

BILL TEXT:

STATE OF NEW YORK

S. 356

A. 536

2005-2006 Regular Sessions

SENATE - ASSEMBLY

January 13, 2005

IN SENATE -- Introduced by Sen. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

IN ASSEMBLY -- Introduced by M. of A. LENTOL -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to enabling chiropractors to provide second opinions and provide certain services without employer authorization; to amend the real property tax law, in relation to enabling chiropractors to certify disability; to amend the vehicle and traffic law, in relation to enabling chiropractors to certify disability for the purpose of issuance of handicapped license plates and registration; to amend the civil practice law and rules, in relation to the statute of limitations for chiropractic malpractice actions; and to amend the education law, in relation to enabling chiropractors to be employed by school districts to provide school health services and giving chiropractors good samaritan immunity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5 of section 13-a of the workers' compensation
2 law, as added by chapter 21 of the laws of 1991, is amended to read as
3 follows:
4 (5) No claim for specialist consultations, surgical operations,
5 physiotherapeutic or occupational therapy procedures, x-ray examinations
6 or special diagnostic laboratory tests costing more than five hundred
7 dollars shall be valid and enforceable, as against such employer, unless
8 such special services shall have been authorized by the employer or by
9 the board, or unless such authorization has been unreasonably withheld,
10 or withheld for a period of more than thirty calendar days from receipt
11 of a request for authorization, or unless such special services are
12 required in an emergency, provided, however, that the basis for a denial
13 of such authorization by the employer must be based on a conflicting

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

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1 second opinion rendered by a physician or chiropractor authorized by the
2 [~~workers' compensation~~] board.

3 § 2. Paragraph (a) of subdivision 3 of section 13-1 of the workers'
4 compensation law, as amended by chapter 473 of the laws of 2000, is
5 amended to read as follows:

6 (a) No claim for chiropractic care or treatment costing more than five
7 hundred dollars shall be valid and enforceable, or against such employ-
8 er, unless such care or treatment shall have been authorized by the
9 employer or by the board. Notwithstanding the above, no claim for
10 chiropractic care or treatment shall be valid and enforceable as against
11 the employer or employees unless within forty-eight hours following the
12 first treatment the chiropractor giving such care or treatment furnishes
13 to the employer and directly to the chair a preliminary notice of such
14 injury and treatment, and within fifteen days thereafter a more complete
15 report and subsequent thereto progress reports as requested in writing
16 by the chair, board, employer or insurance carrier, at intervals of not
17 less than three weeks apart or at less frequent intervals if requested
18 on forms prescribed by the chair. The board may excuse the failure to
19 give such notices within the designated periods when it finds it to be
20 in the interest of justice to do so.

21 § 3. Subdivision 2 of section 459 of the real property tax law, as
22 added by chapter 200 of the laws of 1983, is amended to read as follows:

23 2. To qualify as physically disabled for the purposes of this section,
24 an individual shall submit to the assessor a certified statement from a
25 physician or chiropractor licensed to practice in the state on a form
26 prescribed and made available by the state board which states that the
27 individual has a permanent physical impairment which substantially
28 limits one or more of such individual's major life activities, except
29 that an individual who has obtained a certificate from the state commis-
30 sion for the blind and visually handicapped stating that such individual
31 is legally blind may submit such certificate in lieu of a physician's
32 certified statement.

33 § 4. Subdivision 4 and paragraph (b) of subdivision 5 of section 404-a
34 of the vehicle and traffic law, as amended by chapter 686 of the laws of
35 1994, are amended to read as follows:

36 4. Issue of plates. The commissioner shall issue sets of plates to
37 such person in accordance with subdivision two of this section with
38 proof of such disability of such person or such members of his family
39 certified by a physician, chiropractor or podiatrist pursuant to subdi-
40 vision four-a of this section, to the satisfaction of the commissioner
41 who is empowered to carry out the effects of this section by formulating
42 rules and regulations.

43 For the purposes of this section, a "severely disabled person" shall
44 mean any person having any one or more of the following impairments,
45 disabilities or conditions which are permanent in nature:

46 (a) Has limited or no use of one or both lower limbs;
47 (b) Has a neuro-muscular dysfunction which severely limits mobility;
48 (c) Has a physical or mental impairment or condition which is other
49 than those specified above, but is of such nature as to impose unusual
50 hardship in utilization of public transportation facilities and such
51 condition is certified by a physician duly licensed to practice medicine
52 in this state, or, pursuant to subdivision four-a of this section, a
53 podiatrist duly licensed to practice podiatry in this state, as consti-
54 tuting an equal degree of disability (specifying the particular condi-
55 tion) so as to prevent such person from getting around without great
56 difficulty in accordance with subdivision two of this section; or

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1 (d) A blind person.

2 (b) The commissioner may require the applicant for registration to
3 furnish such proof of his disability or such proof of disability of such
4 members of his family from a physician, chiropractor or podiatrist
5 pursuant to subdivision four-a of this section, as the commissioner
6 deems necessary either for initial registration or renewal thereof;
7 provided, however, that a handicapped or disabled permit issued by a
8 municipality to such applicant pursuant to section twelve hundred
9 three-a of this chapter shall be deemed sufficient proof of disability
10 for purposes of this paragraph.

11 § 5. Subdivision 6 of section 214 of the civil practice law and rules,
12 as amended by chapter 623 of the laws of 1996, is amended to read as
13 follows:

14 6. an action to recover damages for malpractice, other than medical,
15 dental, chiropractic or podiatric malpractice, regardless of whether the
16 underlying theory is based in contract or tort; and

17 § 6. Section 214-a of the civil practice law and rules, as amended by
18 chapter 485 of the laws of 1986, is amended to read as follows:

19 § 214-a. Action for medical, dental, chiropractic or podiatric malp-
20 ractice to be commenced within two years and six months; exceptions. An
21 action for medical, dental, chiropractic or podiatric malpractice must
22 be commenced within two years and six months of the act, omission or
23 failure complained of or last treatment where there is continuous treat-
24 ment for the same illness, injury or condition which gave rise to the
25 said act, omission or failure; provided, however, that where the action
26 is based upon the discovery of a foreign object in the body of the
27 patient, the action may be commenced within one year of the date of such
28 discovery or of the date of discovery of facts which would reasonably
29 lead to such discovery, whichever is earlier. For the purpose of this
30 section the term "continuous treatment" shall not include examinations
31 undertaken at the request of the patient for the sole purpose of ascer-
32 taining the state of the patient's condition. For the purpose of this
33 section the term "foreign object" shall not include a chemical compound,
34 fixation device or prosthetic aid or device.

35 § 7. Section 6556 of the education law is amended by adding a new
36 subdivision 3 to read as follows:

37 3. Notwithstanding any inconsistent provision of any general, special
38 or local law, any licensed chiropractor who voluntarily and without the
39 expectation of monetary compensation renders first aid or emergency
40 treatment at the scene of an accident or other emergency, outside a
41 hospital, doctor's office or any other place having proper equipment, to
42 a person who is unconscious, ill or injured, shall not be liable for
43 damages for injuries alleged to have been sustained by such person or
44 for damages for the death of such person alleged to have occurred by
45 reason of an act or omission in the rendering of such first aid or emer-
46 gency treatment unless it is established that such injuries or such
47 death was caused by gross negligence on the part of such chiropractor.
48 Nothing in this subdivision shall be deemed or construed to relieve a
49 licensed chiropractor from liability for damages for injuries or death
50 caused by an act or omission on the part of a chiropractor while render-
51 ing professional services in the normal and ordinary course of his prac-
52 tice.

53 § 8. Subdivision 1 of section 902 of the education law, as amended by
54 chapter 477 of the laws of 2004, is amended to read as follows:

55 1. As used in this article "health professionals" means persons duly
56 licensed or otherwise authorized to practice a health profession pursu-

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1 ant to applicable law, including, but not limited to, physicians, regis-
2 tered professional nurses, nurse practitioners, physicians assistants,
3 optometrists, dentists, dental hygienists, **chiropractors**, dietitians and
4 nutritionists, and audiologists.

5 § 9. This act shall take effect immediately, provided that if chapter
6 477 of the laws of 2004 shall not have taken effect on or before such
7 effective date, section eight of this act shall take effect on the same
8 date as such chapter takes effect.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A536

SPONSOR: Lentol

TITLE OF BILL: An act to amend the workers' compensation law, in relation to enabling chiropractors to provide second opinions and provide certain services without employer authorization; to amend the real property tax law, in relation to enabling chiropractors to certify disability; to amend the vehicle and traffic law, in relation to enabling chiropractors to certify disability for the purpose of issuance of handicapped license plates and registration; to amend the civil practice law and rules, in relation to the statute of limitations for chiropractic malpractice actions; and to amend the education law, in relation to enabling chiropractors to be employed by school districts to assist medical inspectors and giving chiropractors good samaritan immunity

PURPOSE: The purpose of this bill is to bring parity and equity among primary health care practitioners.

SUMMARY OF PROVISIONS: Section 1 amends workers' compensation law section 13-a to allow chiropractors to render second opinions.

Section 2 amends workers' compensation law section 13-1 to clarify that only individual chiropractic services exceeding \$500 must be pre-authorized by the injured worker's employer.

Section 3 amends real property tax law section 459 enables chiropractors to certify an individual's disability.

Section 4 amends vehicle and traffic law section 404-a to enable chiropractors to certify a person's disability for the purpose of receiving handicap license plates.

Section 5 amends civil practice law and rules section 214 to specify that chiropractic malpractice is not subject to a three year statute of limitations.

Section 6 amends civil practice law and rules section 214-a to reduce the statute of limitations for chiropractic to two and one-half years.

Section 7 amends education law section 6556 to provide chiropractors with good samaritan protection for the provision of emergency services.

Section 8 amends education law section 902 so as to allow chiropractors to be employed by a school district to assist the district's medical inspector or to provide services to students of the district.

Section 9 sets forth the effective date of the amendments contained in this bill.

JUSTIFICATION: Most primary health care professionals are empowered under various sections of the law to certify to a patient's disability for parking permits, handicapped license plates, workers' compensation, and to excuse a patient from physical education classes in school. However, through legislative oversight, chiropractors have been omitted from the list of primary care providers who can certify to their patient's disability. Sections 3 and 4 of this bill simply clarify that chiropractors are included in the list of health care professionals who can certify to a patient's disability. This legislation brings parity among the direct access, primary health care professionals. Moreover, without this legislation, patients must incur the time and dollar expense of being examined by a second professional, whose profession is listed, since their primary care chiropractor is currently unable to certify to their disability.

Chiropractors, physicians, dentists and podiatrists are referred to as direct access health care professionals (i.e., they directly diagnose and treat patients without the necessity for a referral from another professional). Under New York law, an action for medical, dental or podiatric malpractice must be commenced, with certain exceptions, within two and one-half years. Although chiropractors, like physicians, dentists and podiatrists are direct access health care professionals, they are subject to a three year statute of limitations for suits that allege malpractice. Sections 5 and 6 of this bill seek to conform the time limit within which an action for chiropractic malpractice may be commenced with that specified for other direct access health care professionals.

For centuries, good samaritans have been valued and praised for rushing to the aid of individuals in emergencies. New York law has protected good samaritans from civil suits when they in good faith provide emergency care. Through a legislative oversight, chiropractors do not enjoy the same good samaritan protection afforded to all other health care professionals. Section 7 of this bill extends good samaritan immunity to chiropractors who provide assistance to individuals in an emergency. Thousands of New Yorkers each year are treated by chiropractors for workplace injuries. Chiropractic success rates in returning injured workers to work exceeds that for many other health care modalities. Many injured workers are solely treated by their chiropractor. However, under the current workers' compensation law, chiropractors are not able to render second opinions. For an injured worker who has received chiropractic care, it is logical that any requested second opinion on the individuals condition or treatment be rendered by another chiropractor. Section 2 of this bill clarifies that second opinions for workers' compensation may be rendered by chiropractors.

LEGISLATIVE HISTORY: S.2062/ A.3555 of 2000, S.424/A.787 2003-04

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.