Regulatory Impact Statement

1. Statutory Authority:

The Chair of the Workers’ Compensation Board (Chair) is authorized to add a new section 329-1.4 of Title 12 NYCRR. Workers’ Compensation Law (WCL) § 117 (1) authorizes the Chair to make reasonable regulations consistent with the provisions of the WCL. WCL § 141 authorizes the Chair to enforce all provisions of the chapter and make administrative regulations and orders providing in part for the receipt, indexing, and examining of all notices, claims and reports.

2. Legislative Objectives:

The Chair of Workers’ Compensation Board is authorized to adopt reasonable rules consistent with and supplemental to the Workers' Compensation Law (Workers' Compensation Law §§ 117[1] and 141). This proposal is intended as an explicit clarification of the Workers’ Compensation Law that remote intraoperative neurophysiological monitoring (IOM) is prohibited, except in limited circumstances detail in the proposal, which include, but are not necessarily limited to: performance by a physician authorized by the NYS WCB; who remains in continuous contact with the operating surgeon throughout the procedure; and who is in close enough geographic proximity to be immediately and actually available in person in the event that surgical events or other emergent circumstances should require in person presence.

3. Needs and Benefits:
One of the overarching goals of the Board is to provide for effective and safe treatment of injured workers. Having a monitoring physician available for consultation and in-person assistance when needed or in an emergency for surgical procedures is a basic and important safety consideration for injured workers receiving effective and safe treatment. This proposal removes any uncertainty about whether this is permitted and explicitly clarifies that remote IOM by physicians is not permitted, except as noted above.

Currently, there is little regulation of IOM, and there are competing opinions whether remote IOM is safe and effective, and what level of in person availability is required in order to assure patient safety. The Board is charged with ensuring that injured workers receive safe and effective care and treatment. In the absence of clear regulation and/or convincing medical literature and studies concluding that remote IOM is safe, the Board wishes to err on the side of safety and prohibit remote IOM except in very limited circumstances. The Board’s medical experts believe this is currently the best practice – if studies and medical literature change in the future to clearly indicate remote IOM (that does not include the immediate, physical on-site/in-person availability of the monitoring physician, if needed) is safe for injured workers, this is something that can be revisited in the future.

4. Costs:

Because this proposal is making an explicit clarification of a position the Board has already taken, there should be little increased costs associated with the proposal. Additionally, the clarity gained from explicitly prohibiting remote IOM (except in very limited circumstances) may reduce disputes over medical bills, and therefore less administrative costs associated with disputing such medical bills.

5. Local Government Mandates:

The rule imposes a prohibition on remote IOM except in very limited circumstances, which applies to any authorized providers, but no local government mandates.

6. Paperwork Requirements:
The proposed amendments to the regulations should not affect paperwork associated with medical treatment. There will be no change to the method and manner of the forms used as a result of this proposal, since it is simply making remote IOM explicitly prohibited (except in very limited circumstances).

7. **Duplication:**

The proposed regulation does not duplicate or conflict with any state or federal requirements.

8. **Alternatives:**

One alternative would be to not propose the addition of this section to the regulations. However, while the Board has maintained that completely remote IOM is not permitted, there remains confusion, and to not add this section would cause the confusion to continue and perpetuate uncertainty and a lack of clarity. This way, the prohibition is explicit and there can be no confusion about whether or not it is permitted. As outlined above, if medical literature indicates in the future that completely remote IOM is safe and it becomes clear that it should be permitted, this prohibition may be revisited in the future.

9. **Federal Standards:**

There are no federal standards applicable to this proposed regulation.

10. **Compliance Schedule:**

Providers will need to comply with the proposed regulation when it is adopted.