatory updates – these were the most common procedures for workers' compensation injuries that were being performed inpatient but could as easily or better be done outpatient. The process is an ongoing dynamic one, and other procedures may be addressed in the future. No change has been made in response to this comment.

The comment also requested an explanation of how the Board calculated the fees in the emergency adoption, opining that several of the new fees are insufficient, and requested an opportunity to suggest revised fees. The process to determine the fees utilizes statewide and national norms and benchmarks and applies them in the context of the NYS WCB medical fee schedule framework. Additionally, the fees were set to serve as an offset to the cost of the implants. The comment did not offer any specific pricing methodology recommendations or suggested changes, so no change has been made in response to this comment.

The comment also requested a transparent process for a permanent regulation. This regulation was adopted as an emergency measure in addition to the proposal, because there was a need to address the services issues caused by the COVID-19 pandemic as quickly as possible. Because the emergency adoption was also proposed as a permanent adoption and open for a 60-day public comment period before a permanent adoption was considered, no change was made in response to this comment.