

A new subdivision (c) of section 329-1.3 of Title 12 NYCRR is hereby added to read as follows:

Section 329-1.3. Medical fee schedule; incorporation by reference

(a) The medical fee schedule for medical services shall be the Official New York Workers' Compensation Medical Fee Schedule, updated December 11, 2019, prepared by the board and published by OptumInsight, which is herein incorporated by reference.

(b) The Official New York Workers' Compensation Medical Fee Schedule incorporated by reference herein may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the board. Copies may be purchased from OptumInsight, by writing to Official New York Workers' Compensation Fee Schedule, PO Box 88050, Chicago, IL 60680-9920; by telephone at 1-800-464-3649, option 1; or online at www.optum360coding.com keyword New York or <https://www.optum360coding.com/Product/40508/>.

(c) Physical Therapy Assistants (PTAs) and Occupational Therapy Assistants (OTAs) may provide services under the direct supervision of an authorized Physical Therapist (PT) or authorized Occupational Therapist (OT) respectively.

(1) When billing for PTA services, supervising authorized PTs must select codes from the Physical Medicine Section of the Official New York State Workers' Compensation Medical Fee Schedule that are permissible and within the scope of practice for PTAs using modifier CQ.

(2) When billing for OTA services, supervising authorized OTs must select codes from the Physical Medicine Section of the Official New York State Workers' Compensation Medical Fee Schedule that are permissible and within the scope of practice of OTAs using modifier CO.

(3) Services billed using the modifiers CQ or CO must be billed and paid at 85 percent of the amount payable for such services had they been performed directly by PTs and OTs. Clinical notes by PTAs must be cosigned by the supervising PT. Clinical notes by OTAs must be cosigned by the supervising OT. PTAs and OTAs may not provide services or bill for services independently.

(4) Nothing in this section shall change the maximum numbers of billable Relative Value Units (RVUs) for physical therapy and occupational therapy on any given date of service, as outlined elsewhere in the fee schedule. They are not increased or otherwise changed based on whether the services are provided by PTs, OTs, PTAs or OTAs.

(5) When services are performed by PTs and PTAs (or OTs and OTAs) on the same date of service, the services applied to the maximum number of RVUs on any given date of service shall be determined giving priority to services provided by PTs over those provided by PTAs, and services provided by OTs over those provided by OTAs.

(6) The ability of PTAs and OTAs to provide services under NYS Workers Compensation, and for supervising PTs and OTs to submit bills for said services, shall in no way expand or otherwise change the scope of practice or permissible activities for PTAs or OTAs by statute, and/or any applicable regulations promulgated by the New York State Education Department, New York State Department of Health, or the New York State Workers' Compensation Board. As such, it shall be impermissible for PTAs/OTAs to perform any services or activities otherwise reserved for PTs and OTs respectively, or for supervising PTs or OTs to bill for such services, and Current Procedural Terminology (CPT) codes must be selected accordingly.

(i) Examples may include, but are not limited to: a PTA is prohibited by section 6738(a) of the NYS Education Law from performing evaluation, testing, interpretation, planning or modification of patient/client programs; a PT conducts the initial evaluation and develops the plan of care, and the treatment may be provided by the PTA; PTAs and OTAs may not perform Functional Capacity Evaluations (FCEs).