

# SENATE, No. 3003

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2013

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Co-Sponsored by:**

**Senator Singer**

**SYNOPSIS**

Restricts coverage of opioid drugs under workers' compensation system and personal injury protection coverage under automobile insurance.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/8/2013)**

1 AN ACT concerning opioid drugs and supplementing Chapter 15 of  
2 Title 34 of the Revised Statutes and amending P.L.1972, c.70.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) a. Medical expense benefits provided  
8 pursuant to R.S.34:15-15 shall not include coverage of opioid drugs  
9 unless the prescribing health care professional provides  
10 documentation of the following:

11 (1) A thorough medical history, physical examination, and  
12 medical decision-making plan, with particular attention focused on  
13 determining the cause of the patient's pain;

14 (2) An assessment of the patient's risk for opioid addiction,  
15 which shall include a baseline urine drug test; a baseline assessment  
16 of function and pain; and an assessment of past and current  
17 depression, anxiety disorders, and other behavioral or mood  
18 disorders associated with risk for opioid abuse;

19 (3) A written treatment plan, which shall be revised as new  
20 information becomes available, which shall include:

21 (a) clearly stated, measurable objectives;

22 (b) a list of all current medications, with doses, including  
23 medications prescribed by other health care professionals;

24 (c) a description of reported pain relief from each medication;

25 (d) a justification of the continued use of opioid drugs;

26 (e) documentation of attempts at weaning, and an explanation of  
27 why any failed weaning attempt failed, including a detailed history  
28 to elicit information on alcohol and drug use;

29 (f) a description of how the patient's response to medication  
30 will be assessed;

31 (g) a description of any further planned diagnostic evaluation;  
32 and

33 (h) alternative treatments under consideration;

34 (4) Either sustained improvement in function and pain  
35 reduction, or consultation with a pain management specialist, which  
36 shall only be required if the daily prescribed dosage exceeds 120  
37 mg morphine-equivalent dose or if the duration of treatment  
38 exceeds 14 days; and

39 (5) An explanation to the patient of the risks and benefits of  
40 prescribed medications, along with expected outcomes, duration of  
41 treatment, and prescribing limitations.

42 b. An employer, its carrier, or its third party administrator may  
43 disqualify from participation in any network it has established to  
44 provide medical expense benefits pursuant to R.S.34:15-15 any

**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.**

1 health care professional who fails to provide the documentation  
2 required by subsection a. of this section.

3

4 2. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read  
5 as follows:

6 4. Personal injury protection coverage, regardless of fault.

7 Except as provided by section 45 of P.L.2003, c.89 (C.39:6A-  
8 3.3) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), every standard  
9 automobile liability insurance policy issued or renewed on or after  
10 the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall  
11 contain personal injury protection benefits for the payment of  
12 benefits without regard to negligence, liability or fault of any kind,  
13 to the named insured and members of his family residing in his  
14 household who sustain bodily injury as a result of an accident while  
15 occupying, entering into, alighting from or using an automobile, or  
16 as a pedestrian, caused by an automobile or by an object propelled  
17 by or from an automobile, and to other persons sustaining bodily  
18 injury while occupying, entering into, alighting from or using the  
19 automobile of the named insured, with permission of the named  
20 insured.

21 "Personal injury protection coverage" means and includes:

22 a. Payment of medical expense benefits in accordance with a  
23 benefit plan provided in the policy and approved by the  
24 commissioner, for reasonable, necessary, and appropriate treatment  
25 and provision of services to persons sustaining bodily injury, in an  
26 amount not to exceed \$250,000 per person per accident. In the  
27 event benefits paid by an insurer pursuant to this subsection are in  
28 excess of \$75,000 on account of bodily injury to any one person in  
29 any one accident, that excess shall be paid by the insurer and shall  
30 be reimbursable to the insurer from the Unsatisfied Claim and  
31 Judgment Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-  
32 73.1). The policy form, which shall be subject to the approval of  
33 the commissioner, shall set forth the benefits provided under the  
34 policy, including eligible medical treatments, diagnostic tests and  
35 services as well as such other benefits as the policy may provide.  
36 The commissioner shall set forth by regulation a statement of the  
37 basic benefits which shall be included in the policy. Medical  
38 treatments, diagnostic tests, and services provided by the policy  
39 shall be rendered in accordance with commonly accepted protocols  
40 and professional standards and practices which are commonly  
41 accepted as being beneficial for the treatment of the covered injury.  
42 Protocols and professional standards and practices and lists of valid  
43 diagnostic tests which are deemed to be commonly accepted  
44 pursuant to this section shall be those recognized by national  
45 standard setting organizations, national or state professional  
46 organizations of the same discipline as the treating provider, or  
47 those designated or approved by the commissioner in consultation  
48 with the professional licensing boards in the Division of Consumer

1 Affairs in the Department of Law and Public Safety. The  
2 commissioner, in consultation with the Commissioner of the  
3 Department of Health [and Senior Services] and the applicable  
4 licensing boards, may reject the use of protocols, standards and  
5 practices or lists of diagnostic tests set by any organization deemed  
6 not to have standing or general recognition by the provider  
7 community or the applicable licensing boards. Protocols shall be  
8 deemed to establish guidelines as to standard appropriate treatment  
9 and diagnostic tests for injuries sustained in automobile accidents,  
10 but the establishment of standard treatment protocols or protocols  
11 for the administration of diagnostic tests shall not be interpreted in  
12 such a manner as to preclude variance from the standard when  
13 warranted by reason of medical necessity. The policy form may  
14 provide for the precertification of certain procedures, treatments,  
15 diagnostic tests, or other services or for the purchase of durable  
16 medical goods, as approved by the commissioner, provided that the  
17 requirement for precertification shall not be unreasonable, and no  
18 precertification requirement shall apply within ten days of the  
19 insured event. The policy may provide that certain benefits  
20 provided by the policy which are in excess of the basic benefits  
21 required by the commissioner to be included in the policy may be  
22 subject to reasonable copayments in addition to the copayments  
23 provided for pursuant to subsection e. of this section, provided that  
24 the copayments shall not be unreasonable and shall be established  
25 in such a manner as not to serve to encourage underutilization of  
26 benefits subject to the copayments, nor encourage overutilization of  
27 benefits. The policy form shall clearly set forth any limitations on  
28 benefits or exclusions, which may include, but need not be limited  
29 to, benefits which are otherwise compensable under workers'  
30 compensation, or benefits for treatments deemed to be experimental  
31 or investigational, or benefits deducted pursuant to section 6 of  
32 P.L.1972, c.70 (C.39:6A-6). The commissioner may enlist the  
33 services of a benefit consultant in establishing the basic benefits  
34 level provided in this subsection, which shall be set forth by  
35 regulation no later than 120 days following the enactment date of  
36 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not  
37 advertise for bids for the consultant as provided in sections 3 and 4  
38 of P.L.1954, c.48 (C.52:34-8 and 52:34-9).

39 Notwithstanding the provisions of P.L.2003, c.18, physical  
40 therapy treatment shall not be reimbursable as medical expense  
41 benefits pursuant to this subsection unless rendered by a licensed  
42 physical therapist pursuant to a referral from a licensed physician,  
43 dentist, podiatrist or chiropractor within the scope of their  
44 respective practices.

45 Notwithstanding the provisions of P.L.2009, c.56 (C.45:2C-19 et  
46 al.), acupuncture treatment shall not be reimbursable as medical  
47 expense benefits pursuant to this subsection unless rendered by a

1 licensed acupuncturist pursuant to a referral from a licensed  
2 physician within the scope of the physician's practice.

3 Medical expense benefits shall not include coverage of opioid  
4 drugs unless the prescribing health care professional provides  
5 documentation of the following:

6 (1) A thorough medical history, physical examination, and  
7 medical decision-making plan, with particular attention focused on  
8 determining the cause of the patient's pain;

9 (2) An assessment of the patient's risk for opioid addiction,  
10 which shall include a baseline urine drug test; a baseline assessment  
11 of function and pain; and an assessment of past and current  
12 depression, anxiety disorders, and other behavioral or mood  
13 disorders associated with risk for opioid abuse;

14 (3) A written treatment plan, which shall be revised as new  
15 information becomes available, which shall include:

16 (a) clearly stated, measurable objectives;

17 (b) a list of all current medications, with doses, including  
18 medications prescribed by other health care professionals;

19 (c) a description of reported pain relief from each medication;

20 (d) a justification of the continued use of opioid drugs;

21 (e) documentation of attempts at weaning, and an explanation of  
22 why any failed weaning attempt has failed, including a detailed  
23 history to elicit information on alcohol and drug use;

24 (f) a description of how the patient's response to medication  
25 will be assessed;

26 (g) a description of any further planned diagnostic evaluation;  
27 and

28 (h) alternative treatments under consideration;

29 (4) Either sustained improvement in function and pain  
30 reduction, or consultation with a pain management specialist, which  
31 shall only be required if the daily prescribed dosage exceeds 120  
32 mg morphine-equivalent dose or if the duration of treatment  
33 exceeds 14 days; and

34 (5) An explanation to the patient of the risks and benefits of  
35 prescribed medications, along with expected outcomes, duration of  
36 treatment, and prescribing limitations.

37 An insurer may disqualify from participation in any network it  
38 has established to provide medical expense benefits pursuant to this  
39 subsection any health care professional who fails to provide the  
40 documentation required by this subsection.

41 b. Income continuation benefits. The payment of the loss of  
42 income of an income producer as a result of bodily injury disability,  
43 subject to a maximum weekly payment of \$100. Such sum shall be  
44 payable during the life of the injured person and shall be subject to  
45 an amount or limit of \$5,200, on account of injury to any one  
46 person in any one accident, except that in no case shall income  
47 continuation benefits exceed the net income normally earned during  
48 the period in which the benefits are payable.

1 c. Essential services benefits. Payment of essential services  
2 benefits to an injured person shall be made in reimbursement of  
3 necessary and reasonable expenses incurred for such substitute  
4 essential services ordinarily performed by the injured person for  
5 himself, his family and members of the family residing in the  
6 household, subject to an amount or limit of \$12 per day. Such  
7 benefits shall be payable during the life of the injured person and  
8 shall be subject to an amount or limit of \$4,380, on account of  
9 injury to any one person in any one accident.

10 d. Death benefits. In the event of the death of an income  
11 producer as a result of injuries sustained in an accident entitling  
12 such person to benefits under this section, the maximum amount of  
13 benefits which could have been paid to the income producer, but for  
14 his death, under subsection b. of this section shall be paid to the  
15 surviving spouse, or in the event there is no surviving spouse, then  
16 to the surviving children, and in the event there are no surviving  
17 spouse or surviving children, then to the estate of the income  
18 producer.

19 In the event of the death of one performing essential services as a  
20 result of injuries sustained in an accident entitling such person to  
21 benefits under subsection c. of this section, the maximum amount of  
22 benefits which could have been paid to such person, under  
23 subsection c., shall be paid to the person incurring the expense of  
24 providing such essential services.

25 e. Funeral expenses benefits. All reasonable funeral, burial  
26 and cremation expenses, subject to a maximum benefit of \$1,000,  
27 on account of the death of any one person in any one accident shall  
28 be payable to the decedent's estate.

29 Benefits payable under this section shall:

30 (1) Be subject to any option elected by the policyholder  
31 pursuant to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

32 (2) Not be assignable, except to a provider of service benefits  
33 under this section in accordance with policy terms approved by the  
34 commissioner, nor subject to levy, execution, attachment or other  
35 process for satisfaction of debts.

36 Medical expense benefit payments shall be subject to any  
37 deductible and any copayment which may be established as  
38 provided in the policy. Upon the request of the commissioner or  
39 any party to a claim for benefits or payment for services rendered, a  
40 provider shall present adequate proof that any deductible or  
41 copayment related to that claim has not been waived or discharged  
42 by the provider.

43 No insurer or health provider providing benefits to an insured  
44 shall have a right of subrogation for the amount of benefits paid  
45 pursuant to any deductible or copayment under this section.

46 (cf: P.L.2009, c.56, s.18)

1       3. This act shall take effect on the first day of the seventh  
2 month next following the date of enactment and shall apply to  
3 insurance policies or contracts issued or renewed on or after that  
4 date.

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6

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STATEMENT

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9       This bill establishes restrictions on coverage of opioid drugs for  
10 injured workers receiving workers' compensation benefits and  
11 personal injury protection coverage under private passenger  
12 automobile insurance policies.

13       Under the bill, medical expense benefits are not to include  
14 coverage of opioid drugs unless the prescribing health care  
15 professional provides documentation of the following:

16       (1) A thorough medical history, physical examination, and  
17 medical decision-making plan, with particular attention focused on  
18 determining the cause of the patient's pain;

19       (2) An assessment of the patient's risk for opioid addiction,  
20 which shall include a baseline urine drug test; a baseline assessment  
21 of function and pain; and an assessment of past and current  
22 depression, anxiety disorders, and other behavioral or mood  
23 disorders associated with risk for opioid abuse;

24       (3) A written treatment plan, which shall be revised as new  
25 information becomes available, which shall include:

26       (a) clearly stated, measurable objectives;

27       (b) a list of all current medications, with doses, including  
28 medications prescribed by other health care professionals;

29       (c) a description of reported pain relief from each medication;

30       (d) a justification of the continued use of opioid drugs;

31       (e) documentation of attempts at weaning, and an explanation of  
32 why any failed weaning attempt has failed, including a detailed  
33 history to elicit information on alcohol and drug use;

34       (f) a description of how the patient's response to medication  
35 will be assessed;

36       (g) a description of any further planned diagnostic evaluation;  
37 and

38       (h) alternative treatments under consideration;

39       (4) Either sustained improvement in function and pain  
40 reduction, or consultation with a pain management specialist, which  
41 shall only be required if the daily prescribed dosage exceeds 120  
42 mg morphine-equivalent dose or if the duration of treatment  
43 exceeds 14 days; and

44       (5) An explanation to the patient of the risks and benefits of  
45 prescribed medications, along with expected outcomes, duration of  
46 treatment, and prescribing limitations.

47       The bill permits an employer or insurer to disqualify from  
48 participation in any network it has established to provide medical

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1 expense benefits any health care professional who fails to provide  
2 the documentation required by the bill.

3 The bill is to take effect on the first day of the seventh month  
4 after the date of enactment, and is to apply to insurance policies or  
5 contracts issued or renewed on or after that date.