

STATE OF NEW YORK

4222

2017-2018 Regular Sessions

IN ASSEMBLY

February 1, 2017

Introduced by M. of A. HOOPER -- Multi-Sponsored by -- M. of A. ENGLE-BRIGHT, WEPRIN -- read once and referred to the Committee on Labor

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The workers' compensation law is amended by adding a new
2 section 13-p to read as follows:

3 § 13-p. Care and treatment of injured employees by duly licensed
4 social workers. 1. Where the term "social worker" is used in this
5 section, such term shall mean a licensed master social worker or a
6 licensed clinical social worker licensed pursuant to article one hundred
7 fifty-four of the education law.

8 2. (a) An injured employee, injured under circumstances which make
9 such injury compensable under this article, may lawfully be treated,
10 upon the referral of an authorized physician, by a social worker, duly
11 registered and licensed by the state of New York, authorized by the
12 chair to render social work care pursuant to this section. Such services
13 shall be within the scope of such social worker's specialized training
14 and qualifications as defined in article one hundred fifty-four of the
15 education law.

16 (b) Medical bureaus, medical centers jointly operated by labor and
17 management representatives, hospitals and health maintenance organiza-
18 tions, authorized to provide medical care pursuant to section thirteen-c
19 of this article, may provide social work services when required, upon
20 the referral of an authorized physician, provided such care is rendered
21 by a duly registered, licensed and authorized social worker as required
22 by this section.

23 (c) A social worker rendering service pursuant to this section shall
24 maintain records of the patient's condition and treatment, and such

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

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1 records or reports shall be submitted to the chair on such forms and at
2 such times as the chair may require.

3 3. A social worker, licensed and registered to practice social work in
4 the state of New York, who is desirous of being authorized to render
5 social work care under this section and/or to conduct independent exam-
6 inations in accordance with paragraph (b) of subdivision four of this
7 section shall file an application for authorization under this section
8 with the social work practice committee. The applicant shall agree to
9 refrain from subsequently treating for remuneration, as a private
10 patient, any person seeking social work treatment, or submitting to an
11 independent examination, in connection with, or as a result of, any
12 injury compensable under this chapter, if he or she has been removed
13 from the list of social workers authorized to render social work care
14 under this chapter. This agreement shall run to the benefit of the
15 injured person so treated, and shall be available as a defense in any
16 action by such social worker for payment for treatment rendered by such
17 social worker after being removed from the list of social workers
18 authorized to render social work care or to conduct independent examina-
19 tions under this section. The social work practice committee if it deems
20 such licensed social worker duly qualified shall recommend to the chair
21 that such person be authorized to render social work care and/or to
22 conduct independent examinations under this section. Such recommenda-
23 tions shall be only advisory to the chair and shall not be binding or
24 conclusive. The chair shall prepare and establish a schedule for the
25 state or schedules limited to defined localities of charges and fees for
26 social work treatment and care, to be determined in accordance with and
27 be subject to change pursuant to rules promulgated by the chair. Before
28 preparing such schedule for the state or schedules for limited locali-
29 ties the chair shall request the social work practice committee to
30 submit to such chair a report on the amount of remuneration deemed by
31 such committee to be fair and adequate for the types of social work care
32 to be rendered under this chapter, but consideration shall be given to
33 the view of other interested parties. The amounts payable by the employ-
34 er for such treatment and services shall be the fees and charges estab-
35 lished by such schedule.

36 4. (a) No claim for social work care or treatment shall be valid and
37 enforceable as against the employer or employees unless within forty-
38 eight hours following the first treatment the social worker giving such
39 care or treatment furnishes to the employer and directly to the chair a
40 preliminary notice of such injury and treatment, and within fifteen days
41 thereafter a more complete report and subsequent thereto progress
42 reports as requested in writing by the chair, board, employer or insur-
43 ance carrier, at intervals of not less than three weeks apart or at less
44 frequent intervals if requested on forms prescribed by the chair. The
45 board may excuse the failure to give such notices within the designated
46 periods when it finds it to be in the interest of justice to do so.

47 (b) Upon receipt of the notice provided for by paragraph (a) of this
48 subdivision, the employer, the carrier, and the claimant each shall be
49 entitled to have the claimant examined by a qualified social worker,
50 authorized by the chair in accordance with subdivision three of this
51 section, at a medical facility convenient to the claimant and in the
52 presence of the claimant's social worker, and refusal by the claimant to
53 submit to such independent examination at such time or times as may
54 reasonably be necessary in the opinion of the board shall bar the claim-
55 ant from recovering compensation, for any period during which he or she
56 has refused to submit to such examination.

1 (c) Where it would place an unreasonable burden upon the employer or
2 carrier to arrange for, or for the claimant to attend, an independent
3 examination by an authorized social worker, the employer or carrier
4 shall arrange for such examination to be performed by a qualified social
5 worker in a medical facility convenient to the claimant.

6 (d) The independent social worker examiner licensed by the state of
7 New York shall provide such reports and shall submit to investigation as
8 required by the chair.

9 (e) In order to qualify as admissible evidence, for purposes of adju-
10 dicating any claim under this chapter, any report submitted to the board
11 by an independent social work examiner licensed by the state of New York
12 shall include the following:

13 (i) a signed statement certifying that the report is a full and truth-
14 ful representation of the independent social work examiner's profes-
15 sional opinion with respect to the claimant's condition,

16 (ii) such examiner's board issued authorization number,

17 (iii) the name of the individual or entity requesting the examination,
18 and

19 (iv) such other information as the chair may require by regulation.

20 5. Fees for social work services shall be payable only to a duly
21 authorized social worker as licensed in article one hundred fifty-four
22 of the education law, or to the agent, executor or administrator of the
23 estate of such social worker. No social worker rendering treatment to a
24 compensation claimant shall collect or receive a fee from such claimant
25 within this state, but shall have recourse for payment of services
26 rendered only to the employer under the provisions of this section.

27 6. Whenever his or her attendance at a hearing is required the social
28 worker of the injured employee shall be entitled to receive a fee from
29 the employer in an amount to be fixed by the board, in addition to any
30 fee payable under section eight thousand one of the civil practice law
31 and rules.

32 7. (a) The provisions of subdivisions one and three of section thir-
33 teen-g of this article with respect to the conditions under which a
34 hospital, physician or self-employed physical or occupational therapist
35 may request payment or arbitration of a bill, or under which an award
36 may be made for payment of such bill, shall be applicable to bills
37 rendered by a social worker for services rendered to an injured employ-
38 ee. If the parties fail to agree as to the social work care rendered
39 under this chapter to a claimant, such value shall be decided by the
40 social work practice committee and the majority decision of such commit-
41 tee shall be conclusive upon the parties as to the value of the services
42 rendered. The board or the chair may make an award not in excess of the
43 established fee schedules for any such bill or part thereof which
44 remains unpaid in the same manner as an award for bills rendered under
45 subdivisions one and three of section thirteen-g of this article, and
46 such award may be collected in like manner as an award of compensation.
47 The chair shall assess the sum of fifty dollars against the employer for
48 each such award made by the board, which sum shall be paid into the
49 state treasury.

50 (b) Where a social worker's bill has been determined to be due and
51 owing in accordance with the provisions of this section the board shall
52 include in the amount of the award interest of not more than one and
53 one-half percent per month payable to the social worker in accordance
54 with the rules and regulations promulgated by the board.

55 (c) A provider initiating an arbitration pursuant to this section
56 shall pay a fee, as determined by regulations promulgated by the chair,

1 to be used to cover the costs related to the conduct of such arbi-
2 tration. Upon resolution in favor of such party, the amount due, based
3 upon the bill in dispute, shall be increased by the amount of the fee
4 paid by such party. Where a partial award is made, the amount due, based
5 upon the bill in dispute, shall be increased by a part of such fee.

6 8. Within the limits prescribed by the education law for social work
7 care and treatment, the report or testimony of an authorized social
8 worker concerning the condition of an injured employee and treatment
9 thereof shall be deemed competent evidence and the professional opinion
10 of the social worker as to causal relation and as to required treatment
11 shall be deemed competent but shall not be controlling. Nothing in this
12 section shall be deemed to deprive any employer or insurance carrier of
13 any right to a medical examination or presentation of medical testimony
14 now conferred by law.

15 9. The chair shall promulgate rules governing the procedure to be
16 followed by those rendering social work care under this section, which
17 rules so far as practicable shall conform to the rules presently in
18 effect with reference to medical care furnished to claimants in workers'
19 compensation. In connection with the promulgation of said rules the
20 chair may consult the social work practice committee and may take into
21 consideration the view of other interested parties.

22 10. The chair shall appoint for and with jurisdiction in the entire
23 state of New York a single social work practice committee composed of
24 one duly registered and licensed master social worker, one duly regis-
25 tered and licensed clinical social worker, and one duly licensed physi-
26 cian of the state of New York. Each member of said committee shall
27 receive compensation either on an annual basis or on a per diem basis to
28 be fixed by the chair within amounts appropriated therefor. One of said
29 social workers shall be designated by the chair as a chair of said
30 social work practice committee. No member of said committee shall render
31 social work treatment under this section nor be an employer or accept or
32 participate in any fee from any insurance company authorized to write
33 workers' compensation insurance in this state or from any self-insurer,
34 whether such employment or fee relates to a workers' compensation claim
35 or otherwise. The attorney general, upon request, shall advise and
36 assist such committee.

37 11. The social work practice committee shall investigate, hear and
38 make findings with respect to all charges as to professional or other
39 misconduct of any authorized social work under rules and procedures to
40 be prescribed by the chair and shall report evidence of such misconduct,
41 with their findings and recommendations with respect thereto, to the
42 chair. The findings, decision and recommendation of such social work
43 practice committee shall be advisory to the chair only, and shall not be
44 binding or conclusive upon him or her. The chair shall remove from the
45 list of social workers authorized to render social work care under this
46 chapter or to conduct independent examinations in accordance with para-
47 graph (b) of subdivision four of this section the name of any social
48 worker who he or she shall find after reasonable investigation is
49 disqualified because such social worker:

50 (a) has been guilty of professional or other misconduct or incompeten-
51 cy in connection with the rendering of social work services, or

52 (b) has exceeded the limits of his or her professional competence in
53 rendering social work services under the law, or has made false state-
54 ments regarding qualifications in the application for authorization, or

1 (c) has failed to submit timely, full and truthful social work reports
2 of all findings to the employer and directly to the chair within the
3 time limits provided in this section, or

4 (d) has knowingly made a false statement or representation as to a
5 material fact in any report made pursuant to this chapter or in testify-
6 ing or otherwise providing information for the purposes of this chapter,
7 or

8 (e) has solicited or has employed another to solicit for himself or
9 herself or for another professional treatment, examination or care of an
10 injured employee with any claim under this chapter, or

11 (f) has refused to appear before, to testify, to submit to a deposi-
12 tion, or answer upon request of the chair, board, social work practice
13 committee or any duly authorized officer of the state, any legal ques-
14 tion or produce any relevant book or paper concerning conduct under an
15 authorization granted under law, or

16 (g) has directly or indirectly requested, received or participated in
17 the division, transference, assignment, rebating, splitting or refunding
18 of a fee for, or has directly or indirectly requested, received or prof-
19 ited by means of a credit or otherwise valuable consideration as a
20 commission, discount or gratuity in connection with the treatment of a
21 workers' compensation claimant.

22 12. Any person who violates or attempts to violate, and any person who
23 aids another to violate or attempts to induce him or her to violate the
24 provisions of paragraph (g) of subdivision eleven of this section shall
25 be guilty of a misdemeanor.

26 13. Nothing in this section shall be construed as limiting in any
27 respect the power or duty of the chair to investigate instances of
28 misconduct, either before or after investigation by the social work
29 practice committee, or to temporarily suspend the authorization of any
30 social worker believed to be guilty of such misconduct. The provisions
31 of subdivision one of section thirteen-d of this article which are not
32 inconsistent with the provisions of this section shall be applicable as
33 if fully set forth in this section.

34 14. Nothing contained in this section shall prohibit social workers
35 who practice as partners, in groups or as a professional corporation
36 from pooling fees and moneys received, either by the partnership,
37 professional corporation or group or by the individual members thereof,
38 for professional services furnished by any individual professional
39 member, or employee of such partnership, corporation or group, nor shall
40 the professionals constituting the partnerships, corporations, or groups
41 be prohibited from sharing, dividing or apportioning the fees and moneys
42 received by them or by the partnership, corporation or group in accord-
43 ance with a partnership or other agreement.

44 § 2. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law. Effective immediately any rules and regu-
46 lations necessary to implement the provisions of this act on its effec-
47 tive date are authorized and directed to be completed on or before such
48 date.