STATE OF NEW YORK

1492

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sens. AVELLA, KLEIN, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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

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

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

§ 13-p. Care and treatment of injured employees by licensed clinical social workers. 1. For the purposes of this section, "chair" shall mean the chair of the board.

2. (a) An injured employee, injured under circumstances which make such injury compensable under this article, may lawfully be treated, upon the referral of an authorized physician, by a licensed clinical social worker, licensed pursuant to article one hundred fifty-four of the education law, authorized by the chair to render licensed clinical social work services pursuant to this section. Such services shall be within the scope of such licensed clinical social workers' specialized training and qualifications as defined in article one hundred fifty-four of the education law. Licensed clinical social workers authorized by the chair to provide services pursuant to this section, shall not be authorized to perform independent medical examinations, except for independent medical examinations related to the need for licensed clinical social work services.

(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 chapter, may provide licensed 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 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, licensed to practice licensed clinical social work in this state, who is desirous of being authorized to render licensed clinical social work services under this section and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of 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 licensed clinical social work services, or submitting to an independent medical examination, 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 licensed clinical social workers authorized to render licensed clinical social work 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 licensed clinical social worker for payment for treatment rendered by such licensed clinical social worker after being removed from the list of licensed clinical social workers authorized to render licensed clinical social work services or to conduct independent medical examinations 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 licensed clinical social work services and/or to conduct independent medical examinations 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 licensed clinical social work services, 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 licensed 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. (a) No claim for licensed 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 licensed 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.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified licensed clinical social worker, authorized by the chair in accordance with subdivision three of this section and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's licensed clinical social worker, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

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

(d) The independent licensed clinical social work examiner licensed by this state shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent licensed clinical social work examiner licensed by this state shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the independent licensed clinical social work examiner's professional opinion with respect to the claimant's condition,

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

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

(iv) if applicable, the registration number as required by section thirteen-n of this article, and

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

5. Fees for licensed clinical social work services shall be payable only to a duly authorized 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 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) The provisions of subdivisions one and three of section thirteen-g of this article with respect to the conditions under which a hospital, physician, or self-employed physical or occupational therapist may request payment or arbitration of a bill, or under which an award may be made for payment of such bill, shall be applicable to bills rendered by a licensed clinical social worker for services rendered to an injured employee.

(b) If the parties fail to agree as to the licensed clinical social work services rendered under this chapter to a claimant, and the amount of the disputed bill is one thousand dollars or less, or where the

amount of the disputed bill exceeds one thousand dollars and the licensed clinical social worker expressly so requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a member in good standing of a recognized professional association representing licensed clinical social workers in this state to determine the value of such disputed bill. Decisions rendered under the single arbitrator process shall be conclusive upon the parties as to the value of the services in dispute.

(c) If the parties fail to agree as to the licensed clinical social work services rendered under this chapter to a claimant, and the amount of the disputed bill exceeds one thousand dollars and the licensed clinical social worker does not expressly request a single arbitrator process in accordance with paragraph (b) of this subdivision, such value shall be decided by the clinical 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.

(d) The board or the chair may make an award not in excess of the established fee schedules 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. 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 shall include in the amount of the award interest of not more than one and one-half percent per month payable to the licensed clinical social worker in accordance with the rules and regulations promulgated by the board.

(e) A provider initiating an arbitration, including a single arbitrator process, pursuant to this section shall pay a fee, as determined by regulations promulgated by the chair, to be used to cover the costs related to the conduct of such arbitration. Upon resolution in favor of such party, the amount due, based upon the bill in dispute, shall be increased by the amount of the fee paid by such party. Where a partial award is made, the amount due, based upon the bill in dispute, shall be increased by a part of such fee.

8. Within the limits prescribed by the education law for licensed clinical social work services, the report or testimony of an authorized licensed 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 services 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 licensed 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 said 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 a single clinical social work practice committee composed of three

duly licensed clinical social workers. Each member of said 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 said clinical social workers shall be designated by the chair as the chair of such committee. No member of said committee shall render licensed 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 licensed clinical social worker as provided under rules and procedures to be prescribed by the chair and shall report evidence of such misconduct, with its 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 licensed clinical social work services under this chapter or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of this section the name of any licensed clinical social worker who he or she shall find after reasonable investigation is disqualified because such licensed clinical social worker:

(a) has been guilty of professional or other misconduct or incompetency in connection with the rendering of licensed clinical social work services, or

(b) has exceeded the limits of his or her professional competence in rendering licensed clinical social work services under the law, or has made false statements regarding qualifications in the application for authorization, or

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

(d) has knowingly made a false statement or representation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter, or

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

(f) has refused to appear before, to testify, to submit to a deposition, 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 licensed 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.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, however, that, 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 and directed to be completed on or before such date.