

# STATE OF NEW YORK

1122--A

2017-2018 Regular Sessions

## IN SENATE

January 6, 2017

Introduced by Sens. VALESKY, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to diagnosis, care and treatment of injured employees by certified nurse practitioners

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-q to read as follows:

3 § 13-q. Diagnosis, care and treatment of injured employees by certi-  
4 fied nurse practitioners. 1. Where the term "nurse practitioner" is used  
5 in this section, such term shall mean a person who is duly licensed as a  
6 registered professional nurse, certified as a nurse practitioner under  
7 section six thousand nine hundred ten of the education law, and practic-  
8 ing in compliance with the requirements of section six thousand nine  
9 hundred two of the education law.

10 (a) Notwithstanding the requirements of sections thirteen and thir-  
11 teen-a of this article, an injured employee, injured under circumstances  
12 which make such an injury compensable under this article, may lawfully  
13 be diagnosed and treated by a nurse practitioner and authorized by the  
14 chair to render health care services pursuant to this section. Such  
15 services shall be within the scope of the nurse practitioner as defined  
16 in paragraph (a) of subdivision three of section six thousand nine  
17 hundred two of the education law, and shall include performing independ-  
18 ent medical examinations.

19 (b) A nurse practitioner rendering service pursuant to this section  
20 shall maintain records of the patient's condition and nurse practitioner

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

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

3 2. A nurse practitioner who is desirous of being authorized to render  
4 healthcare services under this section shall file an application for  
5 authorization under this section with the nurse practitioner practice  
6 committee. The applicant shall agree to refrain from subsequently treat-  
7 ing for remuneration, as a private patient, any person seeking nurse  
8 practitioner healthcare services, in connection with, or as a result of,  
9 any injury compensable under this chapter, if he or she has been removed  
10 from the list of nurse practitioners authorized to render services under  
11 this chapter. This agreement shall run to the benefit of the injured  
12 person so treated, and shall be available as a defense in any action by  
13 such nurse practitioner for payment for treatment rendered by such nurse  
14 practitioner after being removed from the list of nurse practitioners  
15 authorized to render healthcare services under this section. The nurse  
16 practitioner practice committee, if it deems such certified nurse prac-  
17 titioner duly qualified, shall recommend to the chair that such person  
18 be authorized to render healthcare services under this section. Such  
19 recommendations shall be only advisory to the chair and shall not be  
20 binding or conclusive. The chair shall prepare and establish a schedule  
21 for the state or schedules limited to defined localities of charges and  
22 fees for nurse practitioner treatment and care, to be determined in  
23 accordance with and be subject to change pursuant to rules promulgated  
24 by the chair. Before preparing such schedule for the state or schedules  
25 for limited localities the chair shall request the nurse practitioner  
26 practice committee to submit to such chair a report on the amount of  
27 remuneration deemed by such committee to be fair and adequate for the  
28 types of services to be rendered under this chapter, but consideration  
29 shall be given to the view of other interested parties. The amounts  
30 payable by the employer for such treatment and services shall be the  
31 fees and charges established by such schedule.

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

44 4. Fees for nurse practitioner services shall be payable only to a  
45 duly certified nurse practitioner, or to the agent, executor or adminis-  
46 trator of the estate of such nurse practitioner. No nurse practitioner  
47 rendering treatment to a compensation claimant shall collect or receive  
48 a fee from such claimant within this state, but shall have recourse for  
49 payment of services rendered only to the employer under the provisions  
50 of this section.

51 5. Whenever his or her attendance at a hearing is required, the nurse  
52 practitioner of the injured employee shall be entitled to receive a fee  
53 from the employer in an amount to be fixed by the board, in addition to  
54 any fee payable under section eight thousand one of the civil practice  
55 law and rules.

6. (a) Unless within thirty days after a bill has been rendered to the employer by the nurse practitioner who has treated an injured employee, such employer shall have notified the chair and such nurse practitioner in writing that such employer demands an impartial examination of the fairness of the amount claimed by such nurse practitioner for his or her services, the right to such an impartial examination shall be deemed to be waived and the amount claimed by such nurse practitioner shall be deemed to be the fair value of the services rendered. If the parties fail to agree as to the nurse practitioner healthcare services rendered under this chapter to a claimant, such value shall be decided by the nurse practitioner 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 nurse practitioner'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 nurse practitioner 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.

7. Within the limits prescribed by the education law for certified nurse practitioner services, the report or testimony of an authorized nurse practitioner concerning the condition of an injured employee and treatment thereof shall be deemed competent evidence and the professional opinion of the nurse practitioner 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.

8. The chair shall promulgate rules governing the procedure to be followed by nurse practitioners rendering healthcare 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 nurse practitioner practice committee and may take into consideration the view of other interested parties.

9. The chair shall appoint for and with jurisdiction in the entire state of New York a single nurse practitioner practice committee composed of two certified nurse practitioners, 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 nurse practitioners shall be designated by the chair as a chair of such nurse practitioner practice committee. No member of such committee shall render healthcare services under this section nor be an employer or accept or participate in any fee from any insurance company authorized

1 to write workers' compensation insurance in this state or from any self-  
2 insurer, whether such employment or fee relates to a workers' compen-  
3 sation claim or otherwise. The attorney general, upon request, shall  
4 advise and assist such committee.

5 10. The nurse practitioner practice committee shall investigate, hear  
6 and make findings with respect to all charges as to professional or  
7 other misconduct of any authorized nurse practitioner as provided in  
8 this section under rules and procedures to be prescribed by the chair  
9 and shall report evidence of such misconduct, with their findings and  
10 recommendations with respect thereto, to the chair. The findings, deci-  
11 sion and recommendation of such nurse practitioner practice committee  
12 shall be advisory to the chair only, and shall not be binding or conclu-  
13 sive upon him or her. The chair shall remove from the list of certified  
14 nurse practitioners authorized to render healthcare services under this  
15 chapter the name of any nurse practitioner who he or she shall find  
16 after reasonable investigation is disqualified because such nurse prac-  
17 titioner: (a) has been guilty of professional or other misconduct or  
18 incompetency in connection with the rendering of healthcare services,  
19 (b) has exceeded the limits of his or her professional competence in  
20 rendering healthcare services under the law, or has made false state-  
21 ments regarding qualifications in the application for authorization, (c)  
22 has failed to submit timely, full and truthful nurse practitioner  
23 healthcare services evaluation and treatment reports of all findings to  
24 the employer and directly to the chair of the board within the time  
25 limits provided in this section, (d) has rendered nurse practitioner  
26 services under this chapter for a fee less than that fixed in the fee  
27 schedule, (e) has solicited or has employed another to solicit for  
28 himself or herself or for another professional treatment, examination or  
29 care of an injured employee with any claim under this chapter, (f) has  
30 refused to appear before or answer upon request of the chair, board,  
31 nurse practitioner practice committee or any duly authorized officer of  
32 the state, any legal question or produce any relevant book or paper  
33 concerning conduct under an authorization granted under law, or (g) has  
34 directly or indirectly requested, received or participated in the divi-  
35 sion, transference, assignment, rebating, splitting or refunding of a  
36 fee for, or has directly or indirectly requested, received or profited  
37 by means of a credit or otherwise valuable consideration as a commis-  
38 sion, discount or gratuity in connection with the treatment of a work-  
39 ers' compensation claimant.

40 11. Any person who violates or attempts to violate, and any person who  
41 aids another to violate or attempts to induce him or her to violate the  
42 provisions of paragraph (g) of subdivision ten of this section shall be  
43 guilty of a misdemeanor.

44 12. Nothing in this section shall be construed as limiting in any  
45 respect the power or duty of the chair to investigate instances of  
46 misconduct, either before or after investigation by the nurse practi-  
47 tioner practice committee, or to temporarily suspend the authorization  
48 of any nurse practitioner believed to be guilty of such misconduct. The  
49 provisions of subdivision one of section thirteen-d of this article  
50 which are not inconsistent with the provisions of this section shall be  
51 applicable as if fully set forth in this section.

52 13. Nothing contained in this section shall prohibit nurse practition-  
53 ers who practice as partners, in groups or as a professional corporation  
54 from pooling fees and moneys received, either by the partnership,  
55 professional corporation or group or by the individual members thereof,  
56 for professional services furnished by any individual professional

1 member, or employee of such partnership, corporation or group, nor shall  
2 the professionals constituting the partnerships, corporations, or groups  
3 be prohibited from sharing, dividing or apportioning the fees and moneys  
4 received by them or by the partnership, corporation or group in accord-  
5 ance with a partnership or other agreement.

6 § 2. This act shall take effect on the one hundred eightieth day after  
7 it shall have become a law. Effective immediately, the addition, amend-  
8 ment and/or repeal of any rules and regulations necessary to implement  
9 the provisions of this act on its effective date are authorized to be  
10 made on or before such effective date.