

**HOUSE . . . . . No. 1805**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Sean Garballey**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act Relative to Workers' Compensation.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sean Garballey	23rd Middlesex
Martin J. Walsh	13th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO WORKERS' COMPENSATION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Subsection (7A) of Chapter 152 of the General Laws, as now appearing, is hereby amended by adding  
2 the following sentence after the fourth sentence as so appearing:—  
3 An administrative Judge shall take into consideration the employee's pre-injury employment in determining whether  
4 the injury remains a major but not necessarily predominant cause of disability and need for treatment.

5 SECTION 2. Section 13 of M.G.L. c. 152 shall be amended as follows: to the last sentence of the first paragraph of  
6 subsection (1), delete “.” and add “provided, any rate set by the rate setting commission shall not be less than 80%  
7 of the usual and customary fee for any such health care service.”

8 SECTION 3. Section 14, Subsection 1 of Chapter 152, as currently appearing is amended by adding the following  
9 language after the word “proceedings” currently appearing therein:— “including an employee's claim for medical  
10 benefits pursuant to sections 13 & 30 of this chapter.”

11 SECTION 4. Section 30 of M.G.L. c. 152 shall be further amended as follows: following the last sentence in the first  
12 paragraph, add “In any case in which the provision of health care services is an issue and it is reasonably expected  
13 that a delay or denial may result in harm to the employee, the employee may request an emergency conference  
14 before an Administrative Judge concerning the sole issue of the provision of health care services. Such request may  
15 be made following a referral to dispute resolution and upon information, including a medical record indicating that  
16 the health care services sought are reasonable, necessary and related to the industrial injury or illness at issue.”

17 SECTION 5. Section 30 of M.G.L. c. 152 shall be amended as follows: delete the first sentence of the second  
18 paragraph and add “From time to time, the commissioner shall promulgate regulations regarding the provision of  
19 adequate and reasonable health care services; provided such regulations shall identify no more than five treatment  
20 guidelines representing five of the most common industrial injuries or illnesses for which utilization review shall be  
21 required.” Following the last sentence of the second paragraph, add “Otherwise the determination of whether any  
22 provision of health care services is reasonable or adequate shall be made by the Administrative Judge pursuant to  
23 sections 10A, 11 and 11 A of the Act.”

24 SECTION 6. Section 30, of Chapter 152, as now appearing by inserting at the end thereof the following  
25 paragraph:—  
26 Any insurer who provides utilization review programs or contracts with agents to provide utilization review  
27 programs shall comply with any regulations promulgated regarding utilization review programs, including the time

28 limitations set forth therein. Failure to comply with said regulations shall result in a determination that the requested  
29 health care services shall be deemed approved.

30 SECTION 7. Chapter 152, Section 34, of the General Laws, as now appearing, is hereby amended by striking out  
31 the first sentence of Section 34 as so appearing, and inserting in place thereof, the following sentence:  
32 Section 34. While the incapacity for work resulting from the injury is total, during each week of incapacity, the  
33 insurer shall pay the injured employee a weekly compensation equal to two-thirds of his average weekly wage  
34 before the injury, but not more than the maximum weekly compensation rate, unless the average weekly wage of the  
35 employee is less than the minimum weekly compensation rate, in which case said weekly compensation shall be  
36 equal to his average weekly wage.

37 SECTION 8. Chapter 152 of the General Laws, as now appearing is hereby amended by striking out Section 35 and  
38 inserting in place thereof the following section:—  
39 Section 35. While the incapacity for work resulting from the injury is partial, during each week of incapacity the  
40 insurer shall pay the injured employee a weekly compensation equal to sixty percent of the difference between his or  
41 her average weekly wage before the injury and the weekly wage he or she is capable of earning after the injury. An  
42 insurer may reduce the amount paid to an employee under this section to the amount at which the employee's  
43 combined weekly earnings and benefits are equal to two times the average weekly wage in the commonwealth at the  
44 time of such reduction.  
45 The total number of weeks of compensation due the employee under this section shall not exceed two hundred sixty;  
46 provided, however, that this number may be extended to five hundred twenty if an insurer agrees or an  
47 administrative judge finds that the employee has, as a result of a personal injury under this chapter, suffered a  
48 permanent loss of seventy-five percent or more of any bodily function or sense specified in paragraph (a), (b), (e),  
49 (f), (g), or (h) of subsection (1) of section thirty-six, developed a permanently life-threatening physical condition, or  
50 contracted a permanently disabling occupational disease which is of a physical nature and cause, or has returned to  
51 employment pursuant to an Individual Written Rehabilitation Plan pursuant to Section 30(H); or has been found  
52 unsuitable for vocational rehabilitation by the Office of Education and Vocational Rehabilitation; or has returned to  
53 employment at less than his preinjury average weekly wage; or has been found by an administrative judge to have a  
54 permanent partial incapacity. Where applicable, losses under this section shall be determined in accordance with  
55 standards set forth in the American Medical Association Guides to the Evaluation of Permanent Impairments. Where  
56 the insurer agrees or the administrative judge finds such permanent partial disability as is described in this  
57 paragraph, the total number of weeks the employee may receive benefits under this section shall not exceed five  
58 hundred twenty. Where there has been no such agreement or finding the number of weeks the employee may receive  
59 benefits under these sections shall not exceed three hundred sixty four.

60 SECTION 9. Section 36 of Chapter 152 of the General Laws, as now appearing, is hereby amended by striking out  
61 subsection (k) and substituting in its place the following paragraph:—  
62 Subsection (k). For bodily disfigurement, an amount which, according to the determination of the member or  
63 reviewing board, is a proper and equitable compensation, not to exceed fifteen thousand dollars; which sum shall be  
64 payable in addition to all other sums due under this section.

65 SECTION 10. Section 46A of Chapter 152 as currently appearing is amended by adding the following paragraph:—  
66 Notwithstanding any general or special law to the contrary, in a case of person who has filed a claim for injury under  
67 the provisions of chapter 152 of the General Laws and such claim is disputed and not accepted by the workers'  
68 compensation insurer and such person has coverage under a policy of accident and sickness insurance, the health  
69 insurer shall provide reasonable and necessary medical benefits for such person until and unless an administrative  
70 judge of the division of industrial accidents issues an order directing the workers' compensation insurer to provide  
71 medical benefits pursuant to said chapter 152.