

## Worker's Compensation Board

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Dental Fee Schedule

I.D. No. WCB-52-08-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Addition of Part 444 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13 and 117

**Subject:** Dental fee schedule.

**Purpose:** To adopt a fee schedule for dental treatment and care provided to injured workers.

**Text of proposed rule:** The title to Subchapter M of Chapter V of Title 12 NYCRR is amended to read as follows:

M. Pharmacy, [and] Durable Medical Goods, and Dental Fee Schedules and Appendices

Subchapter M of Chapter V. of Title 12 NYCRR is amended to add a new Part 444 to read as follows:

Part 444. Dental Fee Schedule

Section 444.1 Applicability

*This dental fee schedule is applicable to dental treatment and procedures performed on or after, March 1, 2009, for the necessary care and treatment of an injured employee regardless of the date of accident or date of disablement. The date of service for dental treatment or for a dental procedure shall be the applicable date for reimbursement in accordance with this fee schedule. Dental treatment or procedures performed prior to March 1, 2009, shall be reimbursed at the usual and customary rate in the location where the claimant resides.*

Section 444.2. Fee Schedule

*(1) The dental fee schedule for all dental services shall be the Official New York Workers' Compensation Dental Fee Schedule, First Edition, March 1, 2009, prepared by the Chair and published by the Board, which is hereby incorporated by reference, except that the maximum reimbursement for dental services in cases in which the insurance carrier files or has filed a notice of controversy pursuant to Workers' Compensation Law section 25(2)(a) or (b) shall be twenty-five percent more than the fees set forth in the Official New York Workers' Compensation Dental Fee Schedule.*

*(2) The Official New York Workers' Compensation Dental Fee Schedule incorporated by reference herein may be examined at the office of the Department of State, 99 Washington Avenue, Suite 650, Albany, New York 12231, the Legislative Library, the libraires of the New York State Supreme Court, and the district offices of the Board in Albany, Binghamton, Brooklyn, Buffalo, Hauppauge, Hempstead, Manhattan, Peekskill, Queens, Rochester and Syracuse. Copies may be obtained from the Board by writing to New York Workers' Compensation Dental Fee Schedule, Bureau of Health Management, New York State Workers' Compensation Board, 100 Broadway - Menands, Albany, New York 12241 or by telephone at 1-800-7812362 or by email at general\_information@wcb.state.ny.us.*

*(3) The dental fee schedule shall be updated by the Chair as he or she deems warranted by changes in market rates. The dental fee schedule consists of a list of Current Dental Terminology (CDT) codes and descriptions of treatment services and procedures as published by the American Dental Association with a corresponding maximum fee to be charged by dental providers. Nothing shall prohibit a provider from charging a fee that is less than the fee schedule.*

*(4) Any treatment or procedure provided in connection with a work-related injury not specifically contained in the dental fee schedule should be billed using CDT code D9999 "Unspecified Adjunctive Procedure By Report" (BR). The provider should establish a fee consistent in relativity with the other fees listed in the dental fee schedule. Any bill submitted by a dental provider which lists CDT Code D9999 shall be accompanied by a report providing the reasons why such procedure is necessary to treat the injured employee.*

444.3 Payment of Bills and Reimbursement Requests.

*(1) Bills submitted by a dental provider to the carrier or self-insured employer for payment or reimbursement shall be paid according to the fee schedule adopted under Workers' Compensation Law Section 13(a) within forty-five calendar days of receipt of the bill or reimbursement request.*

*(2) Where the liability of the self-insured employer or carrier for the claim has not been established or the treatment or procedure is not for a*

*causally related condition, the self-insured employer or carrier shall pay any undisputed amount of the bill or reimbursement request and notify the Board, claimant and dental provider in writing using the form prescribed by the Chair for this purpose within forty-five calendar days of receipt of the claim or reimbursement request: a) that the claim is not being paid and the reason for non-payment of the claim; or b) to request additional information needed to reasonably determine the self-insured employer's or carrier's liability for the claim or whether the dental treatment or procedure is causally related to the injury. Upon receipt of the information reasonably requested, the self-insured employer or carrier shall have thirty days to pay the bill or reimbursement request or provide written notice to the Board, claimant and dental provider using the form prescribed by the Chair for this purpose explaining why the bill is not being paid with copies of the additional information requested attached to the form to support the determination.*

*(3) Where the self-insured employer or carrier has failed to pay a bill or reimbursement request or make reasonable request for additional information within forty-five calendar days, the self-insured employer or carrier is deemed to have waived any objection to liability for the bill or reimbursement request and shall pay the bill or reimbursement request.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Special Counsel to the Chair, New York State Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Regulatory Impact Statement

1. Statutory Authority: Workers' Compensation Law (WCL) § 117 authorizes the Chair of the Workers' Compensation Board (Board) to adopt reasonable rules consistent with the provisions of the WCL. WCL § 13(a) requires the Chair to prepare and establish a fee schedule for the state for dental care and treatment.

2. Legislative Objectives: Chapter 6 of the Laws of 2007 amended WCL § 13 to specifically require the Chair to propose and adopt a dental fee schedule. The proposed regulation incorporates the Official New York Workers' Compensation Dental Fee Schedule to govern the cost of dental procedures to eliminate disputes over the proper amount of payment and ensure timely payment to dentists who provide services to injured workers. By eliminating or reducing disputes about the proper amount of payment for dental services, the costs associated with resolving such disputes are also eliminated or reduced, thereby reducing the cost of workers' compensation insurance. Eliminating or reducing delays in payment for dental services should result in dentists being more willing to treat injured workers.

3. Needs and Benefits: This rule, which incorporates the Official New York Workers' Compensation Dental Fee Schedule, is needed because the law was amended to require the Chair to adopt a dental fee schedule. In addition to the statutory mandate for a dental fee schedule, there are other reasons why this rule is needed. First, there currently is no fee schedule for dental care and treatment for injured workers. Prior to the legislative change in 2007, WCL § 13(a) limited dentists to such charges as prevail in the claimant's community for similar treatment of injured individuals of a like standard of living. Payers of workers' compensation benefits, such as insurance carriers, State Insurance Fund and private and public self-insured employers, were required to pay such charges and object to any portion in excess of this amount. Unfortunately it was not always clear what the charges are that prevail in a claimant's community.

Second, to assess the charges submitted by dental providers, payers would use the New York State No-Fault Fee Schedule (NFFS) for dental treatment as a guide to determine the proper reimbursement amount. This was problematic because: 1) neither the law nor regulations authorized the application of the NFFS to dental services provided to injured workers; and 2) the fees charged and the codes reflecting the services provided have remained the same since 1994, so the NFFS does not cover the latest dental procedures. When the NFFS is applied, the reimbursement amounts do not reflect current charges or do not list the treatment provided, which results in dental providers refusing to treat injured workers because the reimbursement is inadequate or there are disputes over the proper reimbursement.

Third, if a payer objects to a charge or adjustment, notice is sent to the dental provider but not always to the Board. Without this notice the Board cannot act to resolve disputes. This is problematic because dental providers have no standing to request any adjudicatory action by the Board to resolve disputes over the proper reimbursement.

Disputes regarding the proper fee for a particular dental procedure must be decided by a Workers' Compensation Law Judge (WCLJ) or conciliator. If a hearing is required to resolve such disputes, it is very

costly and time consuming. The time a WCLJ spends deciding the correct payment to a dentist is time not spent adjudicating whether a claimant is entitled to any benefits.

There are a number of benefits of adopting a fee schedule. First, the Chair will be in compliance with the statute. Second, the fee schedule will use the most up-to-date Current Dental Terminology (CDT) codes so current dental procedures are covered. Third, the reimbursement amounts will be in line with the charges in the dental community. Fourth, dental providers and payers will know what the proper reimbursement amount is so disputes over the proper payment for dental care should be eliminated or reduced. This will eliminate or reduce the costs involved in resolving such disputes. Fifth, dental providers will know upfront the fee for the service and, as it is in line with current charges, they should be willing to provide the treatment to injured workers.

The rule also provides a process for the timely payment or objection to bills for dental services. Currently, there is no statute or regulation which provides such a process. However, WCL § 13(a) requires employers to "promptly provide" dental treatment for an injured worker. Part of promptly providing treatment is paying the provider of such treatment. The term "promptly" is not specifically defined in the WCL, but § 13-g provides that bills for medical care must be paid or the payer must notify the provider that the bill is not being paid and why within 45 days. While dental treatment is not medical care covered by WCL § 13-g, this section supports the position that 45 days is considered prompt. This rule requires payers to pay dental bills according to the fee schedule or notify the Board, claimant and provider why payment is not being made within 45 days of receipt of the bill.

The benefit of this provision is that it defines what is meant by promptly. Without this provision, dental providers could wait indefinitely for payment or notice that payment is not being made. Dentists need to be paid for the services they provide within a reasonable time period. If there is no time period within which to pay them, they will not be willing to treat injured workers. Further, a 45 day time period is provided for medical care and pharmacy bills, so it is only logical to apply it to dental bills.

The rule will benefit payers by providing a uniform standard for pricing which will reduce the litigation which arises when there is a difference between the price a payer will pay and the actual costs charged by a dentist. The rule will benefit injured workers by increasing the participation rate of dentists in the workers' compensation system. Dentists will be more likely to treat workers' compensation claimants if they know that they will be paid a reasonable fee, faster and with little or no litigation.

The rule will also benefit the Board as it is anticipated that there will be a reduction in the number of hearings held to determine the proper amount of fees charged for dental treatment. The rule is also a benefit to payers and dentists because it uses the American Dental Association (ADA) CDT codes that are already utilized in dental practice software systems and insurance carrier billing systems.

4. Costs: The adoption of the fee schedule does not impose any new costs on payers, as they have always been liable for dental services up to the charges that prevail in the claimant's community for such treatment. The adoption of the fee schedule actually eliminates the uncertainty over what is the amount of the charges that prevail. Payers may incur some new costs if they fail to pay or object to a dental bill within 45 days. The rule provides that if the payer does not timely pay or object to a dental bill it is liable for such bill regardless of the legitimacy of any defense, which is new. Some payers will be liable for bills they previously would not be because they fail to act timely. However, this provision is necessary to ensure that payers promptly provide dental services by paying for them and will not apply if they respond in a timely fashion as provided by the rule. The 45 day time period to pay a dental bill in this rule is the same time period for paying a medical bill (WCL § 13-g) or a pharmacy bill (WCL § 13-i). By setting a 45 day time period, the payment of dental bills easily fits into any processes or systems to pay medical or pharmacy bills. Therefore, payers should have little or no difficulty in meeting the 45 day limit. Further, the rule is similar to the rule for paying pharmacy bills. Therefore, carriers will not have to train staff on a new process but can transfer the knowledge from pharmacy bills to dental bills.

The fee schedule will reduce in some instances the amount that a dentist can charge for dental treatment. However, fees set by the schedule are reasonable and were developed using the fees dentists currently charge. Even with reduced fees in some instances, dentists should actually see greater reimbursement. With a set fee schedule disputes regarding the proper reimbursement amount will be greatly reduced, this will speed reimbursement payments to dentists and reduce their administrative expenses from trying to litigate and collect the proper reimbursement. Dentists and payers will not be charged for the fee schedule.

The use of a uniform price standard will reduce the number of hearings necessary to determine the amounts due and owing to a dentist or claimant thus reducing the costs necessary for legal representation at the hearing. It is anticipated that costs will be reduced for claimants due to lower charges

for dental treatment through use of the dental fee schedule as opposed to paying usual and customary charges and then seeking reimbursement from the carrier.

5. Local Government Mandates: A municipality or governmental agency that is self-insured is required to comply with the rules for reimbursement for dental treatment. They will be required to pay according to the fee schedule and pay or object within 45 days. However, as they are required to process medical and pharmacy bills within 45 days this should fit easily within their claims processing.

6. Paperwork: If a payer objects to a bill or requests additional information, it must notify the Board, the claimant and the dentist using a prescribed form within 45 days from receipt of the bill; otherwise the payer is deemed to have waived any objection. However, there should be few disputed bills as the fee amount will be set in the schedule. The objections or requests for additional information must go to the Board, claimant and dentist so the Board can take any needed action and the claimant and dentist know the status of payment. The use of a prescribed form is important so all required information is provided and the action taken by the payer is clear. The Board will not be charging for the fee schedule and it will be available for dentists and carriers in a secure area of the Board's website. Once the rule is adopted, the Board will post instructions on how to access the dental fee schedule on its website.

7. Duplication: There is no duplication.

8. Alternatives: Initially, the Chair considered using the New York State Medicaid dental fee schedule. However, after comparing it with the existing NFFS and consultation with the New York State Dental Association (NYSDA), it was determined that many of the reimbursement rates were too low. The NYSDA distributed a survey to its membership requesting fees for all CDT codes. A comparison of the NYS Medicaid fee schedule with the results of the NYSDA survey showed that the Medicaid rates were extremely low.

Using the NYSDA data, the Chair prepared an initial draft of the fee schedule to use to obtain feedback on the reasonableness of the amounts. A Subject Number was issued on October 9, 2007, asking anyone who was interested in providing comments on the dental fee schedule to request a copy of the draft fee. The comment period extended through November 12, 2007. The Chair received comments about the level of reimbursement from both payers and payees from across the state. In addition the initial draft was compared with the draft Washington State Dental Fee Schedule as it provided the most comprehensive listing of dental procedures and utilized a survey of dental fees based on zip codes. Discussions about the content of the regulations were held with the NYSDA who provided comments and suggestions to be considered in the regulations.

When the Chair requested comments, suggested fees were sought for all CDT codes. However, suggested fees for all codes were not received. Possible options for CDT codes without fees were to: 1) simply leave those codes off the schedule; 2) assign a value to those codes; or 3) provide that any service not covered by a specific code would be covered by code D9999 and the provider would set the fee. The Chair decided to require the use of code D9999 so that all services would be covered by the fee schedule. A few carriers noted that some services covered by CDT codes are the same as Current Procedural Terminology (CPT) codes in the medical fee schedule but the values for the CDT codes provided in the draft were higher than the CPT codes. The Chair had to decide whether to: 1) not include the CDT codes that were the same as the CPT codes; 2) include the CDT codes but have the value equal the value for the CPT codes; or 3) include the CDT codes with values based upon the reasonable fee in the dental community. The Chair decided to include the CDT codes with the values based upon the reasonable fee in the dental community in order to prevent illogical and inequitable results. Specifically, so a dental treatment covered by a CPT code would not have a lesser value than a simpler procedure covered by a CDT code.

The Chair considered not including procedures for objecting to dental bills. However to standardize the process and ensure timely resolution of such issues, he decided to a similar process as is required for pharmacy bills. Originally, the procedures required notification of any objections or requests for information to be sent by certified mail, but this was removed as unnecessary. Also, the rule originally did not require the notification to be sent to the Board. This was changed so the Board would have the knowledge to act.

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

10. Compliance Schedule: The proposed regulation is mandatory and it is expected that all affected entities will be able to comply with the fee schedule and procedures beginning on March 1, 2009.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of rule:**

Insurance carriers, State Insurance Fund and individual self-insured employers are not small employers. Approximately 2511 political subdivisions currently participate as municipal employers in self-

insured programs for workers' compensation coverage in New York State. As part of the overall rule, these self-insured local governments will be required to file objections to dental bills if they object to any such bills. This rule affects members of self-insured trusts, some of which are small businesses. Typically a self-insured trust utilizes a third party administrator or group administrator to process workers' compensation claims, many of whom are small businesses. A third party administrator or group administrator is an entity which must comply with the new rule. These entities will be subject to the new rule in the same manner as any other carrier or self-insured employer subject to the rule. Under the rule, objections to a dental bill must be filed within 45 days of the date of receipt of the bill or the objection is deemed waived and the carrier, third party administrator, or self-insured employer is responsible for payment of the bill. Finally, many dentists are small businesses. The new rule will provide savings to small business and local government by reducing litigation costs associated with reimbursement rates for dental care and treatment. In addition, it will set a fair uniform reimbursement rate for dental care and treatment through the fee schedule it adopts, that eliminates the use of usual and customary rates that vary dentist by dentist and the use of inappropriate fee schedules by carriers that are low and/or out of date.

#### 2. Compliance requirements:

Workers' Compensation Law (WCL) § 13 was amended by Chapter 6 of the Laws of 2007, to specifically require employers to provide dental treatment to injured workers for damage caused by a work related accident or exposure. The amendments also require the Chair to adopt a dental fee schedule setting the reimbursement rate when such dental treatment is provided. Prior to these changes, dental treatment was provided to injured workers, based upon an interpretation of the statute, and the reimbursement amount was the charges that prevail in the claimant's community. The proposed rule adopts a dental fee schedule as required by the statute. Small business/local government payers, such as third party administrators, group self-insured trusts, and self-insured local governments, will be required to reimburse dental providers according to the fee schedule adopted. Private insurance carriers, the State Insurance Fund and individually self-insured employers will also have to reimburse dental providers according to the dental fee schedule. Dental providers who are small businesses will be required to accept the fees set forth in the Dental Fee Schedule as payment in full for dental treatment provided to injured workers. Neither payment pursuant to the fee schedule nor acceptance of such payment amounts should be a hardship for small businesses and local governments. The fee schedule is in line with current reimbursement levels. While the Board does not have an exact number of claimants who need dental treatment, experience indicates that it is a very small number.

The fee schedule provides a set reimbursement rate for services according to the American Dental Association (ADA) Current Dental Terminology (CDT) codes. These codes are commonly used for dental billing purposes and are widely known and understood. The fee schedule was developed after consulting with the New York State Dental Association and an opportunity for dentists and payers to comment on the amount of reimbursement. In addition, the Board reviewed the draft of the State of Washington's workers' compensation dental fee schedule as a point of comparison while drafting the proposed fee schedule. The Board will provide the fee schedule in paper format free of charge and will make it available on the Board's website in accordance to the terms of the licensing agreement with the ADA.

The proposed regulation will require small businesses/local government payers to pay or file written objections to dental bills within a 45 day time period. This same requirement is also imposed on private insurance carriers, the State Insurance Fund and individually self-insured employers. If a carrier or self insured-employer fails to object within 45 days, it will be liable for payment of the bill. The new requirement is the same as the requirements for pharmacy bills [WCL § 13(i)] and medical bills [WCL § 13-g]. The purpose of this requirement is to set a reasonable period of time within which the provider of dental services can expect to be paid and to expedite processing of dental treatment bills.

A payer which objects to a dental bill or seeks additional informa-

tion will be required to notify the Board, claimant and dentist using a prescribed form. Currently, if a payer objects to a dental bill it provides notice to the dentist in writing, and sometimes to the Board. It is important that the Board and the claimant also are notified of any objections or requests for additional information, so the Board can take action to resolve any disputes and monitor whether payers are acting timely. The use of a prescribed form assists payers in ensuring all required information is provided, makes it easier for dental providers to identify an objection or request for information and enables the Board to track the payers' actions.

#### 3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

#### 4. Compliance costs:

This proposal will impose minimal compliance costs on small businesses, such as dental providers, third party administrators and group self-insured trusts, and self-insured local governments. These same costs will be imposed on private insurance carriers, the State Insurance Fund and individually self-insured employers. First there may be some cost involved in incorporating the fee schedule into the practices of the businesses. Dentists will need to incorporate the fee schedule into its billing practices and small business/local government payers will need to incorporate the fee schedule into their bill review and objection procedures. It must be noted that small business/local government payers currently have bill review and objection procedures as they current receive dental bills for payment. There will be no cost to dental providers and payers for the fee schedule as it will be provided in hard copy and on the Board's website for free in accordance with the ADA licensing agreement.

In addition to the minimal costs from incorporating the fee schedule into their processes, small business/local government payers may experience minimal costs in complying with the bill payment process. Upon receiving a dental bill, small business payers, must pay, request additional information or object to a dental bill within 45 days. If the payer objects or requests additional information, it must notify the Board, claimant and dentist on a prescribed form. The requirements to notify the Board and claimant and to use a Board prescribed form are new. These requirements should impose minimal new costs as the notification must already be in writing and it already must be sent to the dentist. Further, if the payer does not act within 45 days it is liable for the bill regardless of any defenses. Payers who fail to respond timely will face additional expense. However, without this provision dentists, which are also small business, will not be promptly paid as there will be no repercussion for failing to comply.

It is expected that these costs will offset by the savings from having set time periods for payment and a fee schedule. The mandatory fee schedule and set time periods for payment should eliminate or reduce disputes about the proper charge for dental treatment and payment, which will eliminate or reduce the number hearings necessary. As hearings are very costly, a reduction in the number necessary results in a reduction in the cost of workers' compensation coverage. As the Board does not know how many hearings are held just for dental disputes or the exact cost of a hearing, the exact savings cannot be calculated. The cost of a hearing would vary by location due to costs such as rent, electric and the pay differential for downstate employees. Small employers must purchase workers' compensation coverage, so any cost would be due to an increase in the cost of such coverage. However, it is expected that the savings produced by this rule will outweigh the costs.

In short, the fee schedule and payment requirements will reduce costs by reducing the need for Board intervention and delays in payment. Any costs are also offset by the benefit to claimants who will be able to obtain dental services for work related injuries because dentists will know the applicable fee and those they are to be paid within 45 days.

#### 5. Economic and technological feasibility:

There are no additional implementation or technology costs to comply with this rule. Most small businesses involved in workers' compensation, such as third party administrators, group self-insured trusts and self-insured local governments, have computers and internet

access in order to take advantage of the ability to review claim files from their offices. The Board will provide secure access to the fee schedule through its website. No other additional equipment or software is needed for access to the fee schedule other than an existing web browser and a computer with internet access. Access to the website will require a secure login which is required as part of the license agreement with the ADA to use the CDT codes it publishes.

#### 6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts on all insurance carriers, employers, self-insured employers and claimants, including those that are small businesses or local governments. The Chair is required to set a dental fee schedule by statute. As part of the development, dental fees from dentists were reviewed to create a state wide fee schedule that would be fair across the state. The Chair was conscious of the need to draft a fee schedule which would not limit access to dental services by injured workers, a situation that already exists. As the fee schedule is based, in part, on data directly received from dentists in response to a survey conducted by the New York State Dental Association (NYSDA), dental practices which are small businesses should receive adequate and appropriate compensation for dental services provided to injured workers. Small businesses and local governments should benefit from this rule, as it sets a fair reimbursement level that will ensure that dentists are willing to provide the services without increasing costs. Further, having a fee schedule and a process for the payment of bills will reduce disputes about the payment of dental bills which reduces costs for everyone. The Board could not set a different fee schedule or different process depending on whether the employer is a self-insured local government or a member of a group self-insured trust as this is information that the dentist would likely not have at the time of treatment, so he would not know what fee to use or process applied and it could result in disparate treatment of injured workers depending whether their employer was a self-insured local government or member of a group trust.

#### 7. Small business and local government participation:

The NYSDA conducted a survey of its membership, which consists of dentists across the state, many of whom are small businesses, requesting information on the fees charged for each CDT code. The raw data was provided to the Board, which reviewed it when developing the fee schedule which is incorporated by reference into the rule. Further, the Board sought comments from all dentists and payers across the state regarding a draft fee schedule it prepared. Comments were received from dentists and payers across the state. The Board then consulted with the NYSDA again before finalizing the fee schedule. The rule was shared with the Business Council of New York State and the AFL-CIO for comment.

#### *Rural Area Flexibility Analysis*

##### 1. Types and estimated numbers of rural areas:

This rule applies to all carriers, employers, self-insured employers, third party administrators and dentists in all areas of the state, which includes all rural areas.

##### 2. Reporting, recordkeeping and other compliance requirements:

Workers' Compensation Law (WCL) § 13 was amended by Chapter 6 of the Laws of 2007, to specifically require employers to provide dental treatment to injured workers for damage caused by a work related accident or exposure. The amendments also require the Chair to adopt a dental fee schedule setting the reimbursement rate when such dental treatment is provided. Prior to these changes, dental treatment was provided to injured workers, based upon an interpretation of the statute, and the reimbursement amount was the charges that prevail in the claimant's community. The proposed rule adopts a dental fee schedule as required by the statute. All entities that pay workers' compensation benefits will be required to reimburse dental providers according to the fee schedule adopted. The fee schedule is the same regardless of where in the state the treatment is provided. Dental providers who are small businesses will be required to accept the fees set forth in the Dental Fee Schedule as payment in full for dental treatment provided to injured workers. The fee schedule is in line with current charges by dentists and reasonable for the entire state. While the Board does not have an exact number of claimants who need dental treatment, experience indicates that it is a very small number.

The fee schedule provides a set reimbursement rate for services according to the American Dental Association (ADA) Current Dental Terminology (CDT) codes. These codes are commonly used for dental billing purposes and are widely known and understood. The fee schedule was developed after consulting with the New York State Dental Association and an opportunity for dentists and payers to comment on the amount of reimbursement. In addition, the Board reviewed the draft of the State of Washington's workers' compensation dental fee schedule as a point of comparison while drafting the proposed fee schedule. The Board will provide the fee schedule in paper format free of charge and will make it available on the Board's website in accordance to the terms of the licensing agreement with the ADA.

The proposed regulation will require all payers of workers' compensation benefits (carriers, State Insurance Fund, private and public self-insured employers, group self-insured trusts and third party administrators), where ever located in the state, to pay or file written objections to dental bills within a 45 day time period. If a carrier or self insured-employer fails to object within 45 days, it will be liable for payment of the bill. The new requirement is the same as the requirement for pharmacy bills [WCL § 13(i)] and medical bills [WCL § 13-g]. The purpose of this requirement is to set a reasonable period of time within which the provider of dental services can expect to be paid and to expedite processing of dental treatment bills.

A payer which objects to a dental bill or seeks additional information will be required to notify the Board, claimant and dentist using a prescribed form. Currently, if a payer objects to a dental bill it provides notice to the dentist in writing, and sometimes to the Board. It is important that the Board and the claimant also are notified of any objections or requests for additional information, so the Board can take action to resolve any disputes and monitor whether payers are acting timely. The use of a prescribed form assists payers in ensuring all required information is provided, makes it easier for dental providers to identify an objection or request for information and enables the Board to track the payers' actions.

##### 3. Costs:

This proposal will impose minimal compliance costs on carriers, self-insured employers and dental providers across the state, including those in rural areas. First there may be some cost involved in incorporating the fee schedule into the practices of the businesses. Dentists will need to incorporate the fee schedule into its billing practices and payers will need to incorporate the fee schedule into its bill review and objection procedures. It must be noted that payers currently have bill review and objection procedures as they current receive dental bills for payment. There will be no cost to dental providers and payers for the fee schedule as it will be provided in hard copy and on the Board's website for free in accordance with the ADA licensing agreement.

In addition to the minimal costs from incorporating the fee schedule into their processes, payers may experience minimal costs in complying with the bill payment process. Upon receiving a dental bill, payers must pay, request additional information or object to a dental bill within 45 days. If the payer objects or requests additional information, it must notify the Board, claimant and dentist on a prescribed form. The requirements to notify the Board and claimant and to use a Board prescribed form are new. These requirements should impose minimal new costs as the notification must already be in writing and it is already must be sent to the dentist. Further, if the payer does not act within 45 days it is liable for the bill regardless of any defenses. Payers who fail to respond timely will face additional expense. However, without this provision dentists, including those located in rural areas, will not be promptly paid as there will be no repercussion for failing to comply.

It is expected that these costs will offset by the savings from having set time periods for payment and a fee schedule. The mandatory fee schedule and set time periods for payment should eliminate or reduce disputes about the proper charge for dental treatment and payment, which will eliminate or reduce the number hearings necessary. As hearings are very costly, a reduction in the number necessary results in a reduction in the cost of workers' compensation coverage. As the Board does not know how many hearings are held just for dental

disputes or the exact cost of a hearing, the exact savings cannot be calculated. The cost of a hearing would vary by location due to costs such as rent, electric and the pay differential for downstate employees.

In short, the fee schedule should decrease costs as it will set a fair, uniform reimbursement rate for dental care and treatment that eliminates the use of usual and customary rates that vary dentist by dentist and the use of inappropriate fee schedules by carriers that are low and/or out of date. The fee schedule and payment requirements will reduce costs by reducing the need for Board intervention and delays in payment. Any costs are also offset by the benefit to claimants who will be able to obtain dental services for work related injuries because dentists will know the applicable fee and those they are to be paid within 45 days.

#### 4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts on all insurance carriers, employers, self-insured employers and claimants, including those in rural areas. The Chair is required to set a dental fee schedule by statute. As part of the development, dental fees from dentists were reviewed to create a state wide fee schedule that would be fair across the state. The Chair was conscious of the need to draft a fee schedule which would not limit access to dental services by injured workers, a situation that already exists. As the fee schedule is based, in part, on data directly received from dentists in response to a survey conducted by the New York State Dental Association (NYSDA), dental practices in rural areas should receive adequate and appropriate compensation for dental services provided to injured workers. All businesses and claimants in rural areas should benefit from this rule, as it sets a fair reimbursement level that will ensure that dentists are willing to provide the services without increasing costs. Further, having a fee schedule and a process for the payment of bills will reduce disputes about the payment of dental bills which reduces costs for everyone. The Board could have created a fee schedule that varied depending on whether the dentist was located in an urban or rural area. However, this was rejected because determining the boundaries of urban areas can be difficult and result in dental practices only miles apart receiving different reimbursement levels. Also, while overhead costs in urban areas may be higher than in some rural areas, there may be a shortage of dentists in rural areas which raises costs. It was determined that the best course of action was a fee schedule with a single fee for each CDT that was reasonable for the entire state.

#### 5. Rural area participation:

The NYSDA conducted a survey of its membership, which consists of dentists across the state, many of whom are in rural areas, requesting information on the fees charged for each CDT code. The raw data was provided to the Board, which reviewed it when developing the proposed fee schedule. Further, the Board sought comments from all dentists and payers across the state regarding a draft fee schedule it prepared. Comments were received from dentists and payers across the state. The Board then consulted with the NYSDA again before finalizing the fee schedule. The rule was shared with the Business Council of New York State and the AFL-CIO for comment.

#### ***Job Impact Statement***

The proposed amendment will not have an adverse impact on jobs. This amendment is intended to provide a standard for reimbursement of dental care and treatment bills.