NYS Workers’ Compensation Board

328 State Street

Schenectady, NY 12305-2318

June 24, 2018

RE: NY Workers’ Compensation Fee Schedule Proposed Changes

To Whom It May Concern:

I am writing to request that the NYS Workers’ Compensation Board reconsider multiple proposals that board has made regarding the NYS Workers’ Compensation Fee Schedule and Ground Rules for Chiropractic that the board released on June 6, 2018. On April 17, 2018, the Workers Compensation Board released a memo (WCB Bulletin, Subject Number 046-105) stating its intent to increase fees to ALL providers and reduce administrative burdens ultimately to improve provider participation and the quality of care for injured workers. Regrettably, after careful examination of the proposed fee schedule and ground rules, I have determined that while a modest pay increase (the first since 1996) has been added to treatment and E/M related CPT codes, it appears that the WCB is using this opportunity to also eliminate certain CPT codes and reduce the RVU’s on other CPT codes. These are all procedures that are within our scope of practice in NY State and are vital to the practice of chiropractic and treatment of injured workers and automobile accident victims in the State of New York. One additional area of concern is that Doctors of Chiropractic are receiving lower conversion factors than physical therapists whom have less training.

Below is a list of concerns that I would like to have addressed as well as corrective actions that I am asking the New York Workers’ Compensation Board to take:

1. In the “Job Impact Statement” released by the WCB (see “Job Impact Statement”), the WCB has stated that “the proposed regulation will not have an adverse impact on jobs” and that the “proposed amendments merely modify the publication date and contact information for the publisher of the Official New York Workers’ Compensation” fee schedules and that “The June 6, 2018 Fee Schedules increase fees by 5% (an average of $1.60 per visit) to reflect that it has been 6 years since the last update to the fee schedules, but is not expected to have an adverse impact on jobs”.
	1. It is my contention that the changes being proposed will have a dramatic impact on the patients being evaluated by chiropractors and medical physicians who currently perform electrodiagnostic evaluations (EDX), manipulation under anesthesia (MUA) and physical performance testing as well as the staffs that they employ (who may have to be laid off should these changes go through), and possibly the reduction and loss of medical providers in the Workers Compensation and No-Fault systems as these proposals will make it even more difficult for providers of these services
	2. to continue to treat injured Workers and No-Fault patients. The above changes will result in reductions of fees by upwards of 63%; and the complete elimination of some services from the fee schedule.
	3. Each of these areas will be addressed separately.
		1. **Electrodiagnostic Testing (EDX)**
* Problem 1: The proposed Chiropractic CPT List fails to include the “new” Nerve Conduction Study (NCS) codes as well as any of the “old NCS codes”. (CMS changed the codes about 5 years ago, however the WCB did not adopt those newer codes into the Medical or Chiropractic Fee Schedules.) The “new” NCS CPT codes (95907-95913) do however appear on page 16 the “Medical Fee Schedule”, but not the "Chiropractic Fee Schedule". Additionally, there are multiple new EMG codes that also need to be added to the Chiropractic CPT List including 95885, 95886 and 95887.
* Recommended Correction: Add CPT codes 95907, 95908, 95909, 95910, 95911, 95912, 95913, 95885, 95886 and 95887 to the Chiropractic Medicine Fee Schedule
* Problem 2: The proposed RVU’s of codes 95907-95913 are highly undervalued. See attached “NCS Comparison Chart” which compares the old NCS CPT code fees to the new CPT code fees and it shows that on average, there is a 50-63% reduction in the fees being proposed for routine EDX studies for typical workups for Carpal Tunnel Syndrome and Radiculopathy, likely the 2 most common workups under the Workers’ Compensation system. This does not appear to be the 5% raise that the WCB has implied in their press releases and it also certainly will affect providers and their ability to hire staff and provide care. It may ultimately result in the loss of providers that was the very point according to the WCB as to why they were giving 5% raises “across the board”.
* Recommended Correction: Adjusted RVU’s have been calculated and appear on the “NCS Comparison Chart” in the right hand column that are equal in value to the old NCS codes plus the proposed 5% raise.
	+ 1. **Manipulation Under Anesthesia & Physical Performance Testing**
* Problem 1: Manipulation under anesthesia is currently performed by trained and certified chiropractors utilizing CPT codes 22505 (spinal) and 27194 (Pelvis). These CPT codes are found on the current Medical Surgical Fee Schedule. These codes have been “modified” on the proposed Medical CPT list and also do not appear on the Chiropractic CPT List. The proposed Surgical Fee Schedule CPT list on page 18, gives code 22505 a RVU 0 and code 27194 is completely eliminated. It appears that the WCB is using the disguise of a “raise” to eliminate these procedures from being performed and paid for.
* Problem 2: On page 11 of the “Chiropractic Ground Rules”, the WCB has added Item 10 under the “General Ground Rules” that states “A chiropractor may only use CPT codes contained in the Chiropractic Fee Schedule for billing of a treatment. A chiropractor may not use codes that do not appear in the Chiropractic Fee Schedule”. This addition makes it impossible for chiropractors to use CPT codes outside of their own CPT list which eliminates the ability to perform MUA which is legal and part of our scope of practice in New York State. The MUA codes currently being billed are on the Medical Surgical Fee schedule.
* Problem 3: In addition to MUA being affected by the addition of Ground Rules #10, this added rule will also eliminate the ability of chiropractors to perform and be reimbursed for procedures such as Dynamic Range of Motion testing and Physical Performance testing which are integral to the quantification of loss of motion and muscle strength that are vital to determining levels of impairment. Additionally, these diagnostic procedures are important for medicolegal issues involved in disability ratings and threshold of injury.
* Recommended Correction: There are 2 possible corrective actions for the WCB to consider.
1. Add code 27194 (pelvic MUA) to the Chiropractic CPT list with reasonable RVU.
2. Add reasonable RVU to code 22505 (spinal MUA) as it is currently listed at a RVU of 0 and add to the Chiropractic CPT list.
3. Add ROM & Muscle Testing CPT codes to the chiropractic CPT list.

OR

1. Eliminate “General Ground Rules” Item 10 as described above and add code 27194 with appropriate RVU as well as properly assigning an RVU to 22505. This is the preferred method, as eliminating the ability of providers to perform procedures that are within their legal scope of practice while at the same time paying another type of provider for the exact same procedure is discriminatory and certainly these “deletions” of CPT codes and assigning RVU’s of 0 seem to be inconsistent with a fee schedule proposal that was marketed to the public by the WCB as “merely a modification” of the fees schedules with the intent of giving a 5% raise.

Thank you for your careful consideration and anticipated action with the above issues that I and other Doctors of Chiropractic in the State of New York are facing. We look forward to your timely response and help in undertaking a swift and concise update to the proposed New York State Workers’ Compensation Board Fee Schedule for Chiropractic.

Sincerely,

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| **Study Type**  | **Evaluation Example** | **New CPT** | **Old CPT** | **RVU** | **CF $** | **Fee $** | **Study Total $** | **% Difference** | **RECOMMENDED RVU/Fee** |
| 1-2 Studies | None | **95907** |  | 19.02 | 6.09 | 115.83 | 115.83 |  | 25.88/$157.61 |
| Motor w/F-wave | Not Typical |  | 95903 | 19.70 | 4.65 | 91.61 |  |  |  |
| Sensory |  |  | 95904 | 12.60 | 4.65 | 58.59 | 150.20 |  |  |
|  |  |  |  |  |  |  |  | **115.83 vs 150.20 23% Less** |  |
|  |  |  |  |  |  |  |  |  |  |
| 3-4 Studies |  | **95908** |  | 24.63 | 6.09 | 149.99 | 149.99 |  | 51.76/$315.22 |
| Motor w/F-wave 2 Units |  |  | 95903 | 19.70 | 4.65 | 183.21 |  |  |  |
| Sensory 2 Units |  |  | 95904 | 12.60 | 4.65 | 117.18 | 300.39 |  |  |
|  |  |  |  |  |  |  |  | **149.99 vs 300.39 50% Less** |  |
|  |  |  |  |  |  |  |  |  |  |
| 5-6 Studies | Unilateral CTS | **95909** |  | 29.35 | 6.09 | 178.74 | 178.74 |  | 77.65/$472.89 |
| Motor w/F-wave 3 Units |  |  | 95903 | 19.70 | 4.65 | 274.82 |  |  |  |
| Sensory 3 Units  |  |  | 95904 | 12.60 | 4.65 | 175.77 | 450.59 |  |  |
|  |  |  |  |  |  |  |  | **178.74 vs 450.59 60% Less** |  |
|  |  |  |  |  |  |  |  |  |  |
| 7-8 Studies | Radiculopathy/TTS | **95910** |  | 38.65 | 6.09 | 235.38 | 235.38 |  | 89.03/$542.19 |
| Motor w/F-wave 3 Units |  |  | 95903 | 19.70 | 4.65 | 274.82 |  |  |  |
| Sensory 3 Units |  |  | 95904 | 12.60 | 4.65 | 175.77 |  |  |  |
| H-reflex Bilateral  |  |  | 95934-50 | 14.20` | 4.65 | 66.03 | 516.62 |  |  |
|  |  |  |  |  |  |  |  | **235.38 vs 516.62 55% Less** |  |
|  |  |  |  |  |  |  |  |  |  |
| 9-10 Studies | CTS Bilateral | **95911** |  | 46.11 | 6.09 | 280.81 | 280.81 |  | 123.73/$753.52 |
| Motor w/F-wave 4 Units |  |  | 95903 | 19.70 | 4.65 | 366.42 |  |  |  |
| Sensory 6 Units |  |  | 95904 | 12.60 | 4.65 | 351.54 | 717.96 |  |  |
|  |  |  |  |  |  |  |  | **280.81 vs 717.96 61 % Less** |  |
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| **Study Type**  | **Evaluation** | **New CPT** | **Old CPT** | **RVU** | **CF $** | **Fee $** | **Study Total $** | **% Difference** | **RECOMMENDED RVU/Fee** |
| 11-12 Studies | Plexus/Bilat Radic | **95912** |  | 51.17 | 6.09 | 311.62 | 311.62 |  | 135.11/$822.82 |
| Motor w/F-wave 4 Units |  |  | 95903 | 19.70 | 4.65 | 366.42 |  |  |  |
| Sensory 6 Units |  |  | 95904 | 12.60 | 4.65 | 351.54 |  |  |  |
| H-reflex Bilateral |  |  | 95934-50 | 14.20 | 4.65 | 66.03 | 783.99 |  |  |
|  |  |  |  |  |  |  |  | **311.62 vs 783.99 60% Less** |  |
|  |  |  |  |  |  |  |  |  |  |
| 13+ Studies |  | **95913** |  | 59.03 | 6.09 | 359.49 | 359.49 | RECOMMEDED RVU 166.68 | 166.68/$1015.08 |
| Motor w/F-wave 6 Units |  |  | 95903 | 19.70 | 4.65 | 549.63 |  |  |  |
| Sensory 6 Units |  |  | 95904 | 12.60 | 4.65 | 351.54 |  |  |  |
| H-reflex Bilateral |  |  | 95934-50 | 14.20 | 4.65 | 66.03 | 967.20 |  |  |
|  |  |  |  |  |  |  |  | **359.49 vs 967.20 63% Less** |  |
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The most commonly performed NCS evaluations under workers compensation are for Carpal Tunnel Syndrome and Cervical/Lumbar radiculopathies. These services would have reductions in fees of 50-60% under the proposed fee schedule.

Proposed RVU values are significantly undervalued. “Recommended RVU” is comparable to old NCS Code Fee Plus 5% Increase as Proposed by the WCB.