November 1, 2018

Clarissa M. Rodriguez, Chair
New York State Workers' Compensation Board
328 State Street
Schenectady, NY 12305

Re: 180 Day Language

Dear Chairwoman Rodriguez:

The New York State Chiropractic Association (NYSCA) is submitting these comments specifically to address our concerns with new language included in the October 3, 2018 Revised Medical Fee Schedule ground rules related to treatment from multiple providers on the same day in the physical medical section of the ground rules. The specific language of concern is contained on page 20 item 3 in the chiropractic fee schedule and states:

> *Note: When a patient receives physical medicine procedures and/or 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 and such procedure or modalities must be performed within 180 days of the accident or illness date.*

We had our government affairs counsel submit a few clarifying questions on this particular section as NYSCA has significant concerns that this note has the potential for substantial harm due to its lack of clarity. As this section references "from more than one provider" it was unclear if the statement of 180 days only refers to physical medicine services from multiple providers on the same day or is to be interpreted more broadly. According to your initial response to counsel's question, it is the broader interpretation with the caveat that the Medical Treatment Guidelines (MTG's) trump this ground rule.

Though the clarification we received indicates that the MTG's trump the proffered Ground Rules, we strongly believe that this statement could, to the detriment of the injured worker, be interpreted to say that all care must occur within 180 days. As such, this ground rule would undermine the MTG's, which begin on the first date of treatment. It could also limit medically necessary treatment from variance, exacerbation and maintenance care.

In addition to the 180-day language itself, we also have a particular concern with the reference to date of injury or accident. In some cases, patients are not initially seen for

conservative care. Cases of hospitalization, surgery, and other complicating events at times delay the beginning of physical medicine services until several months have elapsed. Beginning the timeframe on the date of accident is inappropriate in these cases. In fact, we believe that a stated timeframe at all is inappropriate.

For all injured workers in New York, there are guaranteed medical benefits under the law. In fact, under Medical Benefits, it states that "the injured or ill worker, who is eligible for workers compensation, will receive medically necessary medical care directly related to the original injury or illness and the recovery from his/her disability." Medical necessity, which is also the basis of the MTG's, dictates care for injured workers not an arbitrary timeframe of 180 days. The standard of medically necessary must remain the standard, and we feel the ground rules must not contain language, like the language in this Note, which may confuse this standard.

Additionally, after receiving the initial response, our counsel asked a follow up question because it is our understanding that the ground rules apply to both Workers Compensation and No-Fault. As there are no MTG's in No-Fault, this would mean that there is nothing to trump the 180-day language and thus this language would act as a hard cap on patient treatment under no fault law. As with Workers Compensation, medical necessity must dictate the care of someone injured under No-Fault.

With some injuries sustained in motor vehicle accidents, or in cases of delayed recoveries, ending conservative management at 180 days will unfortunately leave patients suffering without access to medically necessary conservative care. Without such access, patients will be forced into more aggressive measure such as surgeries and opioids. Given the opioid epidemic that this State is facing, we should be supporting policies and access to care that embrace conservative care options, not adopting ground rules that will push patients to increased opioid use.

Our recommendation is for removal of this Note to avoid negative consequences associated with misapplication and misinterpretation. We believe that the existing standards of the MTG's and variance process are adequate for ensuring the injured workers of New York receive appropriate and timely healthcare. We further believe that leaving this Note will cap care for patients seeking treatment under no fault provisions.

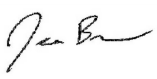
This language needs to be removed. If it is not removed, it must be changed to give deference to medically necessary treatment. The following change would acknowledge medically necessary treatment and remove any inference of a hard cap for treatment under no fault:

> *Note: When an injured worker receives physical medicine procedures and/or modalities from more than one provider, the injured worker may not receive more than 12.0 RVUs*

per day per accident or illness from all providers and such procedure or modalities, if rendered after 180 days from the date of injury must be consistent with the appropriate New York State Workers Compensation Medical Treatment Guideline, treatment of an exacerbation, or variance process.

We hope that you will remove this Note from the proposed ground rules for physical medicine services. Patients in New York deserve access to medically necessary treatments that will help alleviate their pain and get them back to work or on the road to recovery from an accident. Anything that interferes with medically necessary patient care is contrary to the intent of New York' Workers Compensation and No-Fault laws.

Sincerely,



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