

Paragraph (1) of subdivision (a) of section 324.3 of Title 12 NYCRR is hereby amended to read as follows:

(a) *Treating medical providers.*

(1) Applicability

- (i)(a) When a treating medical provider determines that medical care that varies from the Medical Treatment Guidelines, such as when a treatment, procedure, or test is not recommended by the Medical Treatment Guidelines, appropriate for the claimant and medically necessary, he or she shall request a variance from the insurance carrier, self-insured employer, or third party administrator by submitting a prior approval request (PAR: MTG Variance) (hereinafter “PAR”) in the format prescribed by the chair for such purpose, which may be electronic.
- (b) In addition, prior authorization for the following special services (PAR: Special Services) is required:

- (1) Lumbar fusion as set forth in E.4 of the New York Mid and Low Back Injury Medical Treatment Guidelines;
- (2) Artificial disc replacement as set forth in E.5 of the New York Mid and Low Back Injury Medical Treatment Guidelines, and in E.3 of the New York Neck Injury Medical Treatment Guidelines;
- (3) Vertebroplasty as set forth in E.6.a.i. of the New York Mid and Low Back Injury Medical Treatment Guidelines;
- (4) Kyphoplasty as set forth in E.6.a.i. of the New York Mid and Low Back Injury Medical Treatment Guidelines;
- (5) Electrical bone stimulation as set forth in the New York Mid and Low Back Injury Medical Treatment Guidelines and the New York Neck Injury Medical Treatment Guidelines;
- (6) Osteochondral autograft as set forth in D.1.f and Table 4 of the New York Knee Injury Medical Treatment Guidelines;
- (7) Autologous chondrocyte implantation as set forth in D.1.f., Table 5, and D.1.g. of the New York Knee Injury Medical Treatment Guidelines;
- (8) Meniscal allograft transplantation as set forth in D.6.f., Table 8, and D.7. of the New York Knee Injury Medical Treatment Guidelines;
- (9) Knee arthroplasty (total or partial knee joint replacement) as set forth in F.2. and Table 11 of the New York Knee Injury Medical Treatment Guidelines;
- (10) Spinal Cord Pain Stimulators as set forth in G.1 of the Non-Acute Pain Medical Treatment Guidelines; [and,]
- (11) Intrathecal Drug Delivery (Pain Pumps) as set forth in G.2 of the Non-Acute Pain Medical Treatment Guidelines[.];
- (12) Sacroiliac joint (SIJ) fusion as set forth in E.8 of the Mid and Low Back Medical Treatment Guidelines; and
- (13) Peripheral Nerve Stimulation (PNS) as set forth in G.2 of the Non-Acute Pain Medical Treatment Guidelines.

(c) Notwithstanding that a surgical procedure is consistent with the guidelines, a second or subsequent performance of such surgical procedure shall require a variance if it is

repeated because of the failure or incomplete success of the same surgical procedure performed earlier, and if the Medical Treatment Guidelines do not specifically address multiple procedures.

(d) This section shall not apply to prior authorization requests from the formulary, as set forth in Part 441 of this chapter, or the durable medical equipment fee schedule, as set forth in Part 442 of this chapter.

(ii) A PAR must be requested and granted by the carrier, self-insured employer, or third-party administrator, the Board or order of the Chair before medical care that varies from the Medical Treatment Guidelines or special service is provided to the claimant and the carrier, self-insured employer, or third-party administrator may deny the PAR and deny payment of the treatment requested if the treatment is rendered prior to the PAR being granted by the carrier, self-insured employer, third-party administrator, the Board or order of the Chair.

(iii) For the purposes of this section, a treating medical provider shall not include a physician assistant, acupuncturist, physical therapist, or occupational therapist, as defined in section 13-b.