

# HOUSE . . . . . No. 1805

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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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  
2 hereby amended by adding the following sentence after the fourth sentence as so appearing:—An  
3 administrative Judge shall take into consideration the employee’s pre-injury employment in  
4 determining whether the injury remains a major but not necessarily predominant cause of  
5 disability and need for treatment.

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

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

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

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

SECTION 6. Section 30, of Chapter 152, as now appearing by inserting at the end thereof the following paragraph:—Any insurer who provides utilization review programs or contracts with agents to provide utilization review programs shall comply with any regulations promulgated regarding utilization review programs, including the time limitations set forth therein. Failure to comply with said regulations shall result in a determination that the requested health care services shall be deemed approved.

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

SECTION 8. Chapter 152 of the General Laws, as now appearing is hereby amended by striking out Section 35 and inserting in place thereof the following section:—Section 35. While the incapacity for work resulting from the injury is partial, during each week of incapacity the insurer shall pay the injured employee a weekly compensation equal to sixty percent of the difference between his or her average weekly wage before the injury and the weekly wage he or she is capable of earning after the injury. An insurer may reduce the amount paid to an employee under this section to the amount at which the employee's combined weekly earnings and benefits are equal to two times the average weekly wage in the commonwealth at the time of such reduction. The total number of weeks of compensation due the employee under this section shall not exceed two hundred sixty; provided, however, that this number may be extended to five hundred twenty if an insurer agrees or an administrative judge finds that the employee has, as a result of a personal injury under this chapter, suffered a permanent loss of seventy-five percent or more of any bodily function or sense specified in paragraph (a), (b), (e), (f), (g), or (h) of subsection (1) of section thirty-six, developed a permanently life-threatening physical condition, or contracted a permanently disabling occupational disease which is of a physical nature and

59 cause, or has returned to employment pursuant to an Individual Written Rehabilitation Plan  
60 pursuant to Section 30(H); or has been found unsuitable for vocational rehabilitation by the  
61 Office of Education and Vocational Rehabilitation; or has returned to employment at less than  
62 his preinjury average weekly wage; or has been found by an administrative judge to have a  
63 permanent partial incapacity. Where applicable, losses under this section shall be determined in  
64 accordance with standards set forth in the American Medical Association Guides to the  
65 Evaluation of Permanent Impairments. Where the insurer agrees or the administrative judge finds  
66 such permanent partial disability as is described in this paragraph, the total number of weeks the  
67 employee may receive benefits under this section shall not exceed five hundred twenty. Where  
68 there has been no such agreement or finding the number of weeks the employee may receive  
69 benefits under these sections shall not exceed three hundred sixty four.

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

75 SECTION 10. Section 46A of Chapter 152 as currently appearing is amended by adding  
76 the following paragraph:—Notwithstanding any general or special law to the contrary, in a case  
77 of person who has filed a claim for injury under the provisions of chapter 152 of the General  
78 Laws and such claim is disputed and not accepted by the workers' compensation insurer and  
79 such person has coverage under a policy of accident and sickness insurance, the health insurer  
80 shall provide reasonable and necessary medical benefits for such person until and unless an

- 81 administrative judge of the division of industrial accidents issues an order directing the workers'
- 82 compensation insurer to provide medical benefits pursuant to said chapter 152.