

SENATE, No. 3375

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JANUARY 21, 2021

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Concerns medical treatment arising from workers' compensation claims.

CURRENT VERSION OF TEXT

As introduced.



S3375 SINGLETON

2

1 AN ACT concerning medical treatments arising from workers'
2 compensation claims, supplementing chapter 15 of Title 34 of
3 the Revised Statutes, and amending various sections of the
4 statutory law.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. R.S.34:15-53 is amended to read as follows:

10 34:15-53. Within 20 days after the filing of an answer, or the
11 expiration of the time for filing an answer if no answer is filed, the
12 secretary of the division shall fix a time and place for hearing the
13 petition, or shall send the petition and answer or a transcript of the
14 petition and answer to the director, a deputy director or 1 of the
15 referees, in which case such director, deputy director or referee,
16 within 20 days after the filing of the answer, shall fix a time and
17 place for the hearing of the petition. Such time shall be not less than
18 4 weeks nor more than 6 weeks after the filing of the petition,
19 provided however, that in cases where the extent of permanent
20 disability, total or partial, is an issue, the determination of such
21 issue shall be deferred as provided in section 34:15-16 of this Title.
22 The petition shall be heard either in the county in which the injury
23 occurred or in which the petitioner or respondent resides, or in
24 which the respondent's place of business is located, or in which the
25 respondent may be served with process. When a time and place has
26 been fixed for such hearing, the director, deputy director or the
27 referee to whom the cause has been referred shall give at least 10
28 days' notice to each party of the time and place of hearing. Unless
29 the petitioner or respondent gives good cause to the director, deputy
30 director, or the referee that an in-person proceeding is necessary for
31 the proper administration of justice, any administrative matter,
32 conference, or hearing to approve a settlement shall be conducted
33 by telephone or video conferencing. The director, deputy director or
34 any referee to whom a cause has been referred, shall have power to
35 adjourn the hearing thereof from time to time in his discretion.

36 (cf: P.L.1956, c.141, s.7)

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38 2. R.S.34:15-64 is amended to read as follows:

39 34:15-64. a. The commissioner, director and the judges of
40 compensation may make such rules and regulations for the conduct
41 of the hearing not inconsistent with the provisions of this chapter as
42 may, in the commissioner's judgment, be necessary. The official
43 conducting any hearing under this chapter may allow to the party in
44 whose favor judgment is entered, costs of witness fees and a
45 reasonable attorney fee, not exceeding 20% of the judgment; and a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S3375 SINGLETON

1 reasonable fee not exceeding \$400 for any one witness, except that
2 the following fees may be allowed for a medical witness:

3 (1) (a) A fee of not more than \$600 paid to an evaluating
4 physician for an opinion regarding the need for medical treatment
5 or for an estimation of permanent disability, if the physician
6 provides the opinion or estimation in a written report; and

7 (b) An additional fee of not more than \$400 paid to the
8 evaluating physician who makes a court appearance to give
9 testimony; or

10 (2) (a) A fee of not more than \$450 paid to a treating physician
11 for the preparation and submission of a report including the entire
12 record of treatment, medical history, opinions regarding diagnosis,
13 prognosis, causal relationships between the treated condition and
14 the claim, the claimant's ability to return to work with or without
15 restrictions, what, if any, restrictions are appropriate, and the
16 anticipated date of return to work, and any recommendations for
17 further treatment; and

18 (b) (i) An additional fee of not more than \$300 per hour, with
19 the total amount not to exceed \$2,500, paid to the treating physician
20 who gives testimony concerning causal relationship, ability to work
21 or the need for treatment; or

22 (ii) An additional fee of not more than \$300 per hour, with the
23 total amount not to exceed \$1,500, paid to the treating physician
24 who gives a deposition concerning causal relationship, ability to
25 work or the need for treatment.

26 b. (1) No fee for an evaluating physician pursuant to this
27 section shall be contingent on whether a judgment or award is or is
28 not made in favor of the petitioner.

29 (2) No evaluating or treating physician shall charge any fee for a
30 report, testimony or deposition in excess of the amount permitted
31 pursuant to the provisions of this section.

32 c. A fee shall be allowed at the discretion of the judge of
33 compensation when, in the official's judgment, the services of an
34 attorney and medical or expert witnesses are necessary for the
35 proper presentation of the case. In determining a reasonable fee for
36 medical or expert witnesses, the official shall consider (1) the time,
37 personnel, and other cost factors required to conduct the
38 examination or expert services; (2) the extent, adequacy and
39 completeness of the medical evaluation or expert services; (3) the
40 objective measurement of bodily function and the avoidance of the
41 use of subjective complaints; and (4) the necessity of a court
42 appearance of the medical or expert witness. When, however, at a
43 reasonable time, prior to any hearing compensation has been offered
44 and the amount then due has been tendered in good faith or paid
45 within 26 weeks from the date of the notification to the employer of
46 an accident or an occupational disease or the employee's final active
47 medical treatment or within 26 weeks after the employee's return to
48 work whichever is later or within 26 weeks after employer's

1 notification of the employee's death, the reasonable allowance for
2 attorney fee shall be based upon the amount of compensation,
3 theretofore offered, tendered in good faith or paid after the
4 establishment of an attorney-client relationship pursuant to a written
5 agreement, and the amount of the judgment or award in excess of
6 the amount of compensation, theretofore offered. When the amount
7 of the judgment is less than \$200, an attorney fee may be allowed
8 not in excess of \$50. Any fees that the judge of compensation
9 determines are necessary for the proper presentation of the case
10 shall not be limited by any other provision of chapter 15 of Title 34
11 of the Revised Statutes.

12 d. All counsel fees of claimants' attorneys for services
13 performed in matters before the Division of Workers'
14 Compensation, whether or not allowed as part of a judgment, shall
15 be first approved by the judge of compensation before payment.
16 Whenever a judgment or award is made in favor of a petitioner, the
17 judges of compensation or referees of formal hearings shall direct
18 amounts to be deducted for the petitioner's expenses and to be paid
19 directly to the persons entitled to the same, the remainder to be paid
20 directly to the petitioner. In a matter in which compensation,
21 including compensation for medical services, is denied or not
22 promptly provided, and the compensation is paid after a motion
23 claiming the compensation is filed on behalf of the petitioner, the
24 respondent shall pay the actual costs in presenting the motion,
25 including but not limited to the costs of all expert witnesses,
26 together with a counsel fee to the petitioner's counsel in the amount
27 of 20 percent of the expense of all medical and temporary benefits
28 paid by the respondent after the motion filing.

29 (cf: P.L.2018, c.105, s.1)

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31 3. (New section) When an employer furnishes treatment
32 pursuant to R.S.34:15-15, the relationship between treating
33 physician and injured employee shall be deemed the same as if
34 privately contracted between physician and patient, except that the
35 employer shall pay the usual, reasonable, or customary charges for
36 reasonable and necessary treatment causally related to the injury or
37 occupational disease as further provided under this section. Any
38 employer, insurance carrier, or third-party administrator who hires,
39 contacts, designates, or manages medical treatment shall provide
40 the time, date, and substance of any communications with the
41 treating physician to the patient or the patient's legal representative
42 as soon as is practicable. Any written or electronic communication
43 shall be provided contemporaneously to the employee or the
44 employee's designated representatives upon request by employee or
45 employee's authorized representatives. Nurses or rehabilitation
46 professionals who attend medical treatment appointments either
47 personally or via electronic means shall be authorized to do so by
48 the patient or the patient's legal representative. The substance of

1 nurse or rehabilitation professional participation shall be revealed to
2 the patient or the patient's legal representative. No medical provider
3 shall withhold any communication from an employer or its
4 insurance carrier, or third-party administrator, to a treating
5 physician, from an injured worker or legal representative of an
6 injured worker upon request, without documented therapeutic
7 medical reason for the withholding that record. Any willful or
8 repeated violation of this section shall be punishable pursuant to
9 section 1 of P.L.2008, c.93 (C.34:15-28.2) and section 9 of
10 P.L.2001, c.326 (C.34:15-128.5).

11

12 4. (New section) Once an employer, its carrier, or its third
13 party administrator authorizes treatment or medical services, or the
14 Division of Workers' Compensation determines the treatment or
15 medical services are the responsibility of the employer, the
16 employer, carrier, or third-party administrator shall not delay or
17 deny authorization for any treatment, diagnostic studies,
18 procedures, therapies or medications recommended by an
19 authorized medical care provider. No employer, carrier or third-
20 party administrator shall de-authorize any medical care provider
21 authorized to treat or provide services to a petitioner without first
22 securing an order from a judge of compensation. A violation of this
23 section shall be punishable pursuant to section 1 of P.L.2008, c.93
24 (C.34:15-28.2).

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26 5. This act shall take effect immediately.

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STATEMENT

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31 This bill concerns medical treatment arising from workers'
32 compensation claims.

33 The bill increases the transparency of medical providers'
34 communications with injured workers. Specifically, the bill
35 provides that any employer, insurance carrier, or third-party
36 administrator, who hires, contacts, designates, or manages medical
37 treatment, must provide the time, date, and substance of any
38 communications with the treating physician to the patient or their
39 legal representative as soon as is practicable thereafter. Any written
40 or electronic communication shall be provided contemporaneously
41 to the employee or their designated representatives upon notice
42 from the employee or the employee's authorized representatives.
43 Under this bill, no medical provider shall withhold any
44 communication from an employer or its insurance carrier, or third-
45 party administrator to a treating physician, from an injured worker
46 or legal representative of an injured worker upon request, without
47 documented therapeutic medical reason for withholding that record.

S3375 SINGLETON

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1 The bill also mandates non-interference with medical treatment.
2 Once treatment or medical services have been authorized by the
3 employer or its carrier or its third party administrator or determined
4 by the Division of Workers' Compensation to be the responsibility
5 of the employer, no employer, carrier or third-party administrator
6 shall delay or deny authorization for any treatment, diagnostic
7 studies, procedures, therapies or medications recommended by any
8 authorized medical care providers. No employer, carrier or third-
9 party administrator shall de-authorize any medical care provider
10 authorized to treat or provide services to a petitioner without first
11 securing an order from a judge of compensation.

12 The bill also amends existing law to provide for compensation
13 for expert witnesses in workers' compensation hearings, and to
14 allow these hearings to utilize telephone or video conferencing.