

HOUSE BILL 195

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Randal S. Crowder

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. In addition, it includes changes proposed by Gentry floor amendment .203836.2. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO WORKERS' COMPENSATION; **CONDITIONALLY** REMOVING THE REQUIREMENT THAT MEDICAL CANNABIS BE A REIMBURSABLE BENEFIT AFTER INJURY OR DISABLEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 52-1-49 NMSA 1978 (being Laws 1959, Chapter 67, Section 27, as amended) is amended to read:

"52-1-49. MEDICAL AND RELATED BENEFITS--SELECTION OF HEALTH CARE PROVIDER--ARTIFICIAL MEMBERS.--

A. After an injury to a worker and subject to the requirements of the Workers' Compensation Act, and continuing as long as medical or related treatment is reasonably necessary, the employer shall, subject to the provisions of

.202771.4 Amendments in Context

underscored material = new
[bracketed material] = delete
language-deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language-deleted = deleted by HFLR amendment (Gentry)

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

this section, provide the worker in a timely manner reasonable and necessary health care services from a health care provider.

B. A workers' compensation carrier or an employer providing workers' compensation benefits is not ~~liable for a claim for reimbursement associated with~~ required to pay for costs associated with the purchase or use of medical cannabis if the payment violates federal law.

[B-] C. The employer shall initially either select the health care provider for the injured worker or permit the injured worker to make the selection. Subject to the provisions of this section, that selection shall be in effect during the first sixty days [from] after the date the worker receives treatment from the initially selected health care provider.

[G-] D. After the [~~expiration of the~~] initial sixty-day period set forth in Subsection [B] C of this section, the party who did not make the initial selection may select a health care provider of [~~his~~] the party's choice. Unless the worker and employer otherwise agree, the party seeking [~~such a~~] the change shall file a notice of the name and address of [~~his~~] the party's choice of health care provider with the other party at least ten days before treatment from that health care provider begins. The director shall adopt rules [~~and regulations~~] governing forms, which employers shall post in conspicuous places, to enable this notice to be promptly and

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

efficiently provided. This notice may be filed on or after the fiftieth day of the sixty-day period set forth in Subsection ~~[B]~~ C of this section.

~~[D-]~~ E. If a party objects to the choice of health care provider made pursuant to Subsection ~~[G]~~ D of this section, ~~[then he]~~ the party shall file an objection to that choice pursuant to Subsection ~~[E]~~ F of this section with a workers' compensation judge within three days ~~[from]~~ after receiving the notice. ~~[He]~~ The party shall also provide notice of that objection to the other party. If the employer does not file ~~[his]~~ an objection within the three-day period, ~~[then he shall be]~~ the employer is liable for the cost of treatment provided by the worker's health care provider until the employer does file ~~[his]~~ an objection and the workers' compensation judge has rendered ~~[his]~~ a decision as set forth in Subsection ~~[F]~~ G of this section. If the worker does not file ~~[his]~~ an objection within the three-day period, ~~[then]~~ the employer ~~[shall]~~ is only ~~[be]~~ liable for the cost of treatment from the health care provider selected by the employer, subject to the provisions of Subsections ~~[E, F and G]~~ F through H of this section. Nothing in this section shall remove the employer's obligation to provide reasonable and necessary health care services to the worker so long as the worker complies with the provisions of this section.

~~[E-]~~ F. If the worker or employer disagrees with

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

the choice of the health care provider of the other party at any time, including in the initial sixty-day period, and they cannot otherwise agree, [~~then he~~] the worker or employer shall submit a request for a change of health care provider to a workers' compensation judge. The director shall adopt rules [~~and regulations~~] governing forms, which employers shall post in conspicuous places, to submit to a workers' compensation judge a request for change of a health care provider.

[~~F.~~] G. The request shall state the reasons for the request and may state the applicant's choice for a different health care provider. The applicant shall bear the burden of proving to the workers' compensation judge that the care being received is not reasonable. The workers' compensation judge shall render [~~his~~] a decision within seven days [~~from~~] after the date the request was submitted. If the workers' compensation judge grants the request, [~~he~~] the judge shall designate either the applicant's choice of health care provider or a different health care provider.

[~~G.~~] H. If the worker continues to receive treatment or services from a health care provider rejected by the employer and not in compliance with the workers' compensation judge's ruling, [~~then~~] the employer is not required to pay for any of the additional treatment or services provided to that worker by that health care provider.

[~~H.~~] I. In all cases where the injury [~~is such as~~

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

~~to permit]~~ permits the use of artificial members, including teeth and eyes, the employer shall pay for the artificial members."

SECTION 2. Section 52-3-15 NMSA 1978 (being Laws 1951, Chapter 184, Section 2, as amended) is amended to read:

"52-3-15. DISABLEMENT COMPENSATION RESTRICTIONS--MEDICAL AND RELATED SERVICES--SELECTION OF HEALTH CARE PROVIDER--ARTIFICIAL MEMBERS.--

A. No compensation [~~shall be~~] is allowed for the first seven days after the employee has suffered disablement unless [~~such~~] the disablement continues for [~~a period of~~] more than four weeks after the disablement occurs, or in any case, unless the employer is notified [~~thereof~~] of the disablement within the period specified in Section 52-3-16 NMSA 1978.

B. After disablement and continuing so long as medical and surgical attention is reasonably necessary, the employer shall, subject to the provisions of this section, provide the worker in a timely manner reasonable and necessary health care services from a health care provider.

C. A workers' compensation carrier or an employer providing workers' compensation benefits is not ~~liable for a claim for reimbursement associated with~~ required to pay for costs associated with the purchase or use of medical cannabis if the payment violates federal law.

~~[G.]~~ D. The employer shall initially either select

underscored material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

the health care provider for the injured worker or permit the injured worker to make the selection. Subject to the provisions of this section, that selection shall be in effect during the first sixty days [~~from~~] after the date the worker receives treatment from the initially selected health care provider.

[~~D~~] E. After the expiration of the initial sixty-day period set forth in Subsection [~~E~~] D of this section, the party who did not make the initial selection may select a health care provider of [~~his~~] the party's choice. Unless the worker and employer otherwise agree, the party seeking [~~such a~~] the change shall file a notice of the name and address of [~~his~~] the party's choice of health care provider with the other party at least ten days before treatment from that health care provider begins. The director shall adopt rules [~~and regulations~~] governing forms, which employers shall post in conspicuous places, to enable this notice to be promptly and efficiently provided. This notice may be filed on or after the fiftieth day of the sixty-day period set forth in Subsection [~~E~~] D of this section.

[~~E~~] F. If a party objects to the choice of health care provider made pursuant to Subsection [~~D~~] E of this section, [~~then he~~] the party shall file an objection to that choice pursuant to Subsection [~~F~~] G of this section with a workers' compensation judge within three days [~~from~~] after

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

receiving the notice. ~~[He]~~ The party shall also provide notice of that objection to the other party. If the employer does not file ~~[his]~~ an objection within the three-day period, ~~[then he shall be]~~ the employer is liable for the cost of treatment provided by the worker's health care provider until the employer does file ~~[his]~~ an objection and the workers' compensation judge has rendered ~~[his]~~ a decision as set forth in Subsection ~~[G]~~ H of this section. If the worker does not file ~~[his]~~ an objection within the three-day period, ~~[then]~~ the employer ~~[shall]~~ is only ~~[be]~~ liable for the cost of treatment from the health care provider selected by the employer, subject to the provisions of Subsections ~~[F, G and H]~~ G through I of this section. Nothing in this section shall remove the employer's obligation to provide reasonable and necessary health care services to the worker so long as the worker complies with the provisions of this section.

~~[F.]~~ G. If the worker or employer disagrees with the choice of the health care provider of the other party at any time, including in the initial sixty-day period, and they cannot otherwise agree, ~~[then he]~~ the worker or employer shall submit a request for a change of health care provider to a workers' compensation judge. The director shall adopt rules ~~[and regulations]~~ governing forms, which employers shall post in conspicuous places, to submit to a workers' compensation judge a request for a change of a health care provider.

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

[G.] H. The request shall state the reasons for the request and may state the applicant's choice for a different health care provider. The applicant shall bear the burden of proving to the workers' compensation judge that the care being received is not reasonable. The workers' compensation judge shall render [~~his~~] a decision within seven days [~~from~~] after the date the request was submitted. If the workers' compensation judge grants the request, [~~he~~] the judge shall designate either the applicant's choice of health care provider or a different health care provider.

[H.] I. If the worker continues to receive treatment or services from a health care provider rejected by the employer and not in compliance with the workers' compensation judge's ruling, [~~then~~] the employer is not required to pay for any of the additional treatment or services provided to that worker by that health care provider.

[I.] J. In all cases where the disablement [~~is such as to permit~~] permits the use of artificial members, including teeth and eyes, the employer shall pay for [~~such~~] those artificial members."

SECTION 3. Section 52-4-5 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 52, as amended) is amended to read:

"52-4-5. FEE SCHEDULE.--

A. The director shall adopt and promulgate regulations establishing a schedule of maximum charges as

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

deemed necessary for treatment or attendance, service, devices, apparatus or medicine provided by a health care provider. The rates in the schedules of maximum charges shall not fall below the sixtieth percentile or above the eightieth percentile of current rates for health care providers. In determining current rates for health care providers, the director shall utilize a variety of health care provider charges, including the charges of those providers serving low-income, medicare and medicaid patients.

B. A health care provider shall be paid ~~[his]~~ the provider's usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

C. The fee schedule shall be revised annually by the director.

D. No amount in excess of the amount required by Subsection B of this section for a service shall be paid by the employer, the employer's insurer, the worker, a representative of the worker or any other person to a health care provider for rendering that service in connection with an injury or disablement within the purview of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

E. If it is determined by the person primarily responsible for payment that the charges of a health care

underscoring material = new
[bracketed material] = delete
language deleted = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
language deleted = deleted by HFLR amendment (Gentry)

provider exceed the amount established pursuant to Subsection B of this section or that a health care provider [~~over-utilized~~] overutilized or otherwise rendered or ordered inappropriate health care or health care services, and payment is withheld on those grounds, the health care provider may appeal to the director regarding that determination. The director shall establish by regulation procedures for an appeal by a health care provider.

F. The director shall establish an advisory committee that shall:

(1) be appointed and serve at the pleasure of the director;

(2) consist of members, a majority of whom represent health care providers;

(3) reflect the diversity of authorized licensed health care providers available for workers' compensation and occupational disease disablement cases;

(4) assist in establishing the schedules of maximum charges [~~under~~] required by Subsection A of this section for any fees that are payable to health care providers;

(5) assist the director in adopting regulations for employers' utilization review procedures and the establishment and conduct of utilization review boards; and

(6) report its findings, upon request, to the director and the advisory council on workers' compensation.

underscored material = new
[bracketed material] = delete
~~language~~ = deleted by amendment
New amended language = new by amendment
New amended language = new by HFLR amendment (Gentry)
~~language~~ = deleted by HFLR amendment (Gentry)

G. The schedule of maximum charges specified in this section shall not apply to hospital charges. The director shall establish a separate schedule of maximum charges for hospital charges no later than April 1, 1991.

H. Nothing in this section shall prevent an employer from contracting with a health care provider for fees less than the maximum charges allowable.

I. Nothing in this section shall be construed to require a workers' compensation carrier or an employer providing workers' compensation benefits to pay for costs associated with the purchase or use of medical cannabis if the payment violates federal law."