S T A T E O F N E W Y O R K

2360--A

2013-2014 Regular Sessions

I N S E N A T E

January 16, 2013

Introduced by Sens. KLEIN, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to the care and treatment of injured employees by certain licensed clinical social workers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "injured workers assistance act".

S 2. The workers' compensation law is amended by adding a new section 13-p to read as follows:

S 13-P. CARE AND TREATMENT OF INJURED EMPLOYEES BY CERTAIN LICENSED CLINICAL SOCIAL WORKERS. 1. WHERE THE TERM "CLINICAL SOCIAL WORKER" IS USED IN THIS SECTION, SUCH TERM SHALL MEAN A PERSON WHO IS DULY LICENSED AND REGISTERED AS A LICENSED CLINICAL SOCIAL WORKER PURSUANT TO ARTICLE ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW.

2. (A) AN INJURED EMPLOYEE, INJURED UNDER CIRCUMSTANCES WHICH MAKE SUCH AN INJURY COMPENSABLE UNDER THIS ARTICLE, MAY LAWFULLY BE TREATED, UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, BY A LICENSED CLINICAL SOCIAL WORKER AUTHORIZED BY THE CHAIR TO RENDER SOCIAL WORK CARE PURSUANT TO THIS SECTION. SUCH SERVICES SHALL BE WITHIN THE SCOPE OF LICENSED CLINICAL SOCIAL WORK AS DEFINED IN SUBDIVISION TWO OF SECTION SEVENTY-SEVEN HUNDRED ONE OF THE EDUCATION LAW.

(B) MEDICAL BUREAUS, MEDICAL CENTERS JOINTLY OPERATED BY LABOR AND MANAGEMENT REPRESENTATIVES, HOSPITALS AND HEALTH MAINTENANCE ORGANIZATIONS, AUTHORIZED TO PROVIDE MEDICAL CARE PURSUANT TO SECTION THIRTEEN-C OF THIS ARTICLE, MAY PROVIDE CLINICAL SOCIAL WORK SERVICES WHEN REQUIRED, UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, PROVIDED SUCH

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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CARE IS RENDERED BY A DULY REGISTERED, LICENSED AND AUTHORIZED CLINICAL SOCIAL WORKER AS REQUIRED BY THIS SECTION.

(C) A LICENSED CLINICAL SOCIAL WORKER RENDERING SERVICE PURSUANT TO THIS SECTION SHALL MAINTAIN RECORDS OF THE PATIENT'S CONDITION AND CLINICAL SOCIAL WORK TREATMENT, AND SUCH RECORDS OR REPORTS SHALL BE SUBMITTED TO THE CHAIR ON SUCH FORMS AND AT SUCH TIMES AS THE CHAIR MAY REQUIRE.

3. A LICENSED CLINICAL SOCIAL WORKER WHO IS DESIROUS OF BEING AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION SHALL FILE AN APPLICATION FOR AUTHORIZATION UNDER THIS SECTION WITH THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE. THE APPLICANT SHALL AGREE TO REFRAIN FROM SUBSEQUENTLY TREATING FOR REMUNERATION, AS A PRIVATE PATIENT, ANY PERSON SEEKING CLINICAL SOCIAL WORK SERVICES, IN CONNECTION WITH, OR AS A RESULT OF, ANY INJURY COMPENSABLE UNDER THIS CHAPTER, IF HE OR SHE HAS BEEN REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS AUTHORIZED TO RENDER SERVICES UNDER THIS CHAPTER. THIS AGREEMENT SHALL RUN TO THE BENEFIT OF THE INJURED PERSON SO TREATED, AND SHALL BE AVAILABLE AS A DEFENSE IN ANY ACTION BY SUCH CLINICAL SOCIAL WORKER FOR PAYMENT FOR TREATMENT RENDERED BY SUCH CLINICAL SOCIAL WORKER AFTER BEING REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION. THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE, IF IT DEEMS SUCH LICENSED CLINICAL SOCIAL WORKER DULY QUALIFIED, SHALL RECOMMEND TO THE CHAIR THAT SUCH PERSON BE AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION. SUCH RECOMMENDATIONS SHALL BE ONLY ADVISORY TO THE CHAIR AND SHALL NOT BE BINDING OR CONCLUSIVE. THE CHAIR SHALL PREPARE AND ESTABLISH A SCHEDULE FOR THE STATE OR SCHEDULES LIMITED TO DEFINED LOCALITIES OF CHARGES AND FEES FOR CLINICAL SOCIAL WORK TREATMENT AND CARE, TO BE DETERMINED IN ACCORDANCE WITH AND BE SUBJECT TO CHANGE PURSUANT TO RULES PROMULGATED BY THE CHAIR. BEFORE PREPARING SUCH SCHEDULE FOR THE STATE OR SCHEDULES FOR LIMITED LOCALITIES THE CHAIR SHALL REQUEST THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE TO SUBMIT TO SUCH CHAIR A REPORT ON THE AMOUNT OF REMUNERATION DEEMED BY SUCH COMMITTEE TO BE FAIR AND ADEQUATE FOR THE TYPES OF CLINICAL SOCIAL WORK SERVICES TO BE RENDERED UNDER THIS CHAPTER, BUT CONSIDERATION SHALL BE GIVEN TO THE VIEW OF OTHER INTERESTED PARTIES. THE AMOUNTS PAYABLE BY THE EMPLOYER FOR SUCH TREATMENT AND SERVICES SHALL BE THE FEES AND CHARGES ESTABLISHED BY SUCH SCHEDULE.

4. NO CLAIM FOR CLINICAL SOCIAL WORK SERVICES SHALL BE VALID AND ENFORCEABLE AS AGAINST THE EMPLOYER OR EMPLOYEES UNLESS WITHIN FORTY-EIGHT HOURS FOLLOWING THE FIRST TREATMENT THE CLINICAL SOCIAL WORKER GIVING SUCH CARE OR TREATMENT FURNISHES TO THE EMPLOYER AND DIRECTLY TO THE CHAIR A PRELIMINARY NOTICE OF SUCH INJURY AND TREATMENT, AND WITHIN FIFTEEN DAYS THEREAFTER A MORE COMPLETE REPORT AND SUBSEQUENT THERETO PROGRESS REPORTS AS REQUESTED IN WRITING BY THE CHAIR, BOARD, EMPLOYER OR INSURANCE CARRIER, AT INTERVALS OF NOT LESS THAN THREE WEEKS APART OR AT LESS FREQUENT INTERVALS IF REQUESTED ON FORMS PRESCRIBED BY THE CHAIR. THE BOARD MAY EXCUSE THE FAILURE TO GIVE SUCH NOTICES WITHIN THE DESIGNATED PERIODS WHEN IT FINDS IT TO BE IN THE INTEREST OF JUSTICE TO DO SO.

5. FEES FOR CLINICAL SOCIAL WORK SERVICES SHALL BE PAYABLE ONLY TO A DULY LICENSED CLINICAL SOCIAL WORKER AS LICENSED IN ARTICLE ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW, OR TO THE AGENT, EXECUTOR OR ADMINISTRATOR OF THE ESTATE OF SUCH LICENSED CLINICAL SOCIAL WORKER. NO LICENSED CLINICAL SOCIAL WORKER RENDERING TREATMENT TO A COMPENSATION CLAIMANT SHALL COLLECT OR RECEIVE A FEE FROM SUCH CLAIMANT WITHIN THIS

STATE, BUT SHALL HAVE RECOURSE FOR PAYMENT OF SERVICES RENDERED ONLY TO THE EMPLOYER UNDER THE PROVISIONS OF THIS SECTION.

6. WHENEVER HIS OR HER ATTENDANCE AT A HEARING IS REQUIRED, THE LICENSED CLINICAL SOCIAL WORKER OF THE INJURED EMPLOYEE SHALL BE ENTITLED TO RECEIVE A FEE FROM THE EMPLOYER IN AN AMOUNT TO BE FIXED BY THE BOARD, IN ADDITION TO ANY FEE PAYABLE UNDER SECTION EIGHT THOUSAND ONE OF THE CIVIL PRACTICE LAW AND RULES.

7. (A) UNLESS WITHIN THIRTY DAYS AFTER A BILL HAS BEEN RENDERED TO THE EMPLOYER BY THE LICENSED CLINICAL SOCIAL WORKER WHO HAS TREATED AN INJURED EMPLOYEE, SUCH EMPLOYER SHALL HAVE NOTIFIED THE CHAIR AND SUCH CLINICAL SOCIAL WORKER IN WRITING THAT SUCH EMPLOYER DEMANDS AN IMPARTIAL EXAMINATION OF THE FAIRNESS OF THE AMOUNT CLAIMED BY SUCH CLINICAL SOCIAL WORKER FOR HIS OR HER SERVICES, THE RIGHT TO SUCH AN IMPARTIAL EXAMINATION SHALL BE DEEMED TO BE WAIVED AND THE AMOUNT CLAIMED BY SUCH CLINICAL SOCIAL WORKER SHALL BE DEEMED TO BE THE FAIR VALUE OF THE SERVICES RENDERED. IF THE PARTIES FAIL TO AGREE AS TO THE SOCIAL WORK CARE RENDERED UNDER THIS CHAPTER TO A CLAIMANT, SUCH VALUE SHALL BE DECIDED BY THE SOCIAL WORK PRACTICE COMMITTEE AND THE MAJORITY DECISION OF SUCH COMMITTEE SHALL BE CONCLUSIVE UPON THE PARTIES AS TO THE VALUE OF THE SERVICES RENDERED. THE BOARD MAY MAKE AN AWARD FOR ANY SUCH BILL OR PART THEREOF WHICH REMAINS UNPAID IN THE SAME MANNER AS AN AWARD FOR BILLS RENDERED UNDER SUBDIVISIONS ONE AND THREE OF SECTION THIRTEEN-G OF THIS ARTICLE, AND SUCH AWARD MAY BE COLLECTED IN LIKE MANNER AS AN AWARD OF COMPENSATION. THE CHAIR SHALL ASSESS THE SUM OF FIFTY DOLLARS AGAINST THE EMPLOYER FOR EACH SUCH AWARD MADE BY THE BOARD, WHICH SUM SHALL BE PAID INTO THE STATE TREASURY.

(B) WHERE A LICENSED CLINICAL SOCIAL WORKER'S BILL HAS BEEN DETERMINED TO BE DUE AND OWING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE BOARD MAY IMPOSE A PENALTY OF NOT MORE THAN ONE AND ONE-HALF PERCENT INTEREST PER MONTH PAYABLE TO THE LICENSED CLINICAL SOCIAL WORKER IN ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE BOARD.

(C) THE PARTIES TO SUCH PROCEEDING SHALL EACH PAY TO THE CHAIR A SUM EQUAL TO FIVE PER CENTUM OF THE AMOUNT PAYABLE UNDER THE DECISION OF SUCH COMMITTEE OR A MINIMUM OF FIVE DOLLARS, WHICHEVER IS GREATER. THE SUMS SO COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURY TO REIMBURSE IT ON ACCOUNT OF THE EXPENSE OF ADMINISTERING THIS SECTION.

8. WITHIN THE LIMITS PRESCRIBED BY THE EDUCATION LAW FOR LICENSED CLINICAL SOCIAL WORK SERVICES, THE REPORT OR TESTIMONY OF AN AUTHORIZED CLINICAL SOCIAL WORKER CONCERNING THE CONDITION OF AN INJURED EMPLOYEE AND TREATMENT THEREOF SHALL BE DEEMED COMPETENT EVIDENCE AND THE PROFESSIONAL OPINION OF THE LICENSED CLINICAL SOCIAL WORKER AS TO CAUSAL RELATION AND AS TO REQUIRED TREATMENT SHALL BE DEEMED COMPETENT BUT SHALL NOT BE CONTROLLING. NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE ANY EMPLOYER OR INSURANCE CARRIER OF ANY RIGHT TO A MEDICAL EXAMINATION OR PRESENTATION OF MEDICAL TESTIMONY NOW CONFERRED BY LAW.

9. THE CHAIR SHALL PROMULGATE RULES GOVERNING THE PROCEDURE TO BE FOLLOWED BY THOSE RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION, WHICH RULES SO FAR AS PRACTICABLE SHALL CONFORM TO THE RULES PRESENTLY IN EFFECT WITH REFERENCE TO MEDICAL CARE FURNISHED TO CLAIMANTS IN WORKERS' COMPENSATION. IN CONNECTION WITH THE PROMULGATION OF SUCH RULES THE CHAIR MAY CONSULT THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE AND MAY TAKE INTO CONSIDERATION THE VIEW OF OTHER INTERESTED PARTIES.

10. THE CHAIR SHALL APPOINT FOR AND WITH JURISDICTION IN THE ENTIRE STATE OF NEW YORK A SINGLE CLINICAL SOCIAL WORK PRACTICE COMMITTEE COMPOSED OF TWO CLINICAL LICENSED SOCIAL WORKERS, AND ONE DULY LICENSED

PHYSICIAN OF THE STATE OF NEW YORK. EACH MEMBER OF SUCH COMMITTEE SHALL RECEIVE COMPENSATION EITHER ON AN ANNUAL BASIS OR ON A PER DIEM BASIS TO BE FIXED BY THE CHAIR WITHIN AMOUNTS APPROPRIATED THEREFOR. ONE OF SUCH LICENSED CLINICAL SOCIAL WORKERS SHALL BE DESIGNATED BY THE CHAIR AS A CHAIR OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE. NO MEMBER OF SUCH COMMITTEE SHALL RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION NOR BE AN EMPLOYER OR ACCEPT OR PARTICIPATE IN ANY FEE FROM ANY INSURANCE COMPANY AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE OR FROM ANY SELF-INSURER, WHETHER SUCH EMPLOYMENT OR FEE RELATES TO A WORKERS' COMPENSATION CLAIM OR OTHERWISE. THE ATTORNEY GENERAL, UPON REQUEST, SHALL ADVISE AND ASSIST SUCH COMMITTEE.

11. THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE SHALL INVESTIGATE, HEAR AND MAKE FINDINGS WITH RESPECT TO ALL CHARGES AS TO PROFESSIONAL OR OTHER MISCONDUCT OF ANY AUTHORIZED CLINICAL SOCIAL WORKER AS PROVIDED IN THIS SECTION UNDER RULES AND PROCEDURES TO BE PRESCRIBED BY THE CHAIR AND SHALL REPORT EVIDENCE OF SUCH MISCONDUCT, WITH THEIR FINDINGS AND RECOMMENDATIONS WITH RESPECT THERETO, TO THE CHAIR. THE FINDINGS, DECISION AND RECOMMENDATION OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE SHALL BE ADVISORY TO THE CHAIR ONLY, AND SHALL NOT BE BINDING OR CONCLUSIVE UPON HIM OR HER. THE CHAIR SHALL REMOVE FROM THE LIST OF LICENSED CLINICAL SOCIAL WORKERS AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS CHAPTER THE NAME OF ANY CLINICAL SOCIAL WORKER WHO HE OR SHE SHALL FIND AFTER REASONABLE INVESTIGATION IS DISQUALIFIED BECAUSE SUCH CLINICAL SOCIAL WORKER:

(A) HAS BEEN GUILTY OF PROFESSIONAL OR OTHER MISCONDUCT OR INCOMPETENCY IN CONNECTION WITH THE RENDERING OF CLINICAL SOCIAL WORK SERVICES,

(B) HAS EXCEEDED THE LIMITS OF HIS OR HER PROFESSIONAL COMPETENCE IN RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THE LAW, OR HAS MADE FALSE STATEMENTS REGARDING QUALIFICATIONS IN THE APPLICATION FOR AUTHORIZATION,

(C) HAS FAILED TO SUBMIT TIMELY, FULL AND TRUTHFUL CLINICAL SOCIAL WORK EVALUATION AND TREATMENT REPORTS OF ALL FINDINGS TO THE EMPLOYER AND DIRECTLY TO THE CHAIR OF THE BOARD WITHIN THE TIME LIMITS PROVIDED IN THIS SECTION,

(D) HAS RENDERED CLINICAL SOCIAL WORKER SERVICES UNDER THIS CHAPTER FOR A FEE LESS THAN THAT FIXED IN THE FEE SCHEDULE,

(E) HAS SOLICITED OR HAS EMPLOYED ANOTHER TO SOLICIT FOR HIMSELF/HERSELF OR FOR ANOTHER PROFESSIONAL TREATMENT, EXAMINATION OR CARE OF AN INJURED EMPLOYEE WITH ANY CLAIM UNDER THIS CHAPTER,

(F) HAS REFUSED TO APPEAR BEFORE OR ANSWER UPON REQUEST OF THE CHAIR, BOARD, CLINICAL SOCIAL WORK PRACTICE COMMITTEE OR ANY DULY AUTHORIZED OFFICER OF THE STATE, ANY LEGAL QUESTION OR PRODUCE ANY RELEVANT BOOK OR PAPER CONCERNING CONDUCT UNDER AN AUTHORIZATION GRANTED UNDER LAW, OR

(G) HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PARTICIPATED IN THE DIVISION, TRANSFERENCE, ASSIGNMENT, REBATING, SPLITTING OR REFUNDING OF A FEE FOR, OR HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PROFITED BY MEANS OF A CREDIT OR OTHERWISE VALUABLE CONSIDERATION AS A COMMISSION, DISCOUNT OR GRATUITY IN CONNECTION WITH THE TREATMENT OF A WORKERS' COMPENSATION CLAIMANT.

12. ANY PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE, AND ANY PERSON WHO AIDS ANOTHER TO VIOLATE OR ATTEMPTS TO INDUCE HIM OR HER TO VIOLATE THE PROVISIONS OF PARAGRAPH (G) OF SUBDIVISION ELEVEN OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

13. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING IN ANY RESPECT THE POWER OR DUTY OF THE CHAIR TO INVESTIGATE INSTANCES OF MISCONDUCT, EITHER BEFORE OR AFTER INVESTIGATION BY THE CLINICAL SOCIAL

WORK PRACTICE COMMITTEE, OR TO TEMPORARILY SUSPEND THE AUTHORIZATION OF ANY LICENSED CLINICAL SOCIAL WORKER BELIEVED TO BE GUILTY OF SUCH MISCONDUCT. THE PROVISIONS OF SUBDIVISION ONE OF SECTION THIRTEEN-D OF THIS ARTICLE WHICH ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION SHALL BE APPLICABLE AS IF FULLY SET FORTH IN THIS SECTION.

14. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT CLINICAL SOCIAL WORKERS WHO PRACTICE AS PARTNERS, IN GROUPS OR AS A PROFESSIONAL CORPORATION FROM POOLING FEES AND MONEYS RECEIVED, EITHER BY THE PARTNERSHIP, PROFESSIONAL CORPORATION OR GROUP OR BY THE INDIVIDUAL MEMBERS THEREOF, FOR PROFESSIONAL SERVICES FURNISHED BY ANY INDIVIDUAL PROFESSIONAL MEMBER, OR EMPLOYEE OF SUCH PARTNERSHIP, CORPORATION OR GROUP, NOR SHALL THE PROFESSIONALS CONSTITUTING THE PARTNERSHIPS, CORPORATIONS, OR GROUPS BE PROHIBITED FROM SHARING, DIVIDING OR APPORTIONING THE FEES AND MONEYS RECEIVED BY THEM OR BY THE PARTNERSHIP, CORPORATION OR GROUP IN ACCORDANCE WITH A PARTNERSHIP OR OTHER AGREEMENT.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be made on or before such effective date.