

Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(22-C-0705SP1)

Department of State

NOTICE OF ADOPTION

Notaries Public

I.D. No. DOS-30-22-00007-A

Filing No. 62

Filing Date: 2023-01-18

Effective Date: 2023-01-25

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

Action taken: Amendment of Part 182 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 130(1), 135-c, 137-a(2)(a), (3), (5)(e); L. 2021, ch. 767, section 3; L. 2022, ch. 104, sections 6 and 7

Subject: Notaries public.

Purpose: To set standards relating to the performance of notarial acts, including electronic notarial acts.

Substance of final rule: 182.2 Definitions

- (a) "Notary Public" or "Notary"
- (b) "Electronic notary public" or "electronic notary"
- (c) "Notarial act"
- (d) "Electronic notarial act"
- (e) "Record"
- (f) "Electronic record"
- (g) "Identity verification"
- (h) "Credential analysis"
- (i) "Credential service provider"
- (j) "Identity proofing"
- (k) "Personal appearance"
- (l) "Communication technology"
- (m) "Electronic signature"
- (n) "Public key infrastructure"
- (o) "Public/private key or asymmetric cryptographic system"
- (p) "Principal"

182.3 Requirements for Notaries

- (a) All notaries performing notarial acts must:
 - (1) satisfy the requirements of the Executive Law;
 - (2) identify the individual appearing before the notary as authorized;
 - (3) require the personal appearance of all parties to any transaction for which a notarial act is required, except acts performed in conformity with law unless a law expressly excludes such authorization;
 - (4) administer any oath or affirmation;
 - (5) disqualify themselves from transactions in which the notary is a party or directly and pecuniarily interested;
 - (6) refuse to perform a notarial act when the requirements of this Part are not met, or if the notary is not satisfied that the presented record evidences the individual's capacity to act as the representative on the record presented for notarization;
 - (7) maintain records; and
 - (8) within five days after a change of name, address, or e-mail address, transmit to the secretary of state a notice of the change, signed with the notary's official signature.
- (b) A notary may refuse to perform a notarial act if unsatisfied that the principal is competent or has the capacity to execute a record or the principal's signature is knowingly and voluntarily made.

182.4 Additional Requirements for Electronic Notaries

- (a) In addition, all notaries who wish to perform electronic notarial acts must:
 - (1) register the capability to notarize electronically with the secretary of state;

- (2) use only those vendors who comply with the standards outlined in this Part and any communication or reporting relating to those standards;

- (3) be physically located in New York when performing electronic notarial acts;

- (4) use a network that permits location detection;

- (5) affix a reliable electronic signature, which is reliable if:
 - (i) unique to the notary;

- (ii) attached or logically associated with an electronic record by use of a digital certificate that utilizes public key infrastructure and is capable of independent verification;

- (iii) retained under the notary's sole control; and

- (iv) linked to the data in such a manner that any subsequent alterations to the underlying record are detectable and may invalidate the electronic notarial act;

- (6) use their electronic signature only for performing electronic notarial acts or as otherwise specified in this Part;

- (7) ensure the remote online notarial certificate for an electronic notarial act states that the person making the acknowledgement or making the oath appeared using communication technology;

- (8) for execution of any instrument in writing, confirm that such instrument is the same in which the principal made a statement or on which the principal executed a signature;

- (9) if the principal is located outside of the U.S., verify that the record or subject of the notarial act:
 - (i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the U.S.; or

- (ii) involves property located in the territorial jurisdiction of or involves a transaction substantially connected with the U.S.

- (10) for a change of address, ensure that the notice of change is electronically transmitted to the secretary of state, signed with the notary public's designated electronic signature;

- (11) for any update to the information required to register the capability to perform an electronic notarial act, make such update prior to performance of any electronic notarial act; and

- (b) The notary shall not disclose any access information used to affix the electronic notary's signature and seal except when requested by the secretary of state or a designee, or judicial subpoena, and with reasonable precautions, electronic document preparation and transmission vendors. Control of security aspects shall remain under the sole control of the notary public.

182.5 Satisfactory Evidence of Identity

- (a) For anyone signing a document appearing before a notary, including any principal seeking a notarial act, and any witness thereto, the notary must obtain satisfactory evidence of the identity.

- (b) For anyone signing a document appearing before a notary, satisfactory evidence of identity requires:
 - (1) presentation of an identification card issued by a governmental agency provided the card:
 - (i) is valid and current;
 - (ii) contains the photographic image of the bearer;
 - (iii) has an accurate physical description of the bearer, if applicable; and
 - (iv) includes the signature of the bearer;
 - (2) at least two current documents issued by an institution, business entity, or federal or state government with the individual's signature;
 - (3) attestation by the notary public that the individual is personally known to them; or
 - (4) the oath or affirmation of a credible witness who is personally known to the individual and notary; or
 - (5) oath or affirmation of two witnesses who know the individual personally and provide identification that meets the requirements of this section.

- (c) For anyone signing a document appearing before an electronic notary using communication technology, and who is not personally known to the notary, satisfactory evidence of identity requires:
 - (1) identity verification utilizing communication technology that meets the requirements set forth in this Part;
 - (2) credential analysis; and
 - (3) identity proofing by a third-party service provider.

- (d) Provided that all other requirements of this Part are met, attestation by an electronic notary that an individual appearing through communication technology is personally known to them is satisfactory evidence of identity for electronic notarial acts.

182.6 Credential Analysis

- (a) Credential analysis must be performed by a third-party service provider who has provided evidence to the online notary of the provider's ability to satisfy the requirements set forth in this rule.

- (b) Credential analysis must utilize public or private data sources to confirm the validity of an identification credential and must:
 - (1) use automated software processes to aid the online notary public in verifying the identity of a remotely located individual;

(2) ensure that the identification credential passes an authenticity test, consistent with sound commercial practices that:

- (i) uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;
- (ii) uses appropriate technologies to confirm that the identification credential is not fraudulent or inappropriately modified;
- (iii) uses information held or published by the issuing source or an authoritative source, as available, to confirm the validity of identification credential details; and
- (iv) provides output of the authenticity test to the notary.

182.7 Identity Proofing

(a) Identity proofing must meet, at minimum, the Identity Assurance Level 2 standard as outlined in the Digital Identity Guidelines of the National Institute of Standards and Technology or any industry accepted standard that is at least as secure, or more secure, than that standard.

(b) The Identity Assurance Level 2 standard, as outlined in the Digital Identity Guidelines of the National Institute of Standards and Technology, United States Department of Commerce, document SP 800-63-3, Revision 3, dated June 2017 and includes updates as of 03-02-2020, is hereby incorporated by reference.

182.8 Communication Technology

(a) The communication technology used to perform electronic notarial acts must:

- (1) permit sufficient audio and visual clarity to enable the notary and the person(s) to see and speak to each other simultaneously through live, real-time transmission throughout the duration of the notarial act;
- (2) permit sufficient visual clarity to enable the notary to view, read, and capture the identification card presented as verification of identity;
- (3) include a signal transmission secure from interception through lawful means by anyone other than the parties to the notarial act;
- (4) include a process of reproduction that does not permit additions, deletions, or changes without leaving a record of such;
- (5) provide some manner of ensuring that the electronic record that is presented for electronic notarization is the same record electronically signed by the principal; and
- (6) permit recording and archiving of the audio-video communication session.

(b) The electronic notary shall keep a copy of the recording of the video and audio conference that satisfies stated requirements.

182.9 Recordkeeping and Reporting

(a) All notaries must maintain records as outlined herein, which shall be made contemporaneously with the notarial act and include:

- (1) the date, approximate time, and type of notarial acts performed;
- (2) the name and address of any individuals for whom a notarial act was performed;
- (3) the number and type of notarial services provided;
- (4) the type of credential used to identify the principal;
- (5) the verification procedures used for any personal appearance before the notary public; and
- (6) for electronic notarial acts, identification of the communication technology, certification authority, and verification providers used.

(b) Any records maintained by a notary pursuant to this Part must be retained for at least ten years.

(c) Any records retained by a notary pursuant to this Part must be capable of being produced to the secretary of state and others as necessary in relation to the performance of the notary's obligations.

182.10 Applications, Registrations and Renewals

(a) Prior to performing any notarial acts, a notary must be commissioned by the secretary of state and must provide all information required by the application form prescribed by the secretary of state.

(b) No notary may perform electronic notarial acts until they have registered on a form prescribed the secretary of state, including, in addition to any other information prescribed by the secretary of state, the following:

- (1) the notary's name as commissioned and mailing address;
- (2) the expiration date of the notary's commission and signature of the notary;
- (3) the notary's email address;
- (4) the description of the technology to be used in attaching the notary's electronic signature to the record;
- (5) an exemplar of the notary's electronic signature, which shall be provided through and in the manner required by the department of state's registration system using the notary's selected signature vendor and contain the notary's name and any instructions, authorizations, or techniques that allow the notary's electronic signature to be read and verified.

(c) Within five days after the change of an electronic notary's name, address, or e-mail address, electronically transmit to the secretary of state a notice of the change, signed with the notary's designated electronic signature.

(d) Any update to the information required to be submitted by a notary to register as an e-notary must be made prior to performance of any electronic notarial act.

(d) A notary may apply for reappointment within 90 days of expiration of their commission, provided that the notary continues to meet the requirements set forth in law.

(e) When any notary who has registered to perform electronic notarial acts applies for reappointment, the notary must provide verification of the accuracy of all information on file with the secretary of state and affirm compliance with all requirements of this Part.

(f) Any notary who has failed to comply with any of the requirements of this Part shall not be eligible for reappointment.

(g) All applications for appointment and reappointment of notaries, and all registrations of capability to perform electronic notarial acts, shall be in the form and manner prescribed by the secretary of state.

182.11 Fees

(a) Applicants for a commission: sixty dollars.

(b) Registrants for electronic notarial acts: sixty dollars.

(c) Commission renewals: sixty dollars.

(d) Notary applicants who must take a written exam: fifteen dollars for each examination taken.

(e) The fee for change requests and Duplicate License/Registration Requests: ten dollars.

(f) A notary shall be entitled to a fee for notarial acts as set forth in section 136 of the Executive Law.

(g) An electronic notary shall be entitled to a fee of twenty-five dollars for each electronic notarial act, inclusive of all costs incurred by the notary.

(h) All application, renewal, and registration fees required to be paid pursuant to this section shall be transmitted in a manner prescribed by the secretary of state.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 182.2(c), (d), 182.4(a)(4), (9), 182.5(a), (b), (c), 182.8(a)(1), (6), (b), 182.9(a) and 182.11(g).

Text of rule and any required statements and analyses may be obtained from: David Gonzalez, Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 486-2251, email: David.Gonzalez@dos.ny.gov

Revised Regulatory Impact Statement

Modification of the Regulatory Impact Statement that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Regulatory Impact Statement inadequate or incomplete.

Revised Regulatory Flexibility Analysis

Modification of the Regulatory Flexibility Analysis that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Regulatory Flexibility Analysis inadequate or incomplete.

Revised Rural Area Flexibility Analysis

Modification of the Rural Area Flexibility Analysis that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Rural Area Flexibility Analysis inadequate or incomplete.

Revised Job Impact Statement

Modification of the Job Impact Statement that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Job Impact Statement inadequate or incomplete.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2026, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of State (DOS) received public comments from many sources, including comments made on behalf of the National Notary Association (NNA); the New York State Land Title Association (NYSLTA); Notarize, Inc.; ENotaryLog; the New York Association of County Clerks (NYSACC); DocuSign, Inc.; the New York Notary Alliance; and the Electronic Signature and Records Association (ESRA).

The public comments collectively addressed nine issue areas. A summary and analysis of the issues raised and significant alternatives suggested by any such comments are presented in the full assessment of public comment by issue area, followed by a statement of the reasons why any significant alternatives were not incorporated into the rule and a description of any changes made in the rule as a result of such comments.

1) Recordkeeping requirements:

Comments relating to record-keeping requirements focused on several areas itemized in in the full assessment of public comment.

Response:

The statute will require an electronic notary to “keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used” for at least ten years. Documentation of compliance with applicable laws is an important safeguard against fraud and permits the secretary to verify the adherence of notaries to their statutory obligations.

DOS considered issues of consistency among notarial requirements and the documentation requirements commonly imposed by other states, including journaling and outlined the information that all notaries should be retaining in their records in a way that ensures uniformity of standards. There is no requirement that notaries keep information disclosing personally identifiable information not otherwise required by recordkeeping requirements in § 182 provided by signatories, but all notaries must be documenting the type of identification provided.

Clarifications were made to the rule text relating to several issues raised. Regarding whether a notary may outsource record-keeping to a third party, DOS added a provision that permits outsourcing if the records are protected with a password or other secure means of authorization.

In response to concerns about the cost of retaining a recording of the electronic notarial act and the security of personal identifiers, DOS amended the regulations to better define the scope of the required recording. The regulations require that a notary be able to see and hear others throughout the course of the entire session. To address concerns relating to recording and storage costs, however, the proposed rule has been amended to limit scope of the required recording.

With respect to identification of the verification provider and certificate authority, DOS clarified that if a third-party platform is providing these services, the notary is required to identify only the communication technology used.

DOS did not make any clarification around disposal of records as this issue is addressed in other areas of the law.

2) Fees

Multiple comments were received relating to the fees authorized.

Response:

Prior to setting the permissible fee for electronic notarial acts, DOS reviewed the permissible fees for electronic notarial acts authorized in other states, none of which are higher than \$25 per act.

Each time a notary is required to verify identity, take an oath or acknowledgement, and notate a document, those acts constitute a separate notarial act for which fees may be charged. When those acts are performed as part of an electronic notarial session, they constitute an electronic notarial act.

Permissible fees for notarial acts are outlined by statute, and DOS can't alter such fees. DOS clarified the definition of notarial act to include the preparation of a certificate of authenticity but did not consider a change to the statutory fee for preparing the certificate given the clear statutory framework.

DOS clarified that a fee may be charged for each electronic notarial act performed, which will permit notaries to charge a fee for each notarial act performed during one electronic session.

3) Identity verification:

DOS received multiple comments addressing the identity verification provisions, which are itemized in in the full assessment of public comment.

Response:

The proposed term “credible witness” permitted “the oath or affirmation of a credible witness who is personally known to the individual and notary” to be satisfactory evidence of identity. This term was not otherwise defined because the definition of that term is addressed within the rule itself. DOS removed the word “credible” in response to comments. Any witness personally known to the individual and notary is an appropriate witness for identity verification.

With respect to the necessary documentation required for this and other forms of identity verification, the acknowledgement required is sufficient because of recordkeeping requirements. Because the rules otherwise address documentation of this issue, no change is necessary.

DOS clarified that only those individuals signing a document (i.e., for which the notarial act is required) must provide evidence of identity.

DOS added language providing an alternate means by which a notary may seek evidence of identity.

To align the record-keeping requirements with the additional method of identity verification permitted, DOS clarified 19 NYCRR § 182.9(a)(4) to require documentation of the name of any witnesses used to identify a signer and, if applicable, the type of credentials used.

4) Security standards

Comments addressed the incorporation by reference of the National Institute of Standards and Technology's Identity Assurance Level 2 (IAL2)

standard applicable to identity proofing. One comment strongly supporting the use of the IAL2 standard.

Criticism of the IAL2 standard is focused on this standard exceeding current industry standards, and one comment indicated a belief that IAL2 is not currently being met by most vendors. Comments in support focus on the heightened protection against fraud. One comment noted that the IAL2 technical requirements are beyond the scope of most notaries, and that IAL2 may not be met with respect to the evidence of identity standards in the regulations.

Response:

DOS consulted with the New York State Office of Information Technology Services (ITS) regarding the preferred security standards for communication technology providers. The IAL2 standard, which was developed following notice and comment, was determined to offer the best fraud protection in relation to electronic notarization. The standards outlined in reference to credential analysis are sufficient to meet IAL2 and have not been amended.

With respect to the alleged discrepancy between the forms of identity permitted by 19 NYCRR § 182.5(b) and IAL2, DOS has not made any clarification. The standards outlined apply to all notarial acts and are required in addition to identity proofing and credential analysis for electronic notarial acts.

5) Location and documentation relating to electronic notarial acts:

DOS received comments regarding the location of electronic notaries and documentation relating to the items specific to electronic notarizations, which are itemized in the full assessment of public comment.

Response:

The requirement that electronic notaries (but not signers) must be physically present in New York State is a statutory requirement. DOS rules accurately reflect the relevant statutory language; no changes were made.

DOS clarified the requirement that notaries use a network that permits location detection to specify that notaries must not take any steps to hide their location when performing electronic notarial acts.

Regarding issues surrounding the venue, date and time of electronic notarial acts, because the law specifically defines venue in reference to the act of the notary, no further clarification is required. The law provides “An electronic notarial act performed using communication technology pursuant to this section satisfies any requirement of law of this state that a document signer personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act,” which aligns with requirements that a notary document the date and time of the transaction in reference to the notarial act. Accordingly, no changes to the rules were considered necessary regarding the location of the signer.

6) Actions required of County Clerks

One comment raised questions regarding the responsibilities of the county clerks regarding electronically notarized documents; one involving certification of electronic signatures and the second regarding the requirements related to the Certificate of Authenticity.

Response:

One comment raised concern that if an electronic signature is not filed with the county, it will prevent certification of any such signature. That is not the case, as the statutes are designed to allow counties to provide such certification when requested. The law only requires a county to certify a signature under the conditions expressed in Executive Law § 133, and Executive Law § 135-c(6)(d), which contains a “papering out” provision, by which a printed version of an electronically created document may be certified by the notary using the autograph signature on file with the county clerk (a certificate of authenticity). No clarification was made as the county is not mandated and may certify a signature within the framework of applicable law.

Regarding the requirements of Executive Law § 135-c(6), the county is required to accept a tangible copy of an electronic record “if it is otherwise eligible to be recorded” and is accompanied by a certificate of authenticity. As the statute specifies the language required in the certificate of authenticity and mandates County Clerks to accept the document if the certificate of authenticity is attached, revisions or changes to the rule text were not made.

7) Duties of Notaries:

DOS received several comments regarding the duties of notaries before performing a notarial act, which are itemized in the full assessment of public comment.

Response:

Many of the requirements raised regarding the obligations of notaries are well-established under law and are requirements with which all notaries should already be familiar. The requirement set forth in § 182.3(a)(6) is authorized by statute, and the requirement set forth in § 182.4(a)(9) is required by statute and are thus obligations that electronic notaries must fulfill as a condition of performing electronic notarial acts.

Notaries should be familiar with rules that have established grounds for

disqualification from notarizing a transaction and should be familiar with their obligation to be satisfied that any principal to a transaction has the capacity to understand the transaction and the oath. The terms “competent” and “knowing and voluntary” are defined under law and further clarifications were not made.

After considering the comments, DOS clarified the nature of the verification that must be made and specified that a notary must only seek verbal verification of the requirements from the principal. There is a corresponding clarification added requiring this verification to be recorded as part of the electronic notarial act.

8) Vendor Specifications/Requirements:

Some comments focused on the definitions of and requirements for certain third-party resources referenced in the regulations, which are itemized in the full assessment of public comment.

Response:

To ensure consistency throughout the state, where applicable DOS referenced definitions associated with the Electronic Signatures and Records Act and did not consider alternatives in the rules given the existing established definitions.

DOS similarly did not consider the request that DOS certify vendors who meet the regulatory requirements, as the statute does not provide DOS with regulatory authority over communication technology providers. The law simply authorizes notaries to perform electronic notarial acts using communication technology that complies with applicable rules.

DOS consulted with ITS about communication technology provision and standards and considered whether and to what extent such technology could or should be provided by the state and determined that through this rulemaking DOS would set minimum standards for the communication technology and any appropriate security standards and allow notaries to select their own providers.

9) General comments:

Many commenters offered general favorable and negative comments on the regulations, which are itemized in the full assessment of public comment.

Response:

DOS reviewed and considered all comments but did not make any changes based on these general comments as there were no specific regulations implicated by the issues raised.

NOTICE OF ADOPTION

Advertising Licensed Activity of Installing, Servicing, or Maintaining Security or Fire Alarm Systems

I.D. No. DOS-42-22-00003-A

Filing No. 9

Filing Date: 2023-01-06

Effective Date: 2023-01-25

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

Action taken: Repeal of section 195.16; addition of new section 195.16 to Title 19 NYCRR.

Statutory authority: General Business Law, section 69-n(5)

Subject: Advertising licensed activity of installing, servicing, or maintaining security or fire alarm systems.

Purpose: To provide multi-state security or fire alarm system license holders flexibility to making certain disclosures.

Text or summary was published in: the October 19, 2022 issue of the Register, I.D. No. DOS-42-22-00003-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Halima Begum, NYS Department of State, 123 William Street, 20th Floor, New York, NY 10038, (212) 417-2063, email: halima.begum@dos.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the NYS Register.

2019 Novel Coronavirus (COVID-19) masking requirements in congregate shelters

I.D. No.	Proposed	Expiration Date
TDA-01-22-00001-EP	January 5, 2022	January 5, 2023

Workers’ Compensation Board

**EMERGENCY
RULE MAKING**

Allowing Telemedicine in Some Circumstances, Supersede Previous Emergency Adoption

I.D. No. WCB-04-23-00003-E

Filing No. 33

Filing Date: 2023-01-10

Effective Date: 2023-01-10

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

Action taken: Amendment of sections 325-1.8, 329-1.3, 329-4.2, 333.2 and 348.2 of Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, sections 117 and 142

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because the Board wants to avoid health and safety risks that can be avoided through social distancing due to COVID-19, including new variants, by allowing telemedicine in some circumstances, and to supersede the previous emergency adoption addressing this topic. Additionally, the Board has seen these emergency measures work efficiently and effectively to provide care for injured workers and plans to adopt a permanent regulation addressing when telehealth may be used to benefit injured workers and wants to keep the current telemedicine rules in effect during the regulatory process for the permanent telehealth proposal.

Subject: Allowing telemedicine in some circumstances, supersede previous emergency adoption.

Purpose: To allow telemedicine in some circumstances due to COVID-19 and keep in effect during permanent telehealth proposal process.

Text of emergency rule: Section 325-1.8 of Title 12 NYCRR is hereby amended to read as follows:

325-1.8 Emergency medical aid and telemedicine.

(a) In the event of a serious accident requiring immediate emergency medical aid, an ambulance or any physician may be called to give first aid treatment.

(b) *Telemedicine, using two-way audio and visual electronic communication, or treatment via telephone, may be used by authorized providers where medically appropriate for social distancing purposes due to COVID-19 in accordance with the Department of Health COVID-19 Medicaid Guidance and Guidance issued by the Centers for Medicare and Medicaid Services, or irrespective of purely social distancing considerations, in the clinical judgment of the authorized provider, the potential risk of COVID-19 infection to an individual patient outweighs any real or perceived incremental benefit derived from an in-person versus remote or virtual appointment. The authorized provider shall indicate on their report that such assessment was done by telemedicine using modifier 95 and indicating place of service as 11, or telephonically by indicating place of service as 02. The provider shall also confirm the employee’s identity as well as provide basic information about the services the employee is receiving by telephone or telemedicine.*

New subdivisions (c) and (d) of section 329-1.3 of Title 12 NYCRR is hereby added to read as follows:

(c) *When medically appropriate, authorized providers who utilize the Official New York State Workers’ Compensation Fee Schedule may, when telemedicine is used in accordance with section 325-1.8 of this Title and any applicable Medical Treatment Guideline, bill using the applicable Evaluation and Management codes (99212-99214) using modifier 95 and indicating 11 as the place of service. Modifiers 1B and 1D are available when services are rendered by telemedicine using two-way audio and visual communication. When services are rendered by telephone only in accordance with section 325-1.8 of this Title, the authorized provider shall*