

Assessment of Public Comment

The Workers' Compensation Board (WCB) received two letters providing comments regarding the proposed regulation and the Official New York Workers' Compensation Dental Fee Schedule, First Edition, March 1, 2009 (Dental Fee Schedule), incorporated by reference.

The Executive Committee of the New York State Dental Association (NYSDA) appreciated the Chair and Workers' Compensation Board's (WCB) responsiveness to their concerns about impediments to patients' access to care. The NYSDA commented that the new fee schedule and regulations should make it easier for patients injured in the workplace to obtain necessary dental treatment.

The New York State Insurance Fund (NYSIF) noted that the adoption of a dental fee schedule is a big step forward. It is the view of the NYSIF that the benchmark for workers' compensation fee schedules in New York is the Official New York Workers' Compensation Medical Fee Schedule (Medical Fee Schedule), as it provides a schedule of fees and detailed and clear guidelines on how the fares are to be applied in various situations. NYSIF believes that the proposed Dental Fee Schedule requires further refinement, along the lines of the Medical Fee Schedule, to realize the objectives of scheduling dental fees. NYSIF then provided nine specific comments regarding the proposed dental fee schedule.

First, NYSIF noted that unlike the Medical Fee Schedule the Dental Fee Schedule is not regionalized but sets a single fee for each proceed applicable to all parts of the state. According to NYSIF, without regionalization the proposed fee schedule does not reflect community standards. The WCB disagrees with this assessment. When the WCB began the process of drafting a dental fee schedule it considered providing four regions in keeping with the Medical Fee Schedule, but was ultimately dropped. There are problems with a regionalized fee schedule. The Medical Fee Schedule is regionalized based upon zip codes. This results in facilities or providers that are only a couple of miles apart but with different zips potentially being in different regions. When this occurs one facility is reimbursed at a lower value, though it may incur the same expenses as the other

facility. This results in two facilities that are basically in the same community, being reimbursed at two different standards. The WCB did not want to perpetuate this problem. Further, after reviewing the data regarding fees, the WCB determined it could develop a fee schedule that would meet almost all community standards. In addition, having one fee for each procedure makes the fee schedule simple to use. It is interesting to note that numerous dental providers requested and received copies of the proposed fee schedule, yet the WCB has not received one comment that it does not reflect the community standards. In fact, the NYSDA supports the fee schedule. As the WCB had already considered this option and determined it was not appropriate for this fee schedule, the Chair has not amended the Dental Fee Schedule.

Second, NYSIF comments that the Dental Fee Schedule should be revised to provide guidelines similar to those in the Medical Fee Schedule to address the various billing contingencies. The WCB determined it is not necessary to create the numerous and extensive guidelines for the Dental Fee Schedule as exist for the Medical Fee Schedule. Dental treatment is a very small percentage of the health care provided to injured workers. The vast majority of injured workers do not sustain any dental injuries so they do not receive treatment covered by this fee schedule. Therefore, such guidelines are not necessary. Further, as dental treatment is different than medical treatment all of the guidelines from the Medical Fee Schedule are not appropriate. Finally, the experience of the WCB with billing issues relating to dental treatment does not indicate that such guidelines are necessary. With respect to the example of prorating fees between providers this has not been an issue the WCB has to resolve. With respect to the mention of a guideline regarding documentation when charging a fee for anesthesia lasting in excess of 30 minutes, the Dental Fee Schedule provides a single fee for anesthesia that does not depend on length of time. Therefore, the WCB will not be making any changes to the fee schedule.

NYSIF suggest that the Dental Fee Schedule should alert dental providers to the requirements of Workers' Compensation Law (WCL) §13-a (5) that prior authorization must be requested for a procedure or treatment costing more than \$1,000. This provision applies by statute and therefore is not required to be in the regulation

or dental fee schedule. The WCB agrees that dental providers should be reminded of this provision and will perform outreach. With respect to the suggestion that dental providers requesting prior authorization be required to file a treatment plan with the carrier, the WCB does not agree this is necessary and therefore has not adopted this suggestion.

NYSIF proposed two suggestions for Section 444.2. For subdivision (1) of Section 444.2, NYSIF suggested that the language regarding the 25% surcharge for controverted claims be modified to clarify that the increase is only applicable during the time the claim is controverted. The language in this subdivision is the same language in Parts 440 and 442 regarding the pharmacy and durable medical equipment fee schedules. The WCB believes it is best to keep the language the same for all three fee schedules therefore it has not incorporated this change.

With respect to subdivision (2) of Section 444.2, NYSIF suggests modifying it to require dental providers to file a report providing the reasons why a particular procedure is necessary along with the bill for all dental work, rather than just when the procedure is not specifically listed in the fee schedule. The WCB determined this is not necessary as Section 444.3 authorizes a carrier to request additional information if it is needed to determine its liability for the claim.

As this is the first time a dental fee schedule has been adopted in New York, the WCB will monitor its use for issues or confusion regarding its provisions.