

# STATE OF NEW YORK

3407

2021-2022 Regular Sessions

## IN ASSEMBLY

January 26, 2021

Introduced by M. of A. KIM -- Multi-Sponsored by -- M. of A. MONTESANO  
-- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the care and treatment of injured employees by licensed or certified acupuncturists

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 or certi-  
4 fied acupuncturists. 1. Where the term "acupuncturist" is used in this  
5 section, such term shall mean a person who is:

6 (a) duly licensed and registered as a licensed acupuncturist pursuant  
7 to article one hundred sixty of the education law; or

8 (b) a certified acupuncturist pursuant to subdivision three of section  
9 eighty-two hundred sixteen 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 by an acupuncturist authorized by the chair to render acupuncture care  
13 pursuant to this section. Such services shall be within the scope of the  
14 profession of acupuncture as defined in subdivision one of section  
15 eighty-two hundred eleven of the education law.

16 (b) Medical bureaus, medical centers jointly operated by labor and  
17 management representatives, hospitals and health maintenance organiza-  
18 tions, authorized to provide medical care pursuant to section thirteen-c  
19 of this article, may provide acupuncture services when required,  
20 provided such care is rendered by an acupuncturist as required by this  
21 section.

22 (c) An acupuncturist rendering service pursuant to this section shall  
23 maintain records of the patient's condition and acupuncture treatment,

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

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

3 3. (a) An acupuncturist who is desirous of being authorized to render  
4 acupuncture services under this section shall file an application for  
5 authorization under this section with the acupuncture practice commit-  
6 tee. The applicant shall agree to refrain from subsequently treating for  
7 remuneration, as a private patient, any person seeking acupuncture  
8 services, in connection with, or as a result of, any injury compensable  
9 under this chapter, if he or she has been removed from the list of  
10 acupuncturists authorized to render services under this chapter. This  
11 agreement shall run to the benefit of the injured person so treated, and  
12 shall be available as a defense in any action by such acupuncturist for  
13 payment for treatment rendered by such acupuncturist after being removed  
14 from the list of acupuncturists authorized to render acupuncture  
15 services under this section. The acupuncture practice committee if it  
16 deems such acupuncturist duly qualified shall recommend to the chair  
17 that such person be authorized to render acupuncture services under this  
18 section. Such recommendations shall be only advisory to the chair and  
19 shall not be binding or conclusive.

20 (b) The chair shall prepare and establish a schedule for the state or  
21 schedules limited to defined localities of charges and fees for acupunc-  
22 ture treatment and care, to be determined in accordance with and be  
23 subject to change pursuant to rules promulgated by the chair. Before  
24 preparing such schedule for the state or schedules for limited locali-  
25 ties the chair shall request the acupuncture practice committee to  
26 submit to such chair a report on the amount of remuneration deemed by  
27 such committee to be fair and adequate for the types of acupuncture  
28 services to be rendered under this chapter, but consideration shall be  
29 given to the view of other interested parties. The amounts payable by  
30 the employer for such treatment and services shall be the fees and  
31 charges established by such schedule.

32 (c) In determining the schedule or schedules as provided in paragraph  
33 (b) of this subdivision, the chair shall make a distinction between  
34 treatment rendered by a duly licensed and registered acupuncturist  
35 subject to the provisions of article one hundred sixty of the education  
36 law and a certified acupuncturist subject to the provisions of section  
37 eighty-two hundred sixteen of the education law, and the chair shall  
38 prepare and establish a schedule or schedules reflecting fees and charg-  
39 es appropriate to the nature and scope of the treatment rendered by each  
40 type of practitioner, giving due consideration to all relevant factors  
41 including, but not limited to, the level of education of the practition-  
42 er, the type of treatment rendered, whether the acupuncture treatment is  
43 being provided as the principal treatment or as an adjunct treatment,  
44 and the billing practices entailed, including whether the practitioner  
45 submits one comprehensive bill or bills separately for the acupuncture  
46 treatment, office visits and other items.

47 4. (a) No claim for acupuncture services shall be valid and enforcea-  
48 ble as against the employer or employees unless within forty-eight hours  
49 following the first treatment the acupuncturist giving such care or  
50 treatment furnishes to the employer and directly to the chair a prelimi-  
51 nary notice of such injury and treatment, and within fifteen days there-  
52 after a more complete report and subsequent thereto progress reports as  
53 requested in writing by the chair, board, employer or insurance carrier,  
54 at intervals of not less than three weeks apart or at less frequent  
55 intervals if requested on forms prescribed by the chair. The board may

1 excuse the failure to give such notices within the designated periods  
2 when it finds it to be in the interest of justice to do so.

3 (b) Upon receipt of the notice provided for by paragraph (a) of this  
4 subdivision, the employer shall be entitled to have the claimant exam-  
5 ined by an acupuncturist at a place reasonably convenient to the claim-  
6 ant and in the presence of the claimant's acupuncturist, and refusal by  
7 the claimant to submit to such examination at such time or times as may  
8 reasonably be necessary in the opinion of the board shall bar the claim-  
9 ant from recovering compensation, for any period during which he or she  
10 has refused to submit to such examination.

11 5. Fees for acupuncture services shall be payable only to a duly  
12 licensed or certified acupuncturist pursuant to article one hundred  
13 sixty of the education law, or to the agent, executor or administrator  
14 of the estate of such acupuncturist. No acupuncturist rendering treat-  
15 ment to a compensation claimant shall collect or receive a fee from such  
16 claimant within this state, but shall have recourse for payment of  
17 services rendered only to the employer under the provisions of this  
18 section.

19 6. Whenever his or her attendance at a hearing is required, the  
20 acupuncturist of the injured employee shall be entitled to receive a fee  
21 from the employer in an amount to be fixed by the board, in addition to  
22 any fee payable under section eight thousand one of the civil practice  
23 law and rules.

24 7. (a) Unless within thirty days after a bill has been rendered to the  
25 employer by the acupuncturist who has treated an injured employee, such  
26 employer shall have notified the chair and such acupuncturist in writing  
27 that such employer demands an impartial examination of the fairness of  
28 the amount claimed by such acupuncturist for his or her services, the  
29 right to such an impartial examination shall be deemed to be waived and  
30 the amount claimed by such acupuncturist shall be deemed to be the fair  
31 value of the services rendered. If the parties fail to agree as to the  
32 acupuncture care rendered under this chapter to a claimant, such value  
33 shall be decided by the acupuncture practice committee and the majority  
34 decision of such committee shall be conclusive upon the parties as to  
35 the value of the services rendered. The board may make an award for any  
36 such bill or part thereof which remains unpaid in the same manner as an  
37 award for bills rendered under subdivisions one and three of section  
38 thirteen-g of this article, and such award may be collected in like  
39 manner as an award of compensation. The chair shall assess the sum of  
40 fifty dollars against the employer for each such award made by the  
41 board, which sum shall be paid into the state treasury.

42 (b) Where an acupuncturist's bill has been determined to be due and  
43 owing in accordance with the provisions of this section, the board may  
44 impose a penalty of not more than one and one-half percent interest per  
45 month payable to the acupuncturist in accordance with the rules and  
46 regulations promulgated by the board.

47 (c) The parties to such proceeding shall each pay to the chair a sum  
48 equal to five per centum of the amount payable under the decision of  
49 such committee or a minimum of five dollars, whichever is greater. The  
50 sums so collected shall be transferred to the state treasury to reim-  
51 burse it on account of the expense of administering this section.

52 8. Within the limits prescribed by the education law for acupuncture  
53 services, the report or testimony of an authorized acupuncturist  
54 concerning the condition of an injured employee and treatment thereof  
55 shall be deemed competent evidence and the professional opinion of the  
56 acupuncturist as to causal relation and as to required treatment shall

1 be deemed competent but shall not be controlling. Nothing in this  
2 section shall be deemed to deprive any employer or insurance carrier of  
3 any right to a medical examination or presentation of medical testimony  
4 now conferred by law.

5 9. The chair shall promulgate rules governing the procedure to be  
6 followed by those rendering acupuncture services under this section,  
7 which rules so far as practicable shall conform to the rules presently  
8 in effect with reference to medical care furnished to claimants in work-  
9 ers' compensation. In connection with the promulgation of such rules the  
10 chair may consult the acupuncture practice committee and may take into  
11 consideration the view of other interested parties.

12 10. The chair shall appoint for and with jurisdiction in the entire  
13 state of New York a single acupuncture practice committee composed of  
14 two licensed acupuncturists, and one duly licensed physician of the  
15 state of New York. Each member of such committee shall receive compen-  
16 sation either on an annual basis or on a per diem basis to be fixed by  
17 the chair within amounts appropriated therefor. One of such licensed  
18 acupuncturists shall be designated by the chair as a chair of such  
19 acupuncture practice committee. No member of such committee shall render  
20 acupuncture services under this section nor be an employer or accept or  
21 participate in any fee from any insurance company authorized to write  
22 workers' compensation insurance in this state or from any self-insurer,  
23 whether such employment or fee relates to a workers' compensation claim  
24 or otherwise. The attorney general, upon request, shall advise and  
25 assist such committee.

26 11. The acupuncture practice committee shall investigate, hear and  
27 make findings with respect to all charges as to professional or other  
28 misconduct of any authorized acupuncturists as provided in this section  
29 under rules and procedures to be prescribed by the chair and shall  
30 report evidence of such misconduct, with their findings and recommenda-  
31 tions with respect thereto, to the chair. The findings, decision and  
32 recommendation of such acupuncture practice committee shall be advisory  
33 to the chair only, and shall not be binding or conclusive upon him or  
34 her. The chair shall remove from the list of acupuncturists authorized  
35 to render acupuncture services under this chapter or to conduct inde-  
36 pendent examinations in accordance with paragraph (b) of subdivision  
37 four of this section the name of any acupuncturist who he or she shall  
38 find after reasonable investigation is disqualified because such  
39 acupuncturist:

40 (a) has been guilty of professional or other misconduct or incompeten-  
41 cy in connection with the rendering of acupuncture services,

42 (b) has exceeded the limits of his or her professional competence in  
43 rendering acupuncture services under the law, or has made false state-  
44 ments regarding qualifications in the application for authorization,

45 (c) has failed to submit timely, full and truthful acupuncture evalu-  
46 ation and treatment reports of all findings to the employer and directly  
47 to the chair of the board within the time limits provided in this  
48 section,

49 (d) has rendered acupuncture services under this chapter for a fee  
50 less than that fixed in the fee schedule,

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

54 (f) has refused to appear before or answer upon request of the chair,  
55 board, acupuncture practice committee or any duly authorized officer of

1 the state, any legal question or produce any relevant book or paper  
2 concerning conduct under an authorization granted under law, or

3 (g) has directly or indirectly requested, received or participated in  
4 the division, transference, assignment, rebating, splitting or refunding  
5 of a fee for, or has directly or indirectly requested, received or prof-  
6 ited by means of a credit or otherwise valuable consideration as a  
7 commission, discount or gratuity in connection with the treatment of a  
8 workers' compensation claimant.

9 12. Any person who violates or attempts to violate, and any person who  
10 aids another to violate or attempts to induce him or her to violate the  
11 provisions of paragraph (g) of subdivision eleven of this section shall  
12 be guilty of a misdemeanor.

13 13. Nothing in this section shall be construed as limiting in any  
14 respect the power or duty of the chair to investigate instances of  
15 misconduct, either before or after investigation by the acupuncture  
16 practice committee, or to temporarily suspend the authorization of any  
17 acupuncturist believed to be guilty of such misconduct. The provisions  
18 of subdivision one of section thirteen-d of this article which are not  
19 inconsistent with the provisions of this section shall be applicable as  
20 if fully set forth in this section.

21 14. Nothing contained in this section shall prohibit acupuncturists  
22 who practice as partners, in groups or as a professional corporation  
23 from pooling fees and moneys received, either by the partnership,  
24 professional corporation or group or by the individual members thereof,  
25 for professional services furnished by any individual professional  
26 member, or employee of such partnership, corporation or group, nor shall  
27 the professionals constituting the partnerships, corporations, or groups  
28 be prohibited from sharing, dividing or apportioning the fees and moneys  
29 received by them or by the partnership, corporation or group in accord-  
30 ance with a partnership or other agreement.

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