

Regulatory Impact Statement for the amendment of Subpart 441 of Title 12 NYCRR

1. Statutory Authority: WCL §117(1) authorizes the Chair of the Workers' Compensation Board (Board) to adopt reasonable rules consistent with, and supplemental to, the provisions of the WCL.

2. Legislative Objectives: The emergency adoption allows telemedicine visits in some circumstances due to the outbreak of COVID-19, and to keep telemedicine in effect during the regulatory process for a permanent proposal regarding telehealth.

3. Needs and benefits: For social distancing purposes to avoid furthering the outbreak of COVID-19, including the Delta variant, the emergency adoption allows telemedicine visits in some circumstances to avoid in person visits to authorized providers when medically appropriate, consistent with guidance issued by the Center for Medicaid and Medicare Services. This regulation will permit physicians, nurse practitioners, physician assistants, psychologists, licensed clinical social workers, chiropractors, physical therapists and occupational therapists to treat using telehealth due to COVID-19, including the Delta variant.

Additionally, the Board has seen these emergency measures work efficiently and effectively to provide care for injured workers, and plans to adopt a permanent regulation addressing when telehealth may be used to benefit injured workers, and wants to keep the current telemedicine rules in effect during the regulatory process for the permanent telehealth proposal.

4. Costs: The emergency adoption will have no impact on costs.

5. Local government mandates: The proposed amendments do not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The emergency adoption requires authorized providers to indicate in their report that the services rendered were through telemedicine due to the outbreak of COVID-19, including the Delta variant.

7. Duplication: The emergency adoption does not duplicate other regulatory initiatives.

8. Alternatives: An alternative would be to not file an emergency adoption addressing telemedicine, and not keep it in effect during the public comment period and regulatory process for a permanent telehealth proposal. However, this poses a health risk to both the authorized providers and the claimants being treated, and social distancing, where medically appropriate, is a better alternative due to the outbreak of COVID-19, including the Delta variant. Additionally, not keeping telemedicine in effect would cause confusion and could negatively impact injured workers relying on telemedicine in some instances for their care.

9. Federal standards. There are no applicable Federal Standards.

10. Compliance schedule: The emergency adoption takes effect immediately upon filing but does not require telemedicine – it offers it as a tool to assist with social distancing in some circumstances. Any provider rendering services using telemedicine must comply with the emergency adoption, including the reporting requirements.