

STATE OF NEW YORK

3444

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. PRETLOW -- read once and referred 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:

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

3 § 13-q. Care and treatment of injured employees by licensed clinical
4 social workers. 1. For the purposes of this section, "chair" shall mean
5 the chair of the board.

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

19 (b) Medical bureaus, medical centers jointly operated by labor and
20 management representatives, hospitals and health maintenance organiza-
21 tions, authorized to provide medical care pursuant to section thirteen-c
22 of this chapter, may provide licensed clinical social work services when
23 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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1 care is rendered by a duly licensed and authorized clinical social work-
2 er, as required by this section.

3 (c) A licensed clinical social worker rendering service pursuant to
4 this section shall maintain records of the patient's condition and clin-
5 ical social work treatment, and such records or reports shall be submit-
6 ted to the chair on such forms and at such times as the chair may
7 require.

8 3. A licensed clinical social worker, licensed to practice licensed
9 clinical social work in this state, who is desirous of being authorized
10 to render licensed clinical social work services under this section
11 and/or to conduct independent medical examinations in accordance with
12 paragraph (b) of subdivision four of this section shall file an applica-
13 tion for authorization under this section with the clinical social work
14 practice committee. The applicant shall agree to refrain from subse-
15 quently treating for remuneration, as a private patient, any person
16 seeking licensed clinical social work services, or submitting to an
17 independent medical examination, in connection with, or as a result of,
18 any injury compensable under this chapter, if he or she has been removed
19 from the list of licensed clinical social workers authorized to render
20 licensed clinical social work services under this chapter. This agree-
21 ment shall run to the benefit of the injured person so treated, and
22 shall be available as a defense in any action by such licensed clinical
23 social worker for payment for treatment rendered by such licensed clin-
24 ical social worker after being removed from the list of licensed clin-
25 ical social workers authorized to render licensed clinical social work
26 services or to conduct independent medical examinations under this
27 section. The clinical social work practice committee if it deems such
28 licensed clinical social worker duly qualified shall recommend to the
29 chair that such person be authorized to render licensed clinical social
30 work services and/or to conduct independent medical examinations under
31 this section. Such recommendations shall be only advisory to the chair
32 and shall not be binding or conclusive. The chair shall prepare and
33 establish a schedule for the state or schedules limited to defined
34 localities of charges and fees for licensed clinical social work
35 services, to be determined in accordance with and be subject to change
36 pursuant to rules promulgated by the chair. Before preparing such sched-
37 ule for the state or schedules for limited localities the chair shall
38 request the clinical social work practice committee to submit to such
39 chair a report on the amount of remuneration deemed by such committee to
40 be fair and adequate for the types of licensed clinical social work
41 services to be rendered under this chapter, but consideration shall be
42 given to the view of other interested parties. The amounts payable by
43 the employer for such treatment and services shall be the fees and
44 charges established by such schedule.

45 4. (a) No claim for licensed clinical social work services shall be
46 valid and enforceable as against the employer or employees unless within
47 forty-eight hours following the first treatment the licensed clinical
48 social worker giving such care or treatment furnishes to the employer
49 and directly to the chair a preliminary notice of such injury and treat-
50 ment, and within fifteen days thereafter a more complete report and
51 subsequent thereto progress reports as requested in writing by the
52 chair, board, employer or insurance carrier, at intervals of not less
53 than three weeks apart or at less frequent intervals if requested on
54 forms prescribed by the chair. The board may excuse the failure to give
55 such notices within the designated periods when it finds it to be in the
56 interest of justice to do so.

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

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

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

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

25 (i) a signed statement certifying that the report is a full and truth-
26 ful representation of the independent licensed clinical social work
27 examiner's professional opinion with respect to the claimant's condi-
28 tion,

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

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

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

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

34 5. Fees for licensed clinical social work services shall be payable
35 only to a duly authorized licensed clinical social worker as licensed in
36 article one hundred fifty-four of the education law, or to the agent,
37 executor or administrator of the estate of such licensed clinical social
38 worker. No licensed clinical social worker rendering treatment to a
39 compensation claimant shall collect or receive a fee from such claimant
40 within this state, but shall have recourse for payment of services
41 rendered only to the employer under the provisions of this section.

42 6. Whenever his or her attendance at a hearing is required the clin-
43 ical social worker of the injured employee shall be entitled to receive
44 a fee from the employer in an amount to be fixed by the board, in addi-
45 tion to any fee payable under section eight thousand one of the civil
46 practice law and rules.

47 7. (a) The provisions of subdivisions one and three of section thir-
48 teen-g of this article with respect to the conditions under which a
49 hospital, physician, or self-employed physical or occupational therapist
50 may request payment or arbitration of a bill, or under which an award
51 may be made for payment of such bill, shall be applicable to bills
52 rendered by a licensed clinical social worker for services rendered to
53 an injured employee.

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

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

9 (c) If the parties fail to agree as to the licensed clinical social
10 work services rendered under this chapter to a claimant, and the amount
11 of the disputed bill exceeds one thousand dollars and the licensed clin-
12 ical social worker does not expressly request a single arbitrator proc-
13 ess in accordance with paragraph (b) of this subdivision, such value
14 shall be decided by the clinical social work practice committee and the
15 majority decision of such committee shall be conclusive upon the parties
16 as to the value of the services rendered.

17 (d) The board or the chair may make an award not in excess of the
18 established fee schedules for any such bill or part thereof which
19 remains unpaid in the same manner as an award for bills rendered under
20 subdivisions one and three of section thirteen-g of this article, and
21 such award may be collected in like manner as an award of compensation.
22 The chair shall assess the sum of fifty dollars against the employer for
23 each such award made by the board, which sum shall be paid into the
24 state treasury. Where a licensed clinical social worker's bill has been
25 determined to be due and owing in accordance with the provisions of this
26 section the board shall include in the amount of the award interest of
27 not more than one and one-half percent per month payable to the licensed
28 clinical social worker in accordance with the rules and regulations
29 promulgated by the board.

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

38 8. Within the limits prescribed by the education law for licensed
39 clinical social work services, the report or testimony of an authorized
40 licensed clinical social worker concerning the condition of an injured
41 employee and treatment thereof shall be deemed competent evidence and
42 the professional opinion of the licensed clinical social worker as to
43 causal relation and as to required services shall be deemed competent
44 but shall not be controlling. Nothing in this section shall be deemed to
45 deprive any employer or insurance carrier of any right to a medical
46 examination or presentation of medical testimony now conferred by law.

47 9. The chair shall promulgate rules governing the procedure to be
48 followed by those rendering licensed clinical social work services under
49 this section, which rules so far as practicable shall conform to the
50 rules presently in effect with reference to medical care furnished to
51 claimants in workers' compensation. In connection with the promulgation
52 of said rules the chair may consult the clinical social work practice
53 committee and may take into consideration the view of other interested
54 parties.

55 10. The chair shall appoint for and with jurisdiction in the entire
56 state a single clinical social work practice committee composed of three

1 duly licensed clinical social workers. Each member of said committee
2 shall receive compensation either on an annual basis or on a per diem
3 basis to be fixed by the chair within amounts appropriated therefor. One
4 of said clinical social workers shall be designated by the chair as the
5 chair of such committee. No member of said committee shall render
6 licensed clinical social work services under this section nor be an
7 employer or accept or participate in any fee from any insurance company
8 authorized to write workers' compensation insurance in this state or
9 from any self-insurer, whether such employment or fee relates to a work-
10 ers' compensation claim or otherwise. The attorney general, upon
11 request, shall advise and assist such committee.

12 11. The clinical social work practice committee shall investigate,
13 hear and make findings with respect to all charges as to professional or
14 other misconduct of any authorized licensed clinical social worker as
15 provided under rules and procedures to be prescribed by the chair and
16 shall report evidence of such misconduct, with its findings and recom-
17 mendations with respect thereto, to the chair. The findings, decision
18 and recommendation of such clinical social work practice committee shall
19 be advisory to the chair only, and shall not be binding or conclusive
20 upon him or her. The chair shall remove from the list of licensed clin-
21 ical social workers authorized to render licensed clinical social work
22 services under this chapter or to conduct independent medical examina-
23 tions in accordance with paragraph (b) of subdivision four of this
24 section the name of any licensed clinical social worker who he or she
25 shall find after reasonable investigation is disqualified because such
26 licensed clinical social worker:

27 (a) has been guilty of professional or other misconduct or incompeten-
28 cy in connection with the rendering of licensed clinical social work
29 services, or

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

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

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

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

44 (f) has refused to appear before, to testify, to submit to a deposi-
45 tion, or answer upon request of the chair, board, clinical social work
46 practice committee or any duly authorized officer of the state, any
47 legal question or produce any relevant book or paper concerning conduct
48 under an authorization granted under law, or

49 (g) has directly or indirectly requested, received or participated in
50 the division, transference, assignment, rebating, splitting or refunding
51 of a fee for, or has directly or indirectly requested, received or prof-
52 ited by means of a credit or otherwise valuable consideration as a
53 commission, discount or gratuity in connection with the treatment of a
54 workers' compensation claimant.

55 12. Any person who violates or attempts to violate, and any person who
56 aids another to violate or attempts to induce him or her to violate the

1 provisions of paragraph (g) of subdivision eleven of this section shall
2 be guilty of a misdemeanor.

3 13. Nothing in this section shall be construed as limiting in any
4 respect the power or duty of the chair to investigate instances of
5 misconduct, either before or after investigation by the clinical social
6 work practice committee, or to temporarily suspend the authorization of
7 any licensed clinical social worker believed to be guilty of such
8 misconduct. The provisions of subdivision one of section thirteen-d of
9 this article which are not inconsistent with the provisions of this
10 section shall be applicable as if fully set forth in this section.

11 14. Nothing contained in this section shall prohibit licensed clinical
12 social workers who practice as partners, in groups or as a professional
13 corporation from pooling fees and moneys received, either by the part-
14 nership, professional corporation or group or by the individual members
15 thereof, for professional services furnished by any individual profes-
16 sional member, or employee of such partnership, corporation or group,
17 nor shall the professionals constituting the partnerships, corporations,
18 or groups be prohibited from sharing, dividing or apportioning the fees
19 and moneys received by them or by the partnership, corporation or group
20 in accordance with a partnership or other agreement.

21 § 2. This act shall take effect on the one hundred eightieth day after
22 it shall have become a law. Effective immediately, the addition, amend-
23 ment and/or repeal of any rule or regulation necessary for the implemen-
24 tation of this act on its effective date are authorized to be made and
25 completed on or before such effective date date.