A new section 325-1.26 of Title 12 NYCRR is hereby added to read as follows:

325-1.26. Telehealth.

(a) **Definitions.** Telehealth shall mean treatment by physicians, podiatrists, psychologists, nurse practitioners, physician assistants, and licensed clinical social workers authorized by the Chair to provide treatment and care under the Workers' Compensation Law (hereinafter "Authorized Medical Provider") using two-way audio and visual electronic communication, or audio only.

(1) When rendering medical treatment or care via telehealth, an Authorized Medical Provider must be available for an in-person clinical encounter with the claimant should such in-person encounter be medically necessary. This means the Authorized Medical Provider must be able to meet the claimant at the Authorized Medical Provider's office within a reasonable travel time and distance from the claimant's residence.

(2) Telehealth must be used in accordance with this section and any applicable New York State Medical Treatment Guideline incorporated by reference under section 324.2 of this Title.

(3) Authorized Medical Providers shall bill using the applicable Evaluation and Management code 99212 using Modifier 95 when services are rendered by telehealth using two-way audio and visual communication. When services are rendered by audio only in accordance with section 325-1.8 of this Title, the Authorized Medical Provider shall use Modifier 93. Place of service Code 10 shall be used when services are rendered while patient is in their home. Place of service code 02 shall be used when services are rendered while patient is in a healthcare setting that is not their home. When completing the report of treatment, the Authorized Medical Provider shall identify the address from which they rendered Medical Care via telehealth as the Authorized Medical Provider's business address. Notwithstanding the codes listed in this paragraph, appropriate telehealth codes as may appear in any future versions of the Official New York Workers' Compensation Medical Fee Schedule as incorporated by reference in section 329-1.3 of this Title may be used and will have the same effective date as the effective date of the future version of the Official New York Workers' Compensation Medical Fee Schedule.

(b) **Treatment via telehealth.**

(1) Treatment by Board-authorized physicians, podiatrists, nurse practitioners, and physician assistants under the Official New York Workers' Compensation Medical Fee Schedule as incorporated by reference in section 329-1.3 of this Title or the Official New York Workers' Compensation Podiatry Fee Schedule as incorporated by reference in section 343.2 of this Title may be rendered by telehealth following an initial in-person clinical encounter when medically appropriate and subject to the following restrictions:

(i) Acute and Subacute phases of injury or illness. Within the first three months following the date of injury or illness, use of telehealth shall be at the clinical discretion of the treating physician, podiatrist, nurse practitioner, or physician assistant,

except that at least every third clinical encounter must be an in-person assessment by the treating physician, podiatrist, nurse practitioner, or physician assistant.

(ii) Chronic phase of injury or illness. When more than three months has passed from the date of injury or illness, use of telehealth shall be at the clinical discretion of the treating physician, podiatrist, nurse practitioner, or physician assistant, except that there must be an in-person assessment by the treating physician, podiatrist, nurse practitioner, or physician assistant, no less than every three months unless or until such provider has determined the patient has reached Maximum Medical Improvement (MMI) and has stated that the impairment or disability status is permanent and unlikely to change.

(iii) Injury or illness at MMI. When the claimant is in the chronic phase of injury or illness as defined in subparagraph (ii) of this paragraph and the treating physician, podiatrist, nurse practitioner, or physician assistant's opinion is that the claimant has reached MMI and the patient's impairment or disability status is permanent and unlikely to change, use of telehealth shall be at the discretion of the treating physician, podiatrist, nurse practitioner, or physician assistant, except that there must be an in-person assessment by such provider at least annually.

(2) Treatment by Board-authorized psychologists and licensed clinical social workers under the Official New York Workers' Compensation Behavioral Health Fee Schedule as incorporated by reference in section 333.2 of this Title may be rendered by telehealth when medically appropriate and in accordance with applicable Medical Treatment Guidelines using the following codes:

(i) New patient Evaluation and Management codes 99201-99204.

(ii) Psychotherapy combination codes and crisis codes: 90832-90834, 90836-90840, 90853.

(iii) Group therapy: 90853. The number of patients participating in a group therapy session via telehealth shall not exceed the number that would otherwise be permissible if the group therapy session had been held in person and does not require that every participant in the group therapy session be a workers' compensation claimant.

(iv) Remote behavioral health visits should be limited to those situations when there is no benefit to in-person services (versus remote services) or when an in-person office visit poses an undue risk or hardship on the patient. The reason for the use of a remote telehealth visit should be documented with each use of a telehealth visit.

(3) Treatment rendered by Board-authorized chiropractors, acupuncturists, physical therapists, and occupational therapists under the Official New York Workers' Compensation Chiropractic Fee Schedule as incorporated by reference in section 348.2 of this Title and the Official New York Workers' Compensation Acupuncture and Physical Therapy and Occupational Therapy

Fee Schedule as incorporated by reference in section 329-4.2 of this Title may not be rendered via telehealth.

(c) Medically appropriate for telehealth means that an in-person physical examination of the claimant is not needed in order to assess the claimant's clinical status, need for further diagnostic testing, appropriate treatment, or the determination of causal relationship or level of disability. The terms and factors referenced in this subdivision use medical terms of art in the context of best medical practice and are parameters by which providers should prospectively determine whether an in-person physical examination is necessary and should not be the basis of a denial by carriers, self-insured employers, or third-party administrators.

(1) Factors where an in-person physical examination may not be necessary and therefore treatment by telehealth may be medically appropriate include but are not limited to:

(i) Management of chronic conditions where the Authorized Medical Provider has previously conducted a medically appropriate and comprehensive in-person assessment of the patient and condition and is fully familiar with the applicable medical history.

(ii) Discussion of test results.

(iii) Counseling about diagnostic and therapeutic options.

(iv) Dermatology, for visits not requiring palpation or biopsy of a lesion to accurately diagnose or treat the condition.

(v) Prescriptions for medication, subject to the limitations in paragraph (2) of this subdivision.

(vi) Nutrition counseling.

(vii) Mental health counseling, for which in-person assessment of body movements, postures, and other nonverbal cues is not needed for accurate diagnosis, treatment, or interim assessment of a condition or the potential adverse side-effects of a medication.

(viii) Other clinical scenarios as may be prescribed in Medical Treatment Guidelines or other related Board communications.

(2) Factors that indicate an in-person physical examination is necessary and treatment via telehealth is not medically appropriate include but are not limited to:

(i) Health concerns that require a procedure.

(ii) Abdominal pain, chest pain, clinically altered mental status, any situation in which it appears the claimant may pose a risk to themselves or others, severe headache, signs or symptoms of a stroke, or any other clinical presentation that is generally accepted as requiring in-person, emergent or urgent medical assessment, and for which in-person resources (e.g. regional hospital emergency departments or free-standing urgent care centers, as may be clinically appropriate) are readily available.

(iii) Eye or vision complaints.

(iv) Highly nuanced or multiple complex health concerns requiring an in-person examination to assess subtle interactions between co-morbidities or medications.

(v) Any situation in which an in-person physical exam might reasonably impact the accuracy, quality, or certainty of the Authorized Medical Provider's assessment, treatment, or recommendations.

(vi) Any situation where an in-person physical examination is needed to assess disability or range of motion, including but not limited to strength testing, formal range of motion testing, assessment of joint stability, nuanced orthopedic and/or neurologic testing, spirometry or pulmonary function testing, or exercise tolerance testing.

(vii) Any physical therapy, occupational therapy, or chiropractic services utilizing physical modalities other than instruction on range of motion or strengthening exercises.

(viii) Any other clinical scenarios as may be prescribed in Medical Treatment Guidelines or other related Board communications.

(ix) Assessment of causal relationship for an injury or illness unless an in-person physical examination is not necessary to make the determination of causal relationship, in which case the Authorized Medical Provider must specifically articulate in the medical record why an in-person examination was not necessary in order to make a determination of causal relationship.

(3) Notwithstanding any of the factors listed in paragraph (1) of this subdivision, the following procedures or situations are not medically appropriate for telehealth:

(i) Urine drug testing.

(ii) The initial prescription of long-term medications or follow-up monitoring of those medications without periodic in-person evaluation.

(iii) Where the nature of treatment set forth in the Medical Treatment Guidelines necessitates an in-person examination.

(iv) Assessment of permanent disability.

(v) Any other clinical scenarios as may be outlined by the Board in Medical Treatment Guidelines or other related Board communications.

(vi) The patient lacks suitable technology or equipment necessary to conduct the telehealth visit.

(vii) The patient has physical and/or cognitive challenges that would be a barrier to an effective telehealth visit (without the assistance of another individual).

(viii) The patient has expressed a preference for an in-person visit, as well as a willingness and capability to travel to an in-person visit.

(d) Independent Medical Examinations (IMEs) are not treatment under the Workers' Compensation Law. Accordingly, IMEs conducted pursuant to section 300.2 of this Title and section 137 of the Workers' Compensation Law, may be conducted via telehealth

when all parties of interest consent to such telehealth examination, and the independent medical examiner is not offering an opinion on permanent impairment.