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SENATE BILL 245

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

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO WORKERS' COMPENSATION; 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 this section, provide the worker in a timely manner reasonable and necessary health care services from a health care provider.

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1                   B. A workers' compensation carrier or an employer  
2 providing workers' compensation benefits is not liable for a  
3 claim for reimbursement associated with medical cannabis.

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

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

25                   [~~D.~~] E. If a party objects to the choice of health

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

21 [~~E.~~] F. If the worker or employer disagrees with  
22 the choice of the health care provider of the other party at  
23 any time, including in the initial sixty-day period, and they  
24 cannot otherwise agree, [~~then he~~] the worker or employer shall  
25 submit a request for a change of health care provider to a

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1 workers' compensation judge. The director shall adopt rules  
2 [~~and regulations~~] governing forms, which employers shall post  
3 in conspicuous places, to submit to a workers' compensation  
4 judge a request for change of a health care provider.

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

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

21 [~~H.~~] I. In all cases where the injury [~~is such as~~  
22 ~~to permit~~] permits the use of artificial members, including  
23 teeth and eyes, the employer shall pay for the artificial  
24 members."

25 SECTION 2. Section 52-3-15 NMSA 1978 (being Laws 1951,

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1 Chapter 184, Section 2, as amended) is amended to read:

2 "52-3-15. DISABLEMENT COMPENSATION RESTRICTIONS--MEDICAL  
3 AND RELATED SERVICES--SELECTION OF HEALTH CARE PROVIDER--  
4 ARTIFICIAL MEMBERS.--

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

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

16 C. A workers' compensation carrier or an employer  
17 providing workers' compensation benefits is not liable for a  
18 claim for reimbursement associated with medical cannabis.

19 [~~G.~~] D. The employer shall initially either select  
20 the health care provider for the injured worker or permit the  
21 injured worker to make the selection. Subject to the  
22 provisions of this section, that selection shall be in effect  
23 during the first sixty days [~~from~~] after the date the worker  
24 receives treatment from the initially selected health care  
25 provider.

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

15           ~~[E-]~~ F. If a party objects to the choice of health  
16 care provider made pursuant to Subsection [D] E of this  
17 section, [~~then he~~] the party shall file an objection to that  
18 choice pursuant to Subsection [F] G of this section with a  
19 workers' compensation judge within three days [~~from~~] after  
20 receiving the notice. [~~He~~] The party shall also provide notice  
21 of that objection to the other party. If the employer does not  
22 file [~~his~~] an objection within the three-day period, [~~then he~~  
23 ~~shall be~~] the employer is liable for the cost of treatment  
24 provided by the worker's health care provider until the  
25 employer does file [~~his~~] an objection and the workers'

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1 compensation judge has rendered [~~his~~] a decision as set forth  
2 in Subsection [~~G~~] H of this section. If the worker does not  
3 file [~~his~~] an objection within the three-day period, [~~then~~] the  
4 employer [~~shall~~] is only [~~be~~] liable for the cost of treatment  
5 from the health care provider selected by the employer, subject  
6 to the provisions of Subsections [~~F, G and H~~] G through I of  
7 this section. Nothing in this section shall remove the  
8 employer's obligation to provide reasonable and necessary  
9 health care services to the worker so long as the worker  
10 complies with the provisions of this section.

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

20 [~~G-~~] H. The request shall state the reasons for the  
21 request and may state the applicant's choice for a different  
22 health care provider. The applicant shall bear the burden of  
23 proving to the workers' compensation judge that the care being  
24 received is not reasonable. The workers' compensation judge  
25 shall render [~~his~~] a decision within seven days [~~from~~] after

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1 the date the request was submitted. If the workers'  
2 compensation judge grants the request, [~~he~~] the judge shall  
3 designate either the applicant's choice of health care provider  
4 or a different health care provider.

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

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

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

17 "52-4-5. FEE SCHEDULE.--

18 A. The director shall adopt and promulgate  
19 regulations establishing a schedule of maximum charges as  
20 deemed necessary for treatment or attendance, service, devices,  
21 apparatus or medicine provided by a health care provider. The  
22 rates in the schedules of maximum charges shall not fall below  
23 the sixtieth percentile or above the eightieth percentile of  
24 current rates for health care providers. In determining  
25 current rates for health care providers, the director shall

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1 utilize a variety of health care provider charges, including  
2 the charges of those providers serving low-income, medicare and  
3 medicaid patients.

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

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

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

18 E. If it is determined by the person primarily  
19 responsible for payment that the charges of a health care  
20 provider exceed the amount established pursuant to Subsection B  
21 of this section or that a health care provider [~~over-utilized~~]  
22 overutilized or otherwise rendered or ordered inappropriate  
23 health care or health care services, and payment is withheld on  
24 those grounds, the health care provider may appeal to the  
25 director regarding that determination. The director shall

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1 establish by regulation procedures for an appeal by a health  
2 care provider.

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

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

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

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

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

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

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

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

24 H. Nothing in this section shall prevent an  
25 employer from contracting with a health care provider for fees

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1 less than the maximum charges allowable.

2 I. Nothing in this section shall be construed to  
3 require a workers' compensation carrier or an employer  
4 providing workers' compensation benefits to pay for costs  
5 associated with the purchase or use of medical cannabis."

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