A new subdivision (g) of section 324.2 of Title 12 NYCRR is hereby added to read as follows:

(g) Telehealth. Telehealth shall mean medical treatment and care rendered by a medical provider who is Board authorized and provides medical treatment and care in New York State using synchronous two-way audio and visual electronic communication, or synchronous two-way treatment and care via telephone. Telehealth shall not include asynchronous communication between a medical provider and a claimant, and such communication is not separately reimbursable.

(1) Treatment via telehealth is consistent with the Medical Treatment Guidelines following an initial in-person clinical encounter with a Board-authorized provider, when subsequent clinical encounters via telehealth are medically appropriate and subject to the following restrictions:

(i) Every third clinical encounter must be an in-person assessment by the treating medical provider.
(ii) Telehealth is not permissible for services administered by physical therapists, occupational therapists, acupuncturists, and chiropractors.
(iii) In order for any provider to provide services via telehealth, that provider must have previously assessed the patient in-person. All initial encounters between a patient and provider must be in-person encounters.
(iv) When subsequent medical treatment and care will be performed by a medical provider other than the medical provider who treated at the initial clinical encounter, the subsequent treating medical provider must have an in-person clinical encounter with the claimant prior to providing medical treatment and care via telehealth, and thereafter every third clinical encounter with that subsequent treating provider must be an in-person clinical encounter.
(v) In cases in which there have been multiple follow-up clinical encounters by a medical provider other than the initial/in-person medical provider, and the initial/in-person medical provider will be seeing the patient in follow-up, the follow-up clinical encounter by the initial/in-person medical provider must be an in-person clinical encounter, and thereafter every third clinical encounter with the initial/treating provider must be an in-person clinical encounter, as noted herein.
(vi) Every third clinical encounter by medical providers from the same office or medical group practice must be an in-person clinical encounter.
(vii) Whenever follow-up is conducted on an urgent basis, or sooner than the regularly scheduled follow-up appointment, such clinical encounters shall be conducted in-person. If a follow-up is conducted via telehealth, the medical provider must specifically document why an in-person assessment (and/or referral to an urgent care or emergency care facility) was not clinically indicated.
(viii) Permanency evaluations may not be performed via telehealth.
(ix) Independent Medical Examinations conducted pursuant to section 300.2 of this Chapter and section 137 of the Workers’ Compensation Law, may be conducted via telehealth when: (a) the claimant has legal representation; (b) all parties consent to such telehealth examination; (c) the examination is otherwise conducted in accordance with section 300.2 of this Chapter and section 137 of the Workers’ Compensation Law; and (d) the independent medical examiner is not
offering an opinion on permanent impairment. No party is required to consent to participation in an independent medical examination conducted via telehealth.

(x) Supervision of surgical assistants by remote intra-operative monitoring is not a telehealth service or procedure governed or otherwise deemed permissible by this subdivision.

(xi) 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.

(xii) The treating medical provider shall indicate on their report that a clinical encounter was done using telehealth by use of modifier 95 and indicating synchronous two-way audio and visual electronic communication, with a place of service as 11, or by indicating synchronous two-way treatment and care via telephone with place of service as 02.

(xiii) The Chair may suspend or modify application of any restriction set forth in subdivision (b) due to a state-wide or regional emergency or for reasons of medical necessity.

(2) A provider may submit a prior authorization request in accordance with section 324.3 prior to providing telehealth services that vary from the requirements listed in the medical treatment guidelines and paragraph (1) herein.