

2360--B

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "injured workers assistance act".
3 S 2. The workers' compensation law is amended by adding a new section
4 13-p to read as follows:
5 S 13-P. CARE AND TREATMENT OF INJURED EMPLOYEES BY CERTAIN LICENSED
6 CLINICAL SOCIAL WORKERS. 1. WHERE THE TERM "CLINICAL SOCIAL WORKER" IS
7 USED IN THIS SECTION, SUCH TERM SHALL MEAN A PERSON WHO IS DULY LICENSED
8 AND REGISTERED AS A LICENSED CLINICAL SOCIAL WORKER PURSUANT TO ARTICLE
9 ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW.
10 2. (A) AN INJURED EMPLOYEE, INJURED UNDER CIRCUMSTANCES WHICH MAKE
11 SUCH AN INJURY COMPENSABLE UNDER THIS ARTICLE, MAY LAWFULLY BE TREATED,
12 UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, BY A LICENSED CLINICAL
13 SOCIAL WORKER AUTHORIZED BY THE CHAIR TO RENDER SOCIAL WORK CARE PURSU-
14 ANT TO THIS SECTION. SUCH SERVICES SHALL BE WITHIN THE SCOPE OF LICENSED
15 CLINICAL SOCIAL WORK AS DEFINED IN SUBDIVISION TWO OF SECTION
16 SEVENTY-SEVEN HUNDRED ONE OF THE EDUCATION LAW. CLINICAL SOCIAL WORKERS
17 AUTHORIZED BY THE CHAIR TO PROVIDE SERVICES PURSUANT TO THIS SECTION,

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

LBD06715-05-4

1 SHALL NOT BE AUTHORIZED TO PERFORM INDEPENDENT MEDICAL EXAMINATIONS,
2 EXCEPT FOR INDEPENDENT MEDICAL EXAMS RELATED TO THE NEED FOR CLINICAL
3 SOCIAL WORK SERVICES.

4 (B) MEDICAL BUREAUS, MEDICAL CENTERS JOINTLY OPERATED BY LABOR AND
5 MANAGEMENT REPRESENTATIVES, HOSPITALS AND HEALTH MAINTENANCE ORGANIZA-
6 TIONS, AUTHORIZED TO PROVIDE MEDICAL CARE PURSUANT TO SECTION THIRTEEN-C
7 OF THIS ARTICLE, MAY PROVIDE CLINICAL SOCIAL WORK SERVICES WHEN
8 REQUIRED, UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, PROVIDED SUCH
9 CARE IS RENDERED BY A DULY REGISTERED, LICENSED AND AUTHORIZED CLINICAL
10 SOCIAL WORKER AS REQUIRED BY THIS SECTION.

11 (C) A LICENSED CLINICAL SOCIAL WORKER RENDERING SERVICE PURSUANT TO
12 THIS SECTION SHALL MAINTAIN RECORDS OF THE PATIENT'S CONDITION AND CLIN-
13 ICAL SOCIAL WORK TREATMENT, AND SUCH RECORDS OR REPORTS SHALL BE SUBMIT-
14 TED TO THE CHAIR ON SUCH FORMS AND AT SUCH TIMES AS THE CHAIR MAY
15 REQUIRE.

16 3. A LICENSED CLINICAL SOCIAL WORKER WHO IS DESIROUS OF BEING AUTHOR-
17 IZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION SHALL
18 FILE AN APPLICATION FOR AUTHORIZATION UNDER THIS SECTION WITH THE CLIN-
19 ICAL SOCIAL WORK PRACTICE COMMITTEE. THE APPLICANT SHALL AGREE TO
20 REFRAIN FROM SUBSEQUENTLY TREATING FOR REMUNERATION, AS A PRIVATE
21 PATIENT, ANY PERSON SEEKING CLINICAL SOCIAL WORK SERVICES, IN CONNECTION
22 WITH, OR AS A RESULT OF, ANY INJURY COMPENSABLE UNDER THIS CHAPTER, IF
23 HE OR SHE HAS BEEN REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS
24 AUTHORIZED TO RENDER SERVICES UNDER THIS CHAPTER. THIS AGREEMENT SHALL
25 RUN TO THE BENEFIT OF THE INJURED PERSON SO TREATED, AND SHALL BE AVAIL-
26 ABLE AS A DEFENSE IN ANY ACTION BY SUCH CLINICAL SOCIAL WORKER FOR
27 PAYMENT FOR TREATMENT RENDERED BY SUCH CLINICAL SOCIAL WORKER AFTER
28 BEING REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS AUTHORIZED TO
29 RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION. THE CLINICAL
30 SOCIAL WORK PRACTICE COMMITTEE, IF IT DEEMS SUCH LICENSED CLINICAL
31 SOCIAL WORKER DULY QUALIFIED, SHALL RECOMMEND TO THE CHAIR THAT SUCH
32 PERSON BE AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS
33 SECTION. SUCH RECOMMENDATIONS SHALL BE ONLY ADVISORY TO THE CHAIR AND
34 SHALL NOT BE BINDING OR CONCLUSIVE. THE CHAIR SHALL PREPARE AND ESTAB-
35 LISH A SCHEDULE FOR THE STATE OR SCHEDULES LIMITED TO DEFINED LOCALITIES
36 OF CHARGES AND FEES FOR CLINICAL SOCIAL WORK TREATMENT AND CARE, TO BE
37 DETERMINED IN ACCORDANCE WITH AND BE SUBJECT TO CHANGE PURSUANT TO RULES
38 PROMULGATED BY THE CHAIR. BEFORE PREPARING SUCH SCHEDULE FOR THE STATE
39 OR SCHEDULES FOR LIMITED LOCALITIES THE CHAIR SHALL REQUEST THE CLINICAL
40 SOCIAL WORK PRACTICE COMMITTEE TO SUBMIT TO SUCH CHAIR A REPORT ON THE
41 AMOUNT OF REMUNERATION DEEMED BY SUCH COMMITTEE TO BE FAIR AND ADEQUATE
42 FOR THE TYPES OF CLINICAL SOCIAL WORK SERVICES TO BE RENDERED UNDER THIS
43 CHAPTER, BUT CONSIDERATION SHALL BE GIVEN TO THE VIEW OF OTHER INTER-
44 ESTED PARTIES. THE AMOUNTS PAYABLE BY THE EMPLOYER FOR SUCH TREATMENT
45 AND SERVICES SHALL BE THE FEES AND CHARGES ESTABLISHED BY SUCH SCHEDULE.

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

1 THE DESIGNATED PERIODS WHEN IT FINDS IT TO BE IN THE INTEREST OF JUSTICE
2 TO DO SO.

3 5. FEES FOR CLINICAL SOCIAL WORK SERVICES SHALL BE PAYABLE ONLY TO A
4 DULY LICENSED CLINICAL SOCIAL WORKER AS LICENSED IN ARTICLE ONE HUNDRED
5 FIFTY-FOUR OF THE EDUCATION LAW, OR TO THE AGENT, EXECUTOR OR ADMINIS-
6 TRATOR OF THE ESTATE OF SUCH LICENSED CLINICAL SOCIAL WORKER. NO
7 LICENSED CLINICAL SOCIAL WORKER RENDERING TREATMENT TO A COMPENSATION
8 CLAIMANT SHALL COLLECT OR RECEIVE A FEE FROM SUCH CLAIMANT WITHIN THIS
9 STATE, BUT SHALL HAVE RECOURSE FOR PAYMENT OF SERVICES RENDERED ONLY TO
10 THE EMPLOYER UNDER THE PROVISIONS OF THIS SECTION.

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

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

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

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

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

54 9. THE CHAIR SHALL PROMULGATE RULES GOVERNING THE PROCEDURE TO BE
55 FOLLOWED BY THOSE RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THIS
56 SECTION, WHICH RULES SO FAR AS PRACTICABLE SHALL CONFORM TO THE RULES

1 PRESENTLY IN EFFECT WITH REFERENCE TO MEDICAL CARE FURNISHED TO CLAIM-
2 ANTS IN WORKERS' COMPENSATION. IN CONNECTION WITH THE PROMULGATION OF
3 SUCH RULES THE CHAIR MAY CONSULT THE CLINICAL SOCIAL WORK PRACTICE
4 COMMITTEE AND MAY TAKE INTO CONSIDERATION THE VIEW OF OTHER INTERESTED
5 PARTIES.

6 10. THE CHAIR SHALL APPOINT FOR AND WITH JURISDICTION IN THE ENTIRE
7 STATE OF NEW YORK A SINGLE CLINICAL SOCIAL WORK PRACTICE COMMITTEE
8 COMPOSED OF TWO CLINICAL LICENSED SOCIAL WORKERS, AND ONE DULY LICENSED
9 PHYSICIAN OF THE STATE OF NEW YORK. EACH MEMBER OF SUCH COMMITTEE SHALL
10 RECEIVE COMPENSATION EITHER ON AN ANNUAL BASIS OR ON A PER DIEM BASIS TO
11 BE FIXED BY THE CHAIR WITHIN AMOUNTS APPROPRIATED THEREFOR. ONE OF SUCH
12 LICENSED CLINICAL SOCIAL WORKERS SHALL BE DESIGNATED BY THE CHAIR AS A
13 CHAIR OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE. NO MEMBER OF SUCH
14 COMMITTEE SHALL RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION
15 NOR BE AN EMPLOYER OR ACCEPT OR PARTICIPATE IN ANY FEE FROM ANY INSUR-
16 ANCE COMPANY AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS
17 STATE OR FROM ANY SELF-INSURER, WHETHER SUCH EMPLOYMENT OR FEE RELATES
18 TO A WORKERS' COMPENSATION CLAIM OR OTHERWISE. THE ATTORNEY GENERAL,
19 UPON REQUEST, SHALL ADVISE AND ASSIST SUCH COMMITTEE.

20 11. THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE SHALL INVESTIGATE,
21 HEAR AND MAKE FINDINGS WITH RESPECT TO ALL CHARGES AS TO PROFESSIONAL OR
22 OTHER MISCONDUCT OF ANY AUTHORIZED CLINICAL SOCIAL WORKER AS PROVIDED IN
23 THIS SECTION UNDER RULES AND PROCEDURES TO BE PRESCRIBED BY THE CHAIR
24 AND SHALL REPORT EVIDENCE OF SUCH MISCONDUCT, WITH THEIR FINDINGS AND
25 RECOMMENDATIONS WITH RESPECT THERETO, TO THE CHAIR. THE FINDINGS, DECI-
26 SION AND RECOMMENDATION OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE
27 SHALL BE ADVISORY TO THE CHAIR ONLY, AND SHALL NOT BE BINDING OR CONCLU-
28 SIVE UPON HIM OR HER. THE CHAIR SHALL REMOVE FROM THE LIST OF LICENSED
29 CLINICAL SOCIAL WORKERS AUTHORIZED TO RENDER CLINICAL SOCIAL WORK
30 SERVICES UNDER THIS CHAPTER THE NAME OF ANY CLINICAL SOCIAL WORKER WHO
31 HE OR SHE SHALL FIND AFTER REASONABLE INVESTIGATION IS DISQUALIFIED
32 BECAUSE SUCH CLINICAL SOCIAL WORKER:

33 (A) HAS BEEN GUILTY OF PROFESSIONAL OR OTHER MISCONDUCT OR INCOMPETEN-
34 CY IN CONNECTION WITH THE RENDERING OF CLINICAL SOCIAL WORK SERVICES,

35 (B) HAS EXCEEDED THE LIMITS OF HIS OR HER PROFESSIONAL COMPETENCE IN
36 RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THE LAW, OR HAS MADE FALSE
37 STATEMENTS REGARDING QUALIFICATIONS IN THE APPLICATION FOR AUTHORI-
38 ZATION,

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

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

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

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

52 (G) HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PARTICIPATED IN
53 THE DIVISION, TRANSFERENCE, ASSIGNMENT, REBATING, SPLITTING OR REFUNDING
54 OF A FEE FOR, OR HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PROF-
55 ITED BY MEANS OF A CREDIT OR OTHERWISE VALUABLE CONSIDERATION AS A

1 COMMISSION, DISCOUNT OR GRATUITY IN CONNECTION WITH THE TREATMENT OF A
2 WORKERS' COMPENSATION CLAIMANT.

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

7 13. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING IN ANY
8 RESPECT THE POWER OR DUTY OF THE CHAIR TO INVESTIGATE INSTANCES OF
9 MISCONDUCT, EITHER BEFORE OR AFTER INVESTIGATION BY THE CLINICAL SOCIAL
10 WORK PRACTICE COMMITTEE, OR TO TEMPORARILY SUSPEND THE AUTHORIZATION OF
11 ANY LICENSED CLINICAL SOCIAL WORKER BELIEVED TO BE GUILTY OF SUCH
12 MISCONDUCT. THE PROVISIONS OF SUBDIVISION ONE OF SECTION THIRTEEN-D OF
13 THIS ARTICLE WHICH ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS
14 SECTION SHALL BE APPLICABLE AS IF FULLY SET FORTH IN THIS SECTION.

15 14. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT CLINICAL SOCIAL
16 WORKERS WHO PRACTICE AS PARTNERS, IN GROUPS OR AS A PROFESSIONAL CORPO-
17 RATION FROM POOLING FEES AND MONEYS RECEIVED, EITHER BY THE PARTNERSHIP,
18 PROFESSIONAL CORPORATION OR GROUP OR BY THE INDIVIDUAL MEMBERS THEREOF,
19 FOR PROFESSIONAL SERVICES FURNISHED BY ANY INDIVIDUAL PROFESSIONAL
20 MEMBER, OR EMPLOYEE OF SUCH PARTNERSHIP, CORPORATION OR GROUP, NOR SHALL
21 THE PROFESSIONALS CONSTITUTING THE PARTNERSHIPS, CORPORATIONS, OR GROUPS
22 BE PROHIBITED FROM SHARING, DIVIDING OR APPORTIONING THE FEES AND MONEYS
23 RECEIVED BY THEM OR BY THE PARTNERSHIP, CORPORATION OR GROUP IN ACCORD-
24 ANCE WITH A PARTNERSHIP OR OTHER AGREEMENT.

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