Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6517, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-M-0127SP27)

Workers’ Compensation Board

EMERGENCY RULE MAKING

Reimbursement for COVID-19 Testing

L.D. No. WCB-35-20-00013-E

Filing No. 494

Filing Date: 2020-08-17

Effective Date: 2020-08-17

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

Action taken: Addition of section 329-1.3(d) to Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, sections 117 and 141

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because the Board wants to provide reimbursement for COVID-19 testing when it is necessary because workers’ compensation benefits are being sought due to work-place exposure to COVID-19, in order to confirm current presence of the COVID-19 virus.

Subject: Reimbursement for COVID-19 testing.

Purpose: To allow reimbursement for COVID testing when benefits sought due to work-place exposure to COVID-19.

Text of emergency rule: A new subdivision (d) of section 329-1.3 of Title 12 NYCRR is hereby added as follows:

(a) When workers’ compensation benefits are sought due to a workplace exposure to COVID-19, reimbursement for serological, molecular or other reliable testing to confirm a current COVID-19 viral infection may be made using CPT code 87635.

(i) The RVU for CPT code 87635 shall be 39.18, and the total fee for such test shall be $51.33 for Region IV, 47.41 for Region III, and 41.53 for Regions I and II.

(ii) CPT code 87635 may only be billed when there is a claim for workers’ compensation due to a COVID-19 infection as a result of a workplace exposure or when testing for COVID-19 is administered as part of a required pre-operative testing protocol in accordance with Department of Health guidance.

(b) CPT code 87635 may not be billed for routine screening of workers’ compensation claims for the presence of the COVID-19 virus.

(c) Antibody testing is not available under the Official New York Workers’ Compensation Fee Schedule.

(d) CPT code 87635 may only be billed in one instance. Repeat testing is not permitted, except when clinical documentation supports a change or recurrence of symptoms, or a new exposure to the COVID-19 virus.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 14, 2020.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, NYS Workers Compensation Board, 328 State Street, Schenectady, NY 12305, (518) 486-5664, email: regulations@wcb.ny.gov.

Regulatory Impact Statement

1. Statutory authority: Workers’ Compensation Law (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 reimbursement for COVID-19 testing when there is a claim for workers’ compensation benefits due to work-place exposure to COVID-19.

3. Needs and benefits: To provide reimbursement for COVID-19 testing when it is necessary because workers’ compensation benefits are being sought due to work-place exposure to COVID-19, in order to confirm current presence of the COVID-19 virus.

4. Costs: The emergency adoption is not expected to have a significant impact on costs, as reimbursement is limited to situations where the employee has had a work-place exposure to the virus.

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 use a CPT code to bill for COVID-19 testing as described above.

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

8. Alternatives: An alternative would be to not file an emergency adoption addressing the reimbursement of COVID-19 testing, but without a confirmatory test, there would be no way of showing a workers’ compensation claim is currently infected with COVID-19 when benefits are sought due to workplace exposure.

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

10. Compliance schedule: The emergency adoption takes effect immediately upon filing but simply provides guidelines for use of a CPT code that may be used in limited circumstances to confirm COVID-19 infection when workers’ compensation benefits are sought due to workplace exposure to COVID-19.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the emergency adoption will not have any adverse economic impact or impose any new reporting, recordkeeping or other compliance requirements on small businesses or local governments. The emergency adoption allows authorized providers to be reimbursed for COVID-19 testing when workers’ compensation benefits are sought due to workplace exposure to COVID-19.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the emergency adoption will not have any impact rural areas. The emergency adoption allows authorized providers to be reimbursed for COVID-19 testing when workers’ compensation benefits are sought due to workplace exposure to COVID-19.

Job Impact Statement

A Job Impact Statement is not required because the emergency adoption will not have any impact on jobs or employment opportunities. The emergency adoption allows authorized providers to be reimbursed for COVID-19 testing when workers’ compensation benefits are sought due to workplace exposure to COVID-19.