

Section 325-1.5 of Title 12 NYCRR is amended to read as follows:

The authority of an employer or carrier to authorize the services of a specialist in excess of a fee of \$1,000 applies only to the necessity for such services, but the choice of such specialist is entirely the choice of the injured worker[except to the extent an injured worker is required by Workers' Compensation Law section 13-a(7) to obtain diagnostic tests or examinations from a provider network or networks with which the employer or carrier contracts], unless the employer or carrier has a contract with a diagnostic testing network or networks, requires an injured worker to utilize a provider or facility affiliated with such diagnostic testing network or networks and has furnished the notification required by section 325-7.5 (d) of Subpart 325-7 of this Part.

Section 325-2.1 of Title 12 NYCRR is amended to read as follows:

The purpose of this Subpart is to establish procedures and protections governing the ability of an employer or carrier to recommend a designated network or provider to an injured employee in accordance with sections 13-a(1), 13-i and 13-j(1) of the Workers' Compensation Law. This Subpart does not apply to the binding direction of care which is authorized by article 10-A and section 25(2-c) of the Workers' Compensation Law. Notwithstanding any other provision to the contrary, this Subpart does not apply when a carrier or employer has contracted with a network or networks to have diagnostic tests, x-ray examinations, magnetic resonance imaging, or other radiological examinations or tests of claimants performed by an affiliated network provider and requires claimants to undergo all such diagnostic tests from a network or networks pursuant to Workers' Compensation Law section 13-a(7)[of the Workers' Compensation Law] and [any applicable regulations]Subpart 325-7 of this Part.

Part 325 of Title 12 NYCRR is amended to add a new Subpart 325-7 to read as follows:

Subpart 325-7. Diagnostic Testing Networks.

Section 325-7.1. Definitions.

Section 325-7.2. Requirements for insurance carriers to contract with diagnostic testing networks.

Section 325-7.3. Requirements to be a diagnostic testing network.

Section 325-7.4. Services provided by diagnostic testing networks.

Section 325-7.5. Procedures for use of diagnostic testing network.

Section 325-7.6. Alterations.

Section 325-7.7. Improper influence in diagnostic testing.

Section 325-7.1 Definitions.

For purposes of this subpart, the following terms shall have the following meanings:

(a) “Affiliated network provider” means a Board authorized health care provider or a medical facility affiliated with a diagnostic testing network that performs diagnostic examinations and tests.

(b) “Board” means the Workers’ Compensation Board, except that as provided in the Workers’ Compensation Law, the decision of the Board in particular cases may be by a member or panel of the Board or by a Workers’ Compensation Law Judge.

(c) “Chair” means the Chair of the Workers’ Compensation Board.

(d) “Claimant” means a worker injured or ill due to a work-related accident and/or occupational disease covered by the Workers’ Compensation Law and over which the Board has jurisdiction.

(e) “Diagnostic Examinations and Tests” shall include for this section diagnostic tests, as defined in subdivision (g) of this section, x-ray examinations, magnetic resonance imaging, and/or other radiological examinations or tests, as defined in subdivision (m) of this section, but shall not include x-ray examinations when such x-rays are medically necessary, and an integral and routine part of the office visit for the diagnosis and treatment of fractures, possible fractures, joint dislocations, tumors, infections, loosening of surgical implants, dislocation of prosthetic joints, spinal instability, or follow-up to surgical procedures.

(f) “Diagnostic testing network” and “Diagnostic network” mean an entity, including but not limited to, an Independent Practice Association duly organized in compliance with all applicable laws and regulations, Professional Corporation, Professional Limited Liability Corporation, Limited Liability Partnership, or professional partnership that contracts with insurance carriers, to arrange for the performance of diagnostic examinations and tests, pursuant to Workers’ Compensation Law Section 13-a (7), by contracting with affiliated network providers.

(g) “Diagnostic tests” means the use of physical, scientific and/or clinical methods to establish the cause and nature of a claimant’s illness or injury as well as the potential subsequent functional impairment caused by the pathology, including Electromyography (EMG) and Nerve Conduction Studies (NCS). Diagnostic tests can also be used to eliminate other possible diagnoses. Diagnostic test results form the basis for claimant care. Diagnostic tests include tests customarily performed as an outpatient procedure and involve recording techniques performed by a set protocol that produces results that can later be interpreted by one or more trained licensed and authorized professionals.

(h) “Independent practice association” or “IPA” means, for purposes of this section and Workers’ Compensation Law Section 13-a (7), a corporation, limited liability company, or professional services limited liability company, duly organized in compliance with all applicable laws and regulations, which, as specified and permitted by its certificate of incorporation or articles of organization, contracts directly with providers of

diagnostic examinations and tests, in order that it may then contract with one or more insurance carrier to make the services of such providers available to claimants.

(i) “Insurance carrier” means the State Insurance Fund, stock corporations, mutual corporations or reciprocal insurers with which employers are insured to provide workers’ compensation coverage, employers permitted to pay compensation directly under the provisions of Workers’ Compensation Law Section 50 (3), (3-a) or (4), and any special fund maintained by the Board that is responsible for paying for medical treatment and care of injured workers, including but not limited to, the Special Fund for Reopened Cases created and governed by Workers’ Compensation Law Section 25-a and the Uninsured Employers’ Fund created and governed by Workers’ Compensation Law Section 26-a. Insurance carrier shall also mean for purposes of this subpart third party administrators responsible for all or part of the claims handling, pursuant to a contract, for the claims of the State Insurance Fund, stock corporations, mutual corporations or reciprocal insurers with which employers are insured to provide workers’ compensation coverage, employers permitted to pay compensation directly under the provisions of Workers’ Compensation Law Section 50 (3), (3-a) or (4), and any special fund maintained by the Board that is responsible for paying for medical treatment and care of injured workers. Insurance carrier shall also mean for purposes of this subpart a preferred provider organization or PPO licensed pursuant to Workers’ Compensation Law Section 353 as a plan that is owned, operated, or administered by an entity that provides for the delivery of all services required by the Workers’ Compensation Law to all claimants covered by such plan.

(j) “Legally and properly organized” means an entity which is organized in accordance with all applicable State laws and regulations, and may include:

- (1) A Professional Corporation (PC), Professional Limited Liability Company (PLLC), limited liability partnership (LLP), or professional partnership by a New York licensed physician or physicians; or
- (2) An Independent Practice Association that meets the requirements of Section 325-7.3 (k) of this Subpart.

(k) “Medical emergency” means an urgent medical condition that in the professional opinion of any reasonable medical provider requires an immediate diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test, in order to save the patient’s life or prevent damage to a patient’s long term health. For purposes of the definition of medical emergency, “immediate” means within twelve hours.

(l) “Medical Treatment Guidelines” means the treatment guidelines for workers’ compensation injuries, illnesses, or occupational diseases to the parts of the body addressed in the guidelines incorporated by reference in section 324.2 (a) of Part 324 of this Subchapter.

(m) “Other radiological examinations or tests” means examinations or tests that are customarily performed as an outpatient procedure utilizing imaging technologies to diagnose or detect a possible injury or condition, do not usually involve or require sedation or anesthesia, and involve recording techniques performed by a set protocol that produce results that can be later interpreted by one or more trained professionals. Imaging technologies used for such radiological examinations or tests may include ionizing radiation, magnetic fields, positron emission tomography, computed tomography, or ultrasound.

(n) “Reasonable distance” means within twenty-five miles of the injured or ill worker’s residence or place of employment except for the following localities: within the City of New York within five miles of the injured or ill worker’s residence or place of employment; within the Cities of Albany, Buffalo, Niagara Falls, Rochester, Schenectady, Syracuse, Troy, and Yonkers within ten miles of the injured or ill worker’s residence or place of employment; and within the Counties of Nassau, Rockland, Suffolk, and Westchester within fifteen miles of the injured or ill worker’s residence or place of employment. However, if there are no facilities or providers who perform diagnostic examinations and tests within such distances from the injured or ill worker’s residence or place of employment, then “reasonable distance” means the distance between the injured or ill worker’s

residence or place of employment and the nearest facility or provider. In no event should travel time to the facility or provider who performs diagnostic examinations and tests exceed one hour.

Section 325-7.2. Insurance carrier requirements to contract with diagnostic testing networks.

(a) An insurance carrier may contract with a legally and properly organized diagnostic testing network or networks as permitted by this Subpart and Workers' Compensation Law section 13-a(7) and in accordance with all applicable law.

(b) An insurance carrier that contracts with a diagnostic testing network or networks pursuant to this Subpart may require claimants to obtain or undergo diagnostic examinations and tests with an affiliated network provider.

(c) In order for an insurance carrier to require claimants to obtain or undergo diagnostic examinations and tests with an affiliated network provider, the insurance carrier, or through a designated diagnostic testing network or networks if permitted by law, must:

(1) File with the Chair, or his or her designee:

(i) a list of all diagnostic testing networks it has contracted with under this section, which list shall include the name, mailing address, toll-free telephone number, email address and website address for the diagnostic testing network and the name and contact information for the manager of the diagnostic testing network or other party listed as the contact;

(ii) Certification from the diagnostic testing network(s) it has contracted with that such diagnostic network has filed with the Chair a list of the names and physical addresses of the medical facility or professional office location(s) where diagnostic examinations and tests will be performed and will file any changes to such list with the Chair within twenty business days;

(iii) Certification from the diagnostic testing network(s) it has contracted with that such diagnostic network has filed with the Chair a list of the diagnostic examinations and tests offered at each medical facility or professional office location listed in subparagraph (ii) of this paragraph and will file any changes to such list with the Chair within twenty business days; and

(iv) Certification from the diagnostic testing network(s) it has contracted with that such diagnostic network has filed with the Chair a list of the names and addresses of the licensed medical providers who may perform and/or interpret the diagnostic examinations and tests at each listed location and will file any changes to such list with the Chair within twenty business days.

(2) Notify the Chair or his or her designee within twenty business days of the addition or removal of any diagnostic testing network or networks from the list in paragraph (1) (i) of this subdivision; and

(3) Remain compliant with all of the applicable requirements in this Subpart and Workers' Compensation Law Section 13-a (7). The Chair or his or her designee is authorized to request any and all information necessary to ensure such compliance and perform inspections of any affiliated network provider's facilities.

(d) The Chair or his or her designee is authorized to request any and all information necessary to ensure compliance with this section from any insurance carrier that has contracted with a diagnostic testing network or networks, from any such networks, and any provider or facility that is affiliated with such networks. All insurance carriers, diagnostic testing networks, and facilities and providers affiliated with such networks must cooperate in any investigation and produce for review by the Chair or his or her designee any relevant documents, including medical records, films, or other forms of test data concerning diagnostic examinations and tests performed by facilities and providers affiliated with diagnostic testing networks pursuant to this Subpart. The medical facilities and professional offices of providers affiliated with diagnostic testing networks shall be subject to inspection by the Chair or his or her designee.

(e) As required by the Chair, insurance carriers shall report to the Chair or his or her designee specified data pertaining to utilization, quality of diagnostic examinations and tests, costs, and outcomes of the services provided by diagnostic testing networks in a prescribed format.

Section 325-7.3. Requirements to be a Diagnostic Testing Network.

(a) A diagnostic testing network must be legally and properly organized as defined in section 325-7.1 (j) of this Subpart.

(b) Any diagnostic testing network that contracts or has an agreement with an insurance carrier pursuant to Workers' Compensation Law Section 13-a(7) and this Subpart must file with the Chair within thirty days after the effective date of this Subpart or thirty days before any diagnostic examinations and tests of claimants are scheduled:

(1) Copies of the basic organizational documents of the diagnostic testing network, along with proof that those documents which must be filed with the Secretary of State have been so filed, such as the certificate of incorporation, bylaws, articles of organization, partnership agreement, trust agreement, operating agreement or other applicable documents and agreements, and all amendments thereto;

(2) The name or names under which it is registered with the Department of State;

(3) The name or names under which it conducts business;

(4) The address or addresses of its administrative office and each of the offices where it conducts any business;

(5) The telephone numbers of each administrative office and business location;

(6) The network's, as well as any affiliated network provider's, tax identification number;

(7) The name, title, and telephone number of the contact person for the network;

(8) A list of the names, addresses, telephone numbers, and official positions of the members of the board of directors, members or managers of a limited liability company, officers, controlling persons, owners or partners and medical director of the diagnostic testing network, updated annually;

(9) A copy of the proposed contract, form of contract or any memorandum of understanding between the parties, and all attachments thereto, to be made with affiliated network providers and any changes or amendments thereto, which shall include:

(i) provisions allowing access by the diagnostic testing network to the test results, reports and records of the affiliated network providers;

(ii) provisions requiring affiliated network providers to seek consent from the claimant at the time diagnostic examinations and tests are performed;

(iii) provisions requiring all affiliated medical providers practicing in New York State to be authorized by the Chair to treat injured workers;

(iv) provisions setting forth the process to address complaints by treating medical providers regarding the readability of the diagnostic examinations and tests.

(10) A copy of the proposed agreement, contract or form of contract, and all attachments thereto, to be made between the diagnostic testing network and any insurance carrier;

(11) A description of the services provided by the network and its affiliated network providers, including a description of the relationship between the network and its owners, officers, or partners and the affiliated network providers;

(12) A description of the proposed service area and any changes thereto;

(13) A list of the names and physical addresses of the medical facility or professional office location(s) where diagnostic examinations and tests will be performed;

(14) A description of the diagnostic examinations and tests offered at each medical facility or professional office location listed in paragraph (13) of this subdivision, and the web address where a complete list of such diagnostic examinations and tests may be located;

(15) A list of the names, addresses, and Board authorization numbers, for those practicing in New York State, of the medical providers who may perform and/or interpret the diagnostic examinations and tests at each listed location;

(16) A description of any quality assurance program and any quality assessment and performance improvement plan, along with any documentation about such program and plan; and

(17) A description of the process affiliated network providers must follow and the credentials they must have to contract or be affiliated with the diagnostic testing network.

(c) Any changes or amendments to the information and documentation required by subdivision (b) of this section must be filed with the Chair within twenty business days after the changes or amendments are complete.

(d) Compliance with laws. An officer or managing partner of each diagnostic testing network that contracts with an insurance carrier in accordance with this Subpart shall affirm under penalty of perjury, upon submission of the documents and information required by subdivision (b) of this section, that such network is legally and properly organized under the laws of this State and this Subpart, is duly registered with the Department of State, and is in full compliance with the laws of the State of New York and the United States, including but not limited to any laws or regulations under the Public Health Law, the Education Law and the Workers' Compensation Law governing the practice of medicine, treatment of claimants, solicitation and fee splitting, and shall remain in full compliance with all applicable laws and regulations.

(e) Additional information. The Chair reserves the right to request additional information and documentation from any diagnostic testing network that contracts with an insurance carrier for the purpose of administering this Subpart and the Workers' Compensation Law.

(f) Diagnostic examinations and tests shall be performed in a medical facility or professional office suitable for such examinations and tests, with due regard and respect for the privacy and dignity of the claimant. Such medical facility or professional office shall be listed with the Workers' Compensation Board and the Department of Health and/or Education as an office address for the affiliated network provider. A medical facility or professional office shall have adequate access, heat, light, space, and equipment to provide for the safety of the claimant and the integrity of the examination or test, and shall meet reasonable sanitary requirements. Medical facilities and professional offices shall meet all other requirements as established by the Chair or his or her designee, and shall meet all applicable standards for accessibility as required under State or Federal law.

(g) No later than December 31, 2012, each diagnostic testing network shall only use affiliated network providers that are in compliance with the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) regarding imaging accreditation for nuclear medicine, PET, CT and MRI. In addition, each diagnostic testing network shall credential the physicians in their affiliated network providers to National Committee for Quality Assurance (NCQA) standards.

(h) Each diagnostic testing network shall have affiliated network providers open and available to perform diagnostic examinations and tests between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday, except that they need not be open and available on official holidays and religious holidays. Diagnostic examinations and tests may be scheduled outside of regular business hours only with the consent and for the convenience of the claimant.

(i) A diagnostic testing network shall have sufficient affiliated network providers in the geographic areas it serves so that diagnostic examinations and tests will be performed within five business days of the earlier of:

(1) the date that the treating medical provider ordered such diagnostic examinations and tests be performed if such diagnostic examinations and tests costs one thousand dollars or less or is on the list of pre-authorized procedures set forth in section 324.2 (d) of this Subchapter; or

(2) the date the insurance carrier approves the request pursuant to Workers' Compensation Law Section 13-a (5) and section 324.2 (d) (2) of this Subchapter for authorization for diagnostic examinations and tests costing more than one thousand dollars and not on the list of pre-authorized procedures. In determining whether the cost of the requested diagnostic examination or test requires authorization by the insurance carrier, the cost of such diagnostic examination or test that is established in the applicable Medical Fee Schedule set forth in section 329.3 of this Title shall be used to determine whether authorization for the diagnostic examination or test is required.

(j) Electromyography (EMG) and Nerve Conduction Studies(NCS).

(1) Diagnostic testing networks shall require that affiliated network providers that provide EMG and NCS studies have such studies administered and interpreted by physicians who are authorized by the Chair to treat claimants and board certified in Neurology or Physical Medicine and Rehabilitation. Board certified shall have the same meaning as provided in section 300.2 (b) (3) of this Chapter.

(2) Diagnostic testing networks shall require that affiliated network providers perform EMG and NCS studies according to standards established by the American Association of Neuromuscular and Electrodiagnostic Medicine.

(k) (1) If the diagnostic testing network is an IPA it shall:

(i) be in compliance with all the requirements of this Subpart for a diagnostic testing network and all applicable laws and regulations including but not limited to applicable provisions of Subpart 98-1 of Title 10, such as Sections 98-1.4 (a) and 98-1.5 (b) (6) (vii);

(ii) include in the certificate of incorporation or articles of organization of the IPA powers and purposes permitting the arranging by contract for the delivery or provision of diagnostic examinations and tests, by individuals, entities, and facilities licensed or certified to practice medicine and other health professions, and, as appropriate, ancillary medical services, by which arrangements such health care providers will provide their services in accordance with and for such compensation as may be established by a contract between the IPA and the insurance carrier; and

(iii) have submitted the IPA's proposed certificate of incorporation, articles of organization, or amendment thereto to the Commissioner of Health and the Education and Insurance Departments for review and received the waiver, approval, or consent of the Commissioner and the Education and Insurance Departments.

(2) The IPA shall not:

(i) employ physicians or other medical providers or technicians to perform medical services or operate facilities to perform diagnostic examinations and tests; or

(ii) directly or indirectly share in the fees for professional or medical services, other than for technical or administrative services.

(1) All diagnostic testing networks and affiliated network providers shall comply and act in accordance with the Workers' Compensation Law, this Subpart, and all other applicable regulations.

Section 325-7.4. Services provided by diagnostic testing networks and affiliated network providers.

(a) To the extent permitted by law, diagnostic testing networks and affiliated network providers shall be authorized to:

(1) schedule diagnostic examinations and tests of claimants with affiliated network providers;

(2) provide the notice required by section 325-7.5 (d) of this Subpart; and

(3) process, pay, and raise any objections to bills for diagnostic examinations and tests.

(b) (1) Diagnostic testing networks and affiliated network providers shall not require prior authorization or approval of any diagnostic examination and test ordered by a treating health care provider for any reason from the insurance carrier except as required by the Workers' Compensation Law and this Subchapter

(2) In any claim controverted by the insurance carrier pursuant to Workers' Compensation Law Section 25(2), where the insurance carrier will not reimburse the diagnostic testing network, or other party for diagnostic examinations and tests administered to the claimant until the controversy is resolved and the claim established, including under the provisions of Workers' Compensation Law Section 21-a, the insurance carrier shall provide notice of this decision to the claimant with the notice that the right to compensation is controverted. Such notice shall be in the form prescribed by the Chair, and shall state that the insurance carrier does not intend to reimburse any designated diagnostic testing network or affiliated network provider while the claim is controverted and until it is established, and the claimant may elect to use a diagnostic examination and testing facility not designated pursuant to this Part during the period that the claim is controverted. In the event the claimant prevails on his or her claim, the insurance carrier shall reimburse either (1) the claimant or third party that has made payment for such diagnostic examination or test or (2) the diagnostic examination and testing facility that administered the diagnostic examination or test to the claimant where the diagnostic examination and testing facility has not charged the claimant or any third party for payment. Such reimbursement shall not exceed the maximum amount set by the medical fee schedule for such diagnostic examination and test. In the event the insurance carrier prevails, it shall have no obligation to reimburse the claimant, any third party that paid for diagnostic examination or test, or diagnostic examination and testing facility. Nothing in these regulations shall bar the diagnostic examination and testing facility from seeking payment or reimbursement from the claimant if the claim is not established as otherwise permitted by law.

(3) Affiliated network providers shall perform the diagnostic examinations and tests ordered by the treating medical provider exactly as they are ordered and shall not change the scope of or the diagnostic examinations

and tests performed. If the affiliated network provider believes that a change in the test, examination or scope of such test or examination is required, the affiliated network provider shall consult with and obtain the permission of the treating medical provider to modify or change the scope of the ordered examination or test.

(c) Affiliated network providers, or to the extent permitted by law a diagnostic testing network, shall supply a copy of the diagnostic examination and testing report to the treating medical provider who ordered the diagnostic examination and tests and other parties of interest as specified in section 325-7.5 (e) of this Subpart.

Section 325-7.5. Procedures for use of diagnostic testing network.

(a) Required use of diagnostic testing network. (1) A claimant must obtain diagnostic examinations and tests through a diagnostic testing network when:

(i) the insurance carrier responsible for claimant's claim has contracted with a diagnostic testing network that is in compliance with Workers' Compensation Law Section 13-a (7) and this Subpart and requires claimant to obtain or undergo diagnostic examinations and tests with an affiliated network provider; and

(ii) the insurance carrier responsible for the claimant's claim has provided the notification required in subdivision (d) (1) of this section.

(2) The requirement to obtain or undergo diagnostic examinations or tests through a diagnostic testing network applies regardless of the cost of the diagnostic examinations or tests.

(b) Use of diagnostic testing network not required.

(1) A claimant may use a facility or provider that is not affiliated with the diagnostic testing network or networks if all within a reasonable distance are unable to schedule the diagnostic examinations and tests ordered by the treating provider and as prescribed herein, or when the insurance carrier has filed or will be filing a notice of controversy with the Board controverting the claim pursuant to Workers' Compensation Law Section 25(2) and as described at section 7.4 (b)(2) of this Subpart. If the claim is subsequently established by

the Board, then the insurance carrier will be liable for the cost of the diagnostic examinations and tests performed relating to the work-related injury at the workers' compensation fee schedule rate. However, if the claim is not established by the Board, then the insurance carrier will not be liable for the cost of any diagnostic examinations and tests performed. In such event, liability reverts to the claimant pursuant to section 325-1.23 of this Part.

(2) A claimant shall not be required to obtain or undergo diagnostic examinations and tests from an affiliated network provider:

- (i) prior to being provided with the notice required by subdivision (d) (1) of this section; or
- (ii) in the event of a medical emergency as defined in section 325-7.1 (k) of this Subpart; or
- (iii) when the diagnostic testing network does not have a provider or facility within a reasonable distance from the claimant's residence or place of employment as defined in section 325-7.1 (n) of this Subpart; or
- (iv) the diagnostic testing network does not have a provider or facility within a reasonable distance from the claimant's residence or place of employment that can perform the diagnostic examinations and tests within five days as required by section 325-7.3 (i) of this Subpart.

(c) Medical Treatment Guidelines. All diagnostic examinations and tests, for body parts for which a Medical Treatment Guideline has been adopted, shall be performed in compliance with the applicable medical treatment guideline for that body part. If an affiliated network provider, or to the extent permitted by law a diagnostic testing network, requests confirmation or approval from the insurance carrier that the diagnostic examinations and tests are consistent with the Medical Treatment Guidelines, the insurance carrier shall respond to such request promptly so that the diagnostic testing network can schedule and have the examinations and tests performed within five days as required by section 325-7.3 (i) of this Subpart, unless the claimant or treating health care provider requests a specific location that can be accommodated by the diagnostic testing network.

(d) Notice

(1) An insurance carrier that requires claimants to utilize a diagnostic testing network to obtain or undergo diagnostic examinations and tests shall include in its notice a statement that an insurance carrier's failure to comply with the notice requirements relieves the claimant of his or her obligation to use a diagnostic testing network for any necessary diagnostic examinations and tests. An insurance carrier shall:

(i) Furnish to claimants, and treating health care providers as prescribed in subparagraph (iii) herein, notice on a form prescribed by the chair that contains:

(a) The name, mailing address, telephone number, and web address for the diagnostic testing network or networks, or affiliated network providers through which the claimants must obtain or undergo diagnostic examinations and tests, as well as information regarding any other available method for scheduling an appointment such as email address or fax number;

(b) Information regarding the procedures the claimants should follow to schedule diagnostic examinations and tests consistent with Workers' Compensation Law Section 13-a (6) and (7) and this Subpart;

(c) A statement that the name, location address, and telephone number of at least five affiliated network providers that offer the ordered diagnostic examination and test within a reasonable distance from the injured or ill worker's residence or place of employment, or all affiliated network providers if there are less than five within a reasonable distance, will be furnished by the diagnostic testing network or networks or insurance carrier at the time diagnostic examinations and tests are ordered;

(d) A description of the types of diagnostic examinations and tests that a claimant must obtain or undergo from an affiliated network provider;

(e) A statement that directs the claimant to notify all of his or her treating medical providers that the claimant must obtain or undergo the diagnostic examinations and tests identified in the description in clause (d) of this subparagraph from an affiliated network provider identified in the notice required by this paragraph;

(f) A statement that the diagnostic examinations and tests must be scheduled and performed within five business days;

(g) A statement that the claimant is entitled to select any affiliated network provider to perform such diagnostic examinations and tests; and

(h) A statement that the claimant is entitled to determine the affiliated network provider that will perform the diagnostic examinations and tests in consultation with the treating medical provider that requested authorization.

(ii) Furnish the notice required by subparagraph (i) of this paragraph to the claimant:

(a) At the same time he or she is sent the written statement of rights required by Workers' Compensation Law section 110(2); or

(b) Within two weeks from the date the insurance carrier imposes the requirement to use a diagnostic testing network or networks, if the time period within which the written statement of the claimant's rights as provided in Workers' Compensation Law Section 110(2) has expired.

(iii) Furnish the treating medical provider with a copy of the notice required by subparagraph (i) of this paragraph:

(a) When the treating medical provider has submitted a report in accordance with Workers' Compensation Law Section 13-a(4)(a), the first time that the insurance carrier either pays the treating provider's bill for treatment or notifies the treating medical provider that the insurance carrier is objecting to the bill for treatment; or

(b) By one-time mailing to all health care practices with members and all self-employed practitioners that the carrier has identified as treating medical providers who would have occasion to refer patients for diagnostic examinations or tests. A carrier selecting this method of notice must send this notice to any new health care practice or practitioner that is added to the carrier's database after the initial one-time mailing.

(2) While the insurance carrier may delegate responsibility for providing the notice required by this subdivision to the diagnostic testing network or an affiliated network provider with which it contracts, or another agent or contractor, the insurance carriers remain responsible for providing the notice and shall be liable if it is not provided in accordance with this Subpart.

(3) If the insurance carrier fails to comply with the notice requirements of paragraph (1) of this subdivision, and the claimant utilizes the services of a facility or provider that is not an affiliated network provider, the insurance carrier will be liable to pay the cost of such examination(s) and/or test(s) performed at the workers' compensation fee schedule rate.

(4) If the insurance carrier complies with the notice requirements of paragraph (1) of this subdivision, but the claimant utilizes the services of a facility or provider, including the treating medical provider, that is not an affiliated network provider for diagnostic examinations and tests, then the insurance carrier is not liable for the cost of the diagnostic examinations and tests.

(5) If an insurance carrier fails to comply with the notification requirements of this subdivision, it may be subject to sanction by the Chair or his or her designee. Such sanction may include a direction that payment for the diagnostic examinations and tests, when performed by facility or medical provider that is not an affiliated network provider, be at the workers' compensation fee schedule rate, in addition to the costs incurred by the harmed party due to such failure. In cases of persistent and significant non-compliance, such sanction may include suspension or prohibition of the use of a diagnostic testing network or networks pursuant to Workers' Compensation Law Section 13-a(7) and this Subpart. In addition, the Chair in his or her discretion may prohibit the use of a diagnostic testing network operating in violation of any law or regulation.

(e) Reports.

(1) Reports shall be prepared for all diagnostic examinations and tests performed by affiliated network providers on behalf of insurance carriers.

(2) Affiliated network providers shall submit full and truthful reports of the impressions and medical findings of all diagnostic examinations and tests to the claimant's treating medical provider who requested the diagnostic examinations and tests. Said reports must also be filed with the Board and sent to all parties of interest on the same day.

(3) Reports of all results, impressions, and/or findings of diagnostic examinations and tests shall be sent to the claimant's treating medical provider who requested such diagnostic examinations and tests and the Board immediately upon completion of the report detailing the results, impressions, and/or findings but no more than three business days after such examination or test has been performed, except in the case of EMG and NCS studies which shall be sent to the claimant's treating medical provider and the Board no more than seven business days after such study has been performed. The report detailing the results of such diagnostic examinations and tests may be sent electronically to the treating medical provider who requested such examination or test, as long as such provider agrees to such electronic transmission and it complies with all State and Federal privacy laws.

(f) Test film or data. When requested in writing, the actual film or test data that provides the basis for the results, impressions, and medical findings in the report of the diagnostic examinations and tests shall be delivered to the claimant's treating medical provider who requested the diagnostic examinations and tests at the same time the report is submitted or, if requested after the report has been sent, within three business days of receipt of the written request. A second diagnostic examination or test may be ordered from the diagnostic testing network due to inadequate quality and for the purpose of obtaining an accurate diagnosis as set forth in the Medical Treatment Guidelines.

(g) Choice of facility or provider.

(1) When a claimant is required to obtain or undergo diagnostic examinations and tests from an affiliated network provider, he or she has the right to choose the facility or provider that will perform the diagnostic

examinations and tests from among all affiliated network providers available in the insurance carrier's diagnostic testing network or networks. Claimant always has the right to consult with the treating medical provider who ordered the diagnostic examinations and tests when choosing the affiliated network provider.

(2) The carrier, or diagnostic testing network on its behalf, shall provide claimant with a list of affiliated network providers to choose from to perform the diagnostic examinations and tests.

(h) Relationship between claimant and provider. A limited patient-provider relationship is established as a result of conducting diagnostic examinations and tests in accordance with Workers' Compensation Law Section 13-a (7) and this Subpart. The limited patient-provider relationship requires the provider to conduct objective diagnostic examinations and tests but not to monitor claimants' work related injury or illness over time, treat claimants, or fulfill the other duties traditionally held by treating providers. However, all laws and regulations governing the confidentiality of medical records and workers' compensation records shall apply to the records and reports of a diagnostic testing network and the affiliated network providers.

Section 325-7.6. Alterations.

Any diagnostic testing network, affiliated network provider, person employed by a diagnostic testing network or affiliated network provider, or insurance carrier that alters or edits, or causes the alterations or edits of any diagnostic examinations and tests so as to render them inaccurate or a misrepresentation of the results, the results or reports of such examinations and tests, or otherwise misrepresents the findings to the claimant's treating medical provider who requested such diagnostic examinations and tests, the Board, or any party of interest, shall be ineligible to contract with insurance carriers as a diagnostic testing network or be an affiliated network provider pursuant to Workers' Compensation Law Section 13-a (7) and this Subpart. The actions of an employee or a contractor may be imputed to the affiliated network provider and the diagnostic testing network.

In addition, the Chair or his or her designee may make a referral to the Workers' Compensation Fraud Inspector General for investigation.

Section 325-7.7. Improper influence in diagnostic testing.

(a) No person, including but not limited to the employer, insurance carrier, or any of their agents, contractors, servants or employees shall interfere with the selection by a claimant of an affiliated network provider except to the extent that the insurance carrier provides a list of affiliated network providers in accordance with section 325-7.5 (d) (1) (i) (c) and (h) of this Subpart; nor shall any insurance carrier influence or attempt to influence the medical opinion or diagnostic test results of any affiliated network provider, by whom or through which diagnostic examinations and tests were performed and which examinations or tests are interpreted within the meaning of Workers' Compensation Law Section 13-a (7) and this Subpart. Nothing in this section shall prevent a carrier from recommending the use of a particular affiliated network provider.

(b) Insurance carriers shall not participate in the performance of diagnostic examinations and tests, or any reports resulting from such diagnostic examinations and tests of a claimant.