

## Assessment of Public Comment

The Board received approximately 77 total written comments on the proposed changes. Approximately 10 of these were copies of a form letter regarding acupuncture and approximately 8 were copies of a form letter regarding DME. The Board also received approximately six other form letters with 2-3 copies each, as well as approximately six postcards disagreeing with the proposal with no suggested changes.

### Acupuncture

The Board received several copies of a form letter supporting the creation of a new fee schedule and including acupuncturists.

The Board received one comment opining that the proposed acupuncture conversion factors are appropriate.

The form letter and several comments also requested the inclusion and removal of several CPT codes, as well as several comments requesting increased conversion factors and/or reimbursement rates. The Board believes that the codes in the proposal are adequate for services and consistent for Medical Treatment Guidelines. Additionally, the conversion factor for acupuncture is the same as for chiropractors. Accordingly no change has been made in response to these comments.

The Board received several comments requesting inclusion of moxibustion and cupping, as well as comments supporting not allowing these treatments. As these treatments are not recommended in the Medical Treatment Guidelines, they continue to not have a fee associated to them in the fee schedules.

The Board received a number of comments objecting to the requirement that treatment by an acupuncturist may only be upon prescription or referral. This requirement is statutory. Accordingly no change has been made in response to this comment.

### Chiropractic

The Board received a comment from an association strongly supporting the proposal, touting its fairness due to universal application of standards to all injured workers and providers.

One comment from an insurance company requested excluding certain codes from the chiropractic fee schedule. Medical treatment and care rendered by a chiropractor must always be consistent with the Medical Treatment Guidelines. Accordingly, no change has been made in response to this comment.

### Durable Medical Equipment (DME)

The Board received several comments opining that certified orthotist and prosthetists should be dispensing DME, not physicians and physical therapists. These comments are outside the scope of the changes proposed to the medical fee schedule, which just addresses instances when DME is part of an office visit.

The Board also received several copies of form letters as well as other comments stating that medical providers should not be prescribing and supplying unnecessary DME to patients at a profit and that this should not be allowed. Medical providers will not be able to prescribe or supply DME at a profit. The language in the fee schedules is the same as it has been earlier versions and requires DME provided at an office visit to be billed by invoice pricing. Therefore, no change has been made to the proposal in response to these comments.

The Board received three copies of a form letter objecting to the references to the DME fee schedule, opining that it is contradictory a DFS decision regarding no-fault. The Board does not have jurisdiction over no-fault and cannot comment on the applicability of its rules to no-fault.

#### Licensed Clinical Social Workers

The Board received a comment from an association opining that the LCSW reimbursement rate should not be 20% less than a licensed psychologist for the same service. The Board believes this reimbursement rate is appropriate. Accordingly, no change has been made in response to this comment.

#### Physical Medicine

The Board received two copies of a form letter requesting clarification about why the conversion factor assigned to Physical Medicine was changed, and opining that it should remain the same. The physical medicine conversion factors did not change – PT/OT services by physicians remain the same under the proposal, but there are additional fees and conversion factors for authorized physical therapists and occupational therapists performing these services that are different from physicians. Therefore, no change has been made in response to this form letter.

#### Physical Therapy and Occupational Therapy

The Board received comments opining that some therapies and modalities that do not overlap with PT modalities should be reimbursable in addition to units of PT. The modalities and therapies in the proposal are consistent with the Medical Treatment Guidelines and the recommendations of the Medical Director's Office, so no change has been made in response to these comments.

One comment suggested that Physical Medicine Ground Rule 3 in the PT/OT fee schedule be changed to add acupuncture and chiropractic to the note for clarification. This clarification has been made in the final version.

The Board received a comment opining that there is a contradiction between the proposed fee schedules and the text of the current fee schedules, because the current fee schedules contain numerous provisions applicable to self-employed PTs/OTs. As the new statute removes the distinction between employed and self-employed OTs and PTs, the Board has removed any extraneous mentions of “self-employed” PTs/OTs.

#### Ground Rule 2

The Board received several comments and form letters objecting to the proposed change to Ground Rule 2. This change was a typographical error and has been corrected in the final version.

### Miscellaneous

The Board received comments expressing concern about the impact of the fee schedules on the no-fault system. The Board does not have jurisdiction over the no-fault system and questions about the no-fault system should be directed to the Department of Financial Services. No change has been made in response to these comments.

The Board received a handful of comments disagreeing with sections of the Medical Fee Schedule(s) that were not addressed in this proposal as they are not related to inclusion of new types of medical providers in the workers' compensation system. Accordingly, no change has been made in response to these comments.

The Board received a comment that requiring treatment reports to be in the electronic format prescribed by the Board increases costs. Prior experience indicates that electronic filing both diminishes costs and increases accuracy. Accordingly, no change has been made to the proposal in response to this comment.

One comment opined that the Board should recognize CRNAs as anesthesia care providers. The types of providers who may treat injured workers is prescribed in statute. Accordingly, any change would need to be made by the legislature.

The Board received one comment opining that an increase in the fee schedule is required to ensure that high quality care is available to all. The Board recently increased the fee schedule in the amendments that became effective 4/1/19, and therefore no change has been made in response to this comment.

The Chair has made the following clarifying changes to the proposal:

- Added dates of the fee schedules as well as referenced the American Medical Association for CPT codes
- Clarified in Foreword that the fee schedule was effective 4/1/19 except where noted
- Deleted references to "self-employed" for PTs and OTs in all fee schedules to conform to the statute
- Deleted references to modifiers NP, PA, AJ in all fee schedules to conform to the statute
- Clarified that DME that is part of an office visit remains in effect until the new DME fee schedule is adopted
- Added "acupuncture and chiropractic" to Physical Medicine Ground Rule 3 in the PT/OT fee schedule
- Removed modifiers GO and GP in the OT/PT Fee Schedule for clarity
- Corrected rating code updates for modifier 1B and 1D
- Removed a sentence in Ground Rule 6 in the Acupuncture Fee Schedule referencing a NYS license
- Added the language from Physical Medicine Ground Rule 6 in the medical fee schedule to the OT/PT Fee Schedule to match (Postoperative Procedures by a Physical Therapist or Occupational Therapist)
- Added codes 97810, 97811, 97813, and 97814 in the Chiropractic Fee Schedule

- Clarified that when a patient receives physical medicine procedures, acupuncture, and/or chiropractic modalities from more than one provider, the patient may not receive more than 12.0 RVUs per day per accident or illness from all providers
- Deleted list of rating codes in the Intro and General Ground Rules of the Medical Fee Schedule and replaced with: “Please refer to the Board’s website for a full list of rating codes, <http://wcb.ny.gov/>”
- Deleted “When a physician assistant (PA) or nurse practitioner (NP) or licensed clinical social worker (AJ) bills for services (other than assistant at surgery), state-specific modifiers PA, NP, or HCPCS modifier AJ are used.” from Ground Rule 11 of the Medical Fee Schedule
- Changed sentence in Physical Medicine Ground Rule 9 to read “Physical and occupational therapists employed by physicians must bill separately from the physician-employer” to delete references to self-employed and clarify that they must.
- Deleted “Hospital Affiliated Therapy Services: Billing for hospital affiliated physical and occupational therapy services, whether performed on site or at off site facilities, will be paid at the level of physician-supervised therapy services, when billed under the hospital tax ID number.”
- Removed PT/OT conversion factors from page 10 of the Medical Fee Schedule as PTs/OTs have their own fee schedule with this proposal
- Clarified the citation in Pharmacy/DME sections of the fee schedules to cite “subdivision 6 of section 6810 of the NYS Education Law”
- Added nurse practitioners and licensed clinical social workers to the providers who are paid \$350 for testimony.
- Clarified the first sentence in the Physical Medicine Ground Rules (page 60) to add a period after “physician” and delete the rest of the sentence.
- In Physical Medicine Ground Rule 5, changed “sessions/visits” to “RVUs”
- In Physical Medicine Ground Rule 9, added “using the Acupuncture and Physical and Occupational Therapy Fee Schedule” to the end of the sentence
- Removed reference to “appropriate modifiers” on page 10 of the Behavioral Health Fee Schedule.
- Corrected the testimony fees to \$350 for nurse practitioners, not \$450 in accordance with the statute
- Changed the formatting of the conversion factors for Physical Medicine to split into two rows.
- Removed codes 97799, 97169-97172, and 97762 from the PT/OT fee schedule
- Changed “physician” to “prescribing provider” in general Physical Medicine Ground Rule 14 (C)
- Added Ground Rule 6 from the Medical Fee Schedule to the PT/OT fee schedule
- Deleted references to Appendix C-3
- Corrected a typographical error in the Pathology and Laboratory section of the Medical Fee Schedule to utilize the same language (“at least”) from the Non-Acute Pain Medical Treatment Guidelines to clarify and avoid confusion

The chair has corrected the following minor typographical errors in the proposal:

- Corrected a typographical error in Physical Medicine Ground Rule 2 – reverted to original language
- Corrected a typographical error removing extraneous hyphens in the Acupuncture Fee Schedule Modifier 25
- Relettered sections of Ground Rule 4 and surgery Ground Rule 16 for clarity: A. Pharmacy and B. Durable Medical Equipment Fee Schedule
- Corrected typographical error with extra hyphens in Modifier 25 in the Acupuncture Fee Schedule, as well as bold the heading
- Fixed typographical error in Pharmacy/DME sections of the fee schedules to add “for” after the first comma.
- Removed new code icon from the PT/OT fee schedule, as the codes themselves are not new.
- In the Acupuncture, Physical Therapy and Occupational Therapy fee schedules, corrected citation to Part 329-4 of Title 12 NYCRR.