

# STATE OF NEW YORK

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1589

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

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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.