

[First Reprint]

ASSEMBLY, No. 2123

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 25, 2008

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

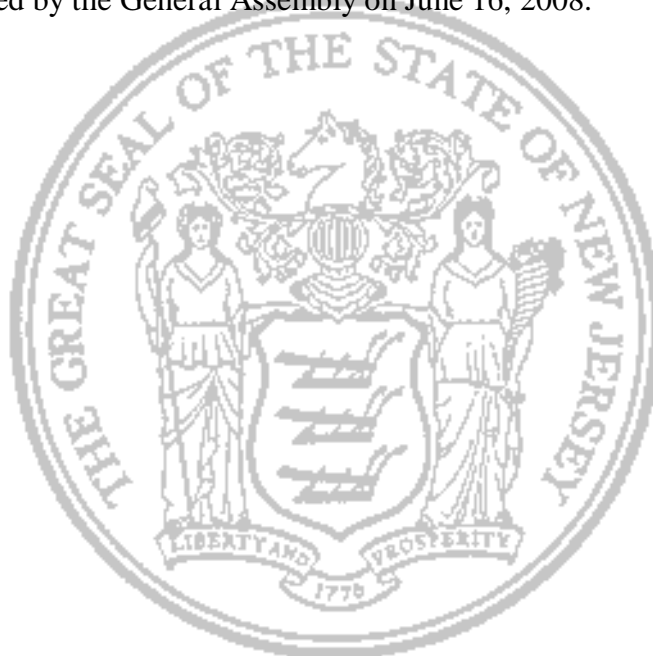
Assemblyman L.Smith

SYNOPSIS

Concerns access to physical therapy services, and insurance claims handling following access to those services.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 16, 2008.



(Sponsorship Updated As Of: 6/13/2008)

1 AN ACT concerning the practice of physical therapy, supplementing
2 chapter 30 of Title 17B of the New Jersey Statutes, and
3 amending various parts of the statutory law.

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

7
8 1. (New section) As used in sections 1 through ¹[6] 8¹ of this
9 act:

10 ¹“Affiliate” means a business entity that directly, or indirectly
11 through one or more intermediaries, controls, or is controlled by, or
12 is under common control with, a licensed health care facility.¹

13 "Assignment of benefits" means any written instrument executed
14 by a covered person or that person's authorized representative,
15 which assigns the covered person's right to receive reimbursement
16 for a covered physical therapy benefit provided to the covered
17 person, to a physical therapy provider.

18 "Carrier" means an insurance company, health service
19 corporation, hospital service corporation, medical service
20 corporation, or health maintenance organization authorized to issue
21 a health benefits plan in this State.

22 "Claimant" means a physical therapy provider, or a covered
23 person who does not execute an assignment of benefits, claiming
24 the right to receive payment from a payer or payer's agent for any
25 covered physical therapy benefit.

26 "Commissioner" means the Commissioner of Banking and
27 Insurance.

28 ¹“Control,” including the terms “controlled by” and “under
29 common control,” means the possession, directly or indirectly, of
30 the power to direct or cause the direction of the management and
31 policies of a business entity, whether through the ownership of
32 voting securities, by contract or otherwise. “Control” shall not be
33 construed to apply to a physical therapist's professional, legal, and
34 ethical responsibilities for the practice of physical therapy,
35 consistent with State laws and regulations applicable to that
36 practice.¹

37 "Covered person" means a person on whose behalf a payer or
38 payer's agent is obligated to pay benefits or provide services
39 pursuant to a health benefits plan.

40 "Covered physical therapy benefit" means: (1) a service of
41 physical therapy provided by a physical therapy provider to a
42 covered person; (2) payable to the physical therapy provider; and
43 (3) at a rate not less than the rate established for the service by the
44 applicable mandated fee schedule as set forth in this act.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 16, 2008.

1 “Generally accepted standards of physical therapy” means
2 standards that are based on: the provisions of the “Physical
3 Therapist Licensing Act of 1983,” P.L.1983, c.296 (C.45:9-37.11 et
4 seq.), concerning business practices, professional conduct, and
5 related practice issues, or promulgated by the State Board of
6 Physical Therapy Examiners pursuant to that act; and, so long as
7 not inconsistent with the statutory law or the board’s regulations,
8 credible scientific evidence published in peer-reviewed medical
9 literature generally recognized by the relevant physical therapy
10 community, physical therapy practice specialist society
11 recommendations, the views of physical therapists and other
12 authorized health care providers licensed pursuant to Title 45 of the
13 Revised Statutes who practice in relevant clinical areas, and any
14 other relevant factor as determined by the commissioner by
15 regulation.

16 “Health benefits plan” means a hospital or medical expense
17 insurance policy, health service corporation contract, hospital
18 service corporation contact, medical service corporation contract,
19 health maintenance organization contract, or other contract, policy,
20 or plan for hospital or medical care delivered or issued in this State.
21 Health benefits plan includes, but is not limited to: ¹[coverage only
22 for accident, or disability income insurance, or any combination
23 thereof;]¹ liability insurance, including general liability insurance
24 and motor vehicle liability insurance; workers’ compensation or
25 similar insurance; and motor vehicle medical payment insurance or
26 personal injury protection coverage provided by a motor vehicle or
27 automobile insurance policy issued pursuant to Subtitle 3 of Title
28 17 of the Revised Statutes (C.17:17-1 et seq.) or P.L.1972, c.70
29 (C.39:6A-1 et seq.).

30 “Health care facility” means “health care facility” as defined by
31 subsection a. of section 2 of P.L.1971, c.136 (C.26:2H-2) , ¹except
32 as provided in section 7 of this act ¹ .

33 “Mandated fee schedule” means a regional medical fee schedule
34 promulgated by the commissioner pursuant to section 10 of
35 P.L.1988, c.119 (C.39:6A-4.6), but, for purposes of this act shall
36 apply to any reimbursement of a covered physical therapy benefit
37 pursuant to any health benefits plan.

38 “Medical necessity” or “medically necessary” means a physical
39 therapy service that a physical therapy provider, exercising prudent
40 clinical judgment, would provide to a covered person for the
41 purpose of evaluating, diagnosing, or treating an injury or
42 disability, and that is: in accordance with the generally accepted
43 standards of physical therapy; clinically appropriate, in terms of
44 type, frequency, extent, site and duration, and considered effective
45 for the covered person’s injury or disability; not primarily for the
46 convenience of the covered person or the physical therapy provider;
47 and not more costly than an alternative service or sequence of
48 services by that physical therapy provider, which is at least as likely

1 to produce equivalent therapeutic or diagnostic results as to the
2 diagnosis or treatment of that covered person's injury or disability.

3 "Network" means one or more physical therapy providers, which
4 enter into a selective contracting arrangement with a carrier or
5 organized delivery system.

6 "Organized delivery system" means "organized delivery system"
7 as defined in section 1 of P.L.1999, c.409 (C.17:48H-1).

8 "Payer" means a carrier or organized delivery system assuming
9 the financial risk of paying for a covered physical therapy benefit.

10 "Payer's agent" or "agent" means any agent of a payer,
11 including, but not limited to, a third party administrator or third
12 party billing service, providing authorization for covered physical
13 therapy benefits, or administrative functions including, but not
14 limited to, the payment of claims or the receipt, processing, or
15 transfer of claims or claims information, without the assumption of
16 a financial risk for any claims payment.

17 "Physical therapist" means "physical therapist" as defined in
18 section 3 of the "Physical Therapist Licensing Act of 1983,"
19 P.L.1983, c.296 (C.45:9-37.13).

20 "Physical therapy" means "physical therapy" as defined in
21 section 3 of the "Physical Therapist Licensing Act of 1983,"
22 P.L.1983, c.296 (C.45:9-37.13).

23 ¹["Physical therapy corporation" means a professional
24 corporation under which physical therapy providers provide
25 physical therapy.]¹

26 "Physical therapy provider" means an individual, licensed health
27 care facility ¹or an affiliate thereof¹, or other entity authorized to
28 render, and be reimbursed for, physical therapy services under State
29 law.

30 "Prior authorization" means prior approval by a payer or payer's
31 agent of a covered physical therapy benefit to be provided by a
32 physical therapy provider, requested by a physical therapy provider,
33 and requested subsequent to any initial examination, evaluation, and
34 diagnosis of a covered person by a physical therapist.

35 ¹["Professional corporation" means "professional corporation"
36 as defined in paragraph (2) of section 3 of "The Professional
37 Service Corporation Act," P.L.1969, c.232 (C.14A:17-3).]¹

38 "Selective contracting arrangement" means an arrangement in
39 which a carrier or organized delivery system participates in
40 selective contracting with one or more physical therapy providers,
41 and which arrangement contains reasonable benefit differentials,
42 including, but not limited to, predetermined fee or reimbursement
43 rates for covered physical therapy benefits applicable to
44 participating and nonparticipating physical therapy providers.

45

46 2. (New section) Based upon the provisions of P.L.2003, c.18
47 (C.45:9-37.34b et seq.), concerning direct access by the public to

1 physical therapists' services, and notwithstanding any provision of
2 law to the contrary, with respect to any health benefits plan
3 delivered, issued, executed or renewed in this State, or approved for
4 issuance or renewal in this State by the commissioner, a payer or
5 payer's agent shall not require any manner of prior approval,
6 including, but not limited to, any form of review by the payer or its
7 agent, or a professional referral from another health care provider
8 licensed pursuant to Title 45 of the Revised Statutes, in order for a
9 covered person to access any physical therapy service.

10
11 3. (New section) Notwithstanding any provision of law to the
12 contrary, with respect to any health benefits plan delivered, issued,
13 executed or renewed in this State, or approved for issuance or
14 renewal in this State by the commissioner:

15 a. A payer or payer's agent shall provide reimbursement to a
16 claimant for any covered physical therapy benefit under a health
17 benefits plan at a rate that is not less than the rate established for
18 the benefit by the Commissioner of Banking and Insurance pursuant
19 to a mandated fee schedule which is established and updated in
20 accordance with the provisions of section 10 of P.L.1988, c.119
21 (C.39:6A-4.6).

22 b. A payer or payer's agent shall not calculate the reimbursement
23 rate of any out-of-network physical therapy provider by using any
24 negotiated, predetermined fee or reimbursement rate agreed to by
25 any network of physical therapy providers pursuant to a selective
26 contracting arrangement.

27
28 4. (New section) a. Notwithstanding any provision of law to the
29 contrary, with respect to any health benefits plan delivered, issued,
30 executed or renewed in this State, or approved for issuance or
31 renewal in this State by the commissioner, a covered person may,
32 through an assignment of benefits, assign to a physical therapy
33 provider, the covered person's right to receive reimbursement for a
34 covered physical therapy benefit provided to the covered person,
35 regardless of whether the physical therapy provider is a participant
36 in a network or otherwise under contract with a carrier or organized
37 delivery system to provide the covered person with physical
38 therapy.

39 b. A physical therapy provider provided an assignment of
40 benefits by a covered person shall submit a copy of that assignment
41 of benefits, or provide other notice of that assignment of benefits
42 acceptable to the commissioner pursuant to regulation, to the payer
43 or payer's agent with any claim for payment for any physical
44 therapy provided to the covered person.

45 c. The payer or payer's agent shall, pursuant to a submitted
46 claim and a notice of an assignment of benefits, remit payment of
47 the claim directly to the claiming physical therapy provider, and
48 provide written notice of the payment to the covered person.

1 5. (New section) a. Notwithstanding the claims authorization,
2 processing, and payment provisions of P.L.1999, c.154 (C.17B:30-
3 23 et al.) for health care claims, P.L.1972, c.70 (C.39:6A-1 et seq.)
4 for private passenger automobile insurance personal injury
5 protection claims, or any other law concerning any other health
6 benefits plan claims, a payer or payer's agent shall respond to a
7 request for prior authorization by a physical therapy provider,
8 concerning a covered physical therapy benefit to be provided by a
9 physical therapy provider, within a time frame appropriate to the
10 medical exigencies underlying the request, but no later than three
11 days following the time the request is made. Whenever the physical
12 therapy provider receives prior authorization to provide a covered
13 physical therapy benefit to a covered person from a payer or payer's
14 agent, or the payer or payer's agent fails to respond to a prior
15 authorization request within the time frame established by this
16 subsection, that payer or payer's agent shall not reduce, delay, or
17 deny a claim for reimbursement to the physical therapy provider, or
18 to the covered person if the claimant, on any basis pertaining to
19 medical necessity in the absence of fraud or misrepresentation,
20 unless the payer or payer's agent first requests an independent
21 examination of the covered person pursuant to subsection b. of this
22 section.

23 b. (1) A payer or payer's agent, in order to reduce, delay, or
24 deny a claim for reimbursement, on the basis of medical necessity,
25 of a previously authorized covered physical therapy benefit, or after
26 failing to respond to a prior authorization request for the benefit
27 which is the subject of the claim, shall request an independent
28 examination of the covered person, and shall, pursuant to paragraph
29 (4) of this subsection, base any decision to reduce, delay, or deny
30 the claim upon the conclusions set forth in the written report
31 resulting from the examination. The independent examination shall
32 be:

33 (a) conducted by a physical therapist;

34 (b) conducted within a reasonable proximity to the covered
35 person's residence;

36 (c) based on and refer to objective clinical evidence, which may
37 include medical testing performed in accordance with medical
38 protocols pursuant to subsection a. of section 4 of P.L.1972, c.70
39 (C.39:6A-4) and the use of valid diagnostic tests administered in
40 accordance with section 12 of P.L.1998, c.21 (C.39:6A-4.7), or any
41 other applicable law concerning physical therapy medical protocols
42 or valid diagnostic tests, and shall not be experimental in nature or
43 dependent entirely upon the subjective response of the covered
44 person; and

45 (d) paid for entirely by the payer, including any costs associated
46 with the resulting written report containing the conclusions drawn
47 from the examination.

1 (2) The covered person shall provide or make available to the
2 examining physical therapist any pertinent medical records or
3 medical history that the physical therapist deems necessary to the
4 independent examination.

5 (3) The examining physical therapist shall provide a written
6 report to the payer or payer's agent and the claimant which contains
7 the conclusions drawn from the examination.

8 (4) The payer or payer's agent shall base any decision to reduce,
9 delay, or deny the claim for medical necessity upon the conclusions
10 drawn from the independent examination, as set forth in the written
11 report.

12 c. The provisions of this section shall also apply to any claim for
13 reimbursement for a covered physical therapy benefit: (1) provided
14 by a physical therapy provider to a patient for which a payer or
15 payer's agent provided prior authorization, or failed to respond to a
16 prior authorization request within the time frame established by
17 subsection a. of this section; (2) but for which the patient is no
18 longer eligible to receive coverage under the health benefits plan
19 which provided the basis for the prior authorization, or was
20 applicable at the time the payer or payer's agent failed to respond to
21 the prior authorization request; and (3) it is determined that the
22 patient is covered by another health benefits plan. Whenever these
23 circumstances occur, the current covering payer, or that payer's
24 agent, based upon the coverage provided to the patient under the
25 other health benefits plan, shall accept the previously provided
26 authorization, or previously established legal obligation based upon
27 the failure to respond to the prior authorization request, when
28 processing any claim for reimbursement.

29
30 6. (New section) Notwithstanding any applicable claims
31 authorization, processing, and payment provisions of P.L.1999,
32 c.154 (C.17B:30-23 et al.) for health care claims, P.L.1972, c.70
33 (C.39:6A-1 et seq.) for private passenger automobile insurance
34 personal injury protection claims, or any other law concerning any
35 other health benefits plan claims, a payer or payer's agent shall not
36 amend a claim for reimbursement for any covered physical therapy
37 benefit to a physical therapy provider, or to a covered person if the
38 claimant, by changing the diagnostic code assigned to the physical
39 therapy benefit provided by the claimant.

40
41 ¹7. (New section) Nothing in this act shall be construed to apply
42 to comprehensive rehabilitation hospitals licensed pursuant to
43 P.L.1971, c.136 (C.26:2H-1 et seq.).¹

44
45 ¹8. (New section) Nothing in this act shall be construed to
46 amend, modify, or in any way change any provision of "The
47 Professional Service Corporation Act," P.L.1969, c.232 (C.14A:17-
48 1 et seq.) or the authorization granted under the laws of this State to

1 any licensed individual to render and to be reimbursed by carriers
2 for physical therapy services.¹

3

4 **'[7.] 9.'**¹ Section 6 of P.L.1997, c.192 (C.26:2S-6) is amended
5 to read as follows:

6 6. a. A carrier which offers a managed care plan or uses a
7 utilization management system in any of its health benefits plans
8 shall designate a licensed physician to serve as medical director.
9 The medical director, or his designee, shall be designated to serve
10 as the medical director for medical services provided to covered
11 persons in the State and shall be licensed to practice medicine in
12 New Jersey.

13 The medical director shall be responsible for treatment policies,
14 protocols, quality assurance activities and utilization management
15 decisions of the carrier. The treatment policies, protocols, quality
16 assurance program and utilization management decisions of the
17 carrier shall be based on generally accepted standards of health care
18 practice. The quality assurance and utilization management
19 programs shall be in accordance with standards adopted by
20 regulation of the department pursuant to this act.

21 b. The medical director shall ensure that:

22 (1) Any utilization management decision to deny, reduce or
23 terminate a health care benefit or to deny payment for a health care
24 service, because that service is not medically necessary, shall be
25 made by a physician. In the case of a health care service prescribed
26 or provided by a dentist, the decision shall be made by a dentist;

27 (2) A utilization management decision shall not retrospectively
28 deny coverage for health care services provided to a covered person
29 when prior approval has been obtained from the carrier for those
30 services, unless the approval was based upon fraudulent information
31 submitted by the covered person or the participating provider;

32 (3) In the case of a managed care plan, a procedure is
33 implemented whereby participating physicians and dentists have an
34 opportunity to review and comment on all medical and surgical and
35 dental protocols, respectively, of the carrier;

36 (4) The utilization management program is available on a 24-
37 hour basis to respond to authorization requests for emergency and
38 urgent services and is available, at a minimum, during normal
39 working hours for inquiries and authorization requests for
40 nonurgent health care services; **[and]**

41 (5) In the case of a managed care plan, a covered person is
42 permitted to: choose or change a primary care physician from
43 among participating providers in the provider network, and, when
44 appropriate, choose a specialist from among participating network
45 providers following an authorized referral, if required by the carrier,
46 and subject to the ability of the specialist to accept new patients;
47 and

1 (6) Any manner of prior approval, including, but not limited to,
2 any form of review by the carrier or a professional referral from
3 another health care provider licensed pursuant to Title 45 of the
4 Revised Statutes, shall not be required in order for a covered person
5 to access any physical therapy service.

6 (cf: P.L.1997, c.192, s.6)

7
8 '**[8.] 10.'** Section 4 of P.L.1998, c.21 (C.39:6A-3.1) is amended
9 to read as follows:

10 4. As an alternative to the mandatory coverages provided in
11 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), any
12 owner or registered owner of an automobile registered or
13 principally garaged in this State may elect a basic automobile
14 insurance policy providing the following coverage:

15 a. Personal injury protection coverage, for the payment of
16 benefits without regard to negligence, liability or fault of any kind,
17 to the named insured and members of his family residing in his
18 household, who sustained bodily injury as a result of an accident
19 while occupying, entering into, alighting from or using an
20 automobile, or as a pedestrian, caused by an automobile or by an
21 object propelled by or from an automobile, and to other persons
22 sustaining bodily injury while occupying, entering into, alighting
23 from or using the automobile of the named insured, with the
24 permission of the named insured. "Personal injury protection
25 coverage" issued pursuant to this section means and includes
26 payment of medical expense benefits, as provided in the policy and
27 approved by the commissioner, for the reasonable and necessary
28 treatment of bodily injury in an amount not to exceed \$15,000 per
29 person per accident; except that, medical expense benefits shall be
30 paid in an amount not to exceed \$250,000: (1) for all medically
31 necessary treatment of permanent or significant brain injury, spinal
32 cord injury or disfigurement or (2) for medically necessary
33 treatment of other permanent or significant injuries rendered at a
34 trauma center or acute care hospital immediately following the
35 accident and until the patient is stable, no longer requires critical
36 care and can be safely discharged or transferred to another facility
37 in the judgment of the attending physician. In the event benefits
38 paid by an insurer pursuant to this subsection are in excess of
39 \$75,000 on account of personal injury to any one person in any one
40 accident covered by a policy issued or renewed prior to January 1,
41 2004, such excess shall be paid by the insurer and shall be
42 reimbursable to the insurer from the Unsatisfied Claim and
43 Judgment Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-
44 73.1). Benefits provided under basic coverage shall be in
45 accordance with a benefit plan provided in the policy and approved
46 by the commissioner. The policy form, which shall be subject to
47 the approval of the commissioner, shall set forth the benefits
48 provided under the policy, including eligible medical treatments,

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

1 this amendatory and supplementary act. The commissioner shall
2 not advertise for the consultant as provided in sections 3 and 4 of
3 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

4 Medical expense benefits payable under this subsection shall not
5 be assignable, except to a provider of service benefits, in
6 accordance with policy terms approved by the commissioner, nor
7 shall they be subject to levy, execution, attachment or other process
8 for satisfaction of debts. Medical expense benefits payable in
9 accordance with this subsection may be subject to a deductible and
10 copayments as provided for in the policy, if any. No insurer or
11 provider providing service benefits to an insured shall have a right
12 of subrogation for the amount of benefits paid pursuant to any
13 deductible or copayment under this section.

14 **[Notwithstanding]** Consistent with the provisions of P.L.2003,
15 c.18 (C.45:9-37.34b et seq.) and P.L. , c. (C.) (pending
16 before the Legislature as this bill), physical therapy treatment shall
17 **[not]** be reimbursable as medical expense benefits pursuant to this
18 subsection **[unless rendered by a licensed physical therapist**
19 **pursuant to]** only if provided by a licensed physical therapist, and
20 additionally shall be accessible without the need of a referral from a
21 licensed physician, dentist, podiatrist or chiropractor within the
22 scope of their respective practices.

23 b. Liability insurance coverage insuring against loss resulting
24 from liability imposed by law for property damage sustained by any
25 person arising out of the ownership, maintenance, operation or use
26 of an automobile in an amount or limit of \$5,000, exclusive of
27 interest and costs, for damage to property in any one accident.

28 c. In addition to the aforesaid coverages required to be provided
29 in a basic automobile insurance policy, optional liability insurance
30 coverage insuring against loss resulting from liability imposed by
31 law for bodily injury or death in an amount or limit of \$10,000,
32 exclusive of interests and costs, on account of injury to, or death of,
33 one or more persons in any one accident.

34 If a named insured has elected the basic automobile insurance
35 policy option and an immediate family member or members or
36 relatives resident in his household have one or more policies with
37 the coverages provided for in sections 3 and 4 of P.L.1972, c.70
38 (C.39:6A-3 and 39:6A-4), the provisions of section 12 of P.L.1983,
39 c.362 (C.39:6A-4.2) shall apply.

40 Every named insured and any other person to whom the basic
41 automobile insurance policy, with or without the optional \$10,000
42 liability coverage insuring against loss resulting from liability
43 imposed by law for bodily injury or death provided for in
44 subsection c. of this section, applies shall be subject to the tort
45 option provided in subsection a. of section 8 of P.L.1972, c.70
46 (C.39:6A-8).

47 No licensed insurance carrier shall refuse to renew the coverage
48 stipulated by this section of an eligible person as defined in section

1 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
2 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
3 the consent of the Commissioner of Banking and Insurance.
4 (cf: P.L.2003, c.89, s.36)

5
6 ¹[9.] 11. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended
7 to read as follows:

8 4. **[Personal injury protection coverage, regardless of fault.]**

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

23 "Personal injury protection coverage" means and includes:

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

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

41 **【Notwithstanding】** Consistent with the provisions of P.L.2003,
42 c.18 (C.45:9-37.34b et seq.) and P.L. , c. (C.) (pending
43 before the Legislature as this bill), physical therapy treatment shall
44 **【not】** be reimbursable as medical expense benefits pursuant to this
45 subsection **【unless rendered by a licensed physical therapist**
46 **pursuant to】** only if provided by a licensed physical therapist, and
47 additionally shall be accessible without the need of a referral from a

1 licensed physician, dentist, podiatrist or chiropractor within the
2 scope of their respective practices.

3 b. Income continuation benefits. The payment of the loss of
4 income of an income producer as a result of bodily injury disability,
5 subject to a maximum weekly payment of \$100. Such sum shall be
6 payable during the life of the injured person and shall be subject to
7 an amount or limit of \$5,200, on account of injury to any one
8 person in any one accident, except that in no case shall income
9 continuation benefits exceed the net income normally earned during
10 the period in which the benefits are payable.

11 c. Essential services benefits. Payment of essential services
12 benefits to an injured person shall be made in reimbursement of
13 necessary and reasonable expenses incurred for such substitute
14 essential services ordinarily performed by the injured person for
15 himself, his family and members of the family residing in the
16 household, subject to an amount or limit of \$12 per day. Such
17 benefits shall be payable during the life of the injured person and
18 shall be subject to an amount or limit of \$4,380, on account of
19 injury to any one person in any one accident.

20 d. Death benefits. In the event of the death of an income
21 producer as a result of injuries sustained in an accident entitling
22 such person to benefits under this section, the maximum amount of
23 benefits which could have been paid to the income producer, but for
24 his death, under subsection b. of this section shall be paid to the
25 surviving spouse, or in the event there is no surviving spouse, then
26 to the surviving children, and in the event there are no surviving
27 spouse or surviving children, then to the estate of the income
28 producer.

29 In the event of the death of one performing essential services as a
30 result of injuries sustained in an accident entitling such person to
31 benefits under subsection c. of this section, the maximum amount of
32 benefits which could have been paid to such person, under
33 subsection c., shall be paid to the person incurring the expense of
34 providing such essential services.

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

39 Benefits payable under this section shall:

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

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

46 Medical expense benefit payments shall be subject to any
47 deductible and any copayment which may be established as
48 provided in the policy. Upon the request of the commissioner or

1 any party to a claim for benefits or payment for services rendered, a
2 provider shall present adequate proof that any deductible or
3 copayment related to that claim has not been waived or discharged
4 by the provider.

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

8 (cf: P.L.2003, c.89, s.37)

9

10 '[10.] 12.' Section 3 of P.L.1983, c.296 (C.45:9-37.13) is
11 amended to read as follows:

12 3. As used in this act:

13 "Board" means the State Board of Physical Therapy Examiners
14 established pursuant to section 5 of this act.

15 "Direct supervision" means the presence of the supervising
16 physical therapist on site, available to respond to any consequence
17 occurring during any treatment procedure.

18 "Physical therapist" means a natural person who holds a current,
19 valid license to practice physical therapy pursuant to the provisions
20 of this act and in accordance with regulations of the board. For the
21 purposes of third party reimbursement, a physical therapist is a
22 specialty physician or specialist within the scope of the "Physical
23 Therapist Licensing Act of 1983," P.L.1983, c.296 (C.45:9-37.11 et
24 seq.), except that a physical therapist shall not use the title,
25 designation, words, letters, abbreviations, or insignia indicating the
26 practice of medicine or surgery, or hold himself out by any means
27 to be a medical doctor or doctor of osteopathy.

28 "Physical therapist assistant" means a natural person who is
29 licensed pursuant to the provisions of this act and who assists a
30 licensed physical therapist under his direct supervision in
31 accordance with this act and regulations of the board.

32 "Physical therapy" or "physiotherapy," and "physical therapy
33 practice" mean the identification of physical impairment or
34 movement-related functional limitation that occurs as a result of
35 injury or congenital or acquired disability, or other physical
36 dysfunction through examination, evaluation and diagnosis of the
37 physical impairment or movement-related functional limitation and
38 the establishment of a prognosis for the resolution or amelioration
39 thereof, and treatment of the physical impairment or movement-
40 related functional limitation, which shall include, but is not limited
41 to, the alleviation of pain, physical impairment and movement-
42 related functional limitation by therapeutic intervention, including
43 treatment by means of manual therapy techniques and massage,
44 electro-therapeutic modalities, the use of physical agents,
45 mechanical modalities, hydrotherapy, therapeutic exercises with or
46 without assistive devices, neurodevelopmental procedures, joint
47 mobilization, movement-related functional training in self-care,
48 providing assistance in community and work integration or

1 reintegration, providing training in techniques for the prevention of
2 injury, impairment, movement-related functional limitation, or
3 dysfunction, providing consultative, educational, other advisory
4 services, **[and]** peer-review, independent examination services,
5 collaboration with other health care providers in connection with
6 patient care, and such other treatments and functions as may be
7 further defined by the board by regulation.

8 (cf: P.L.2003, c.18, s.1)

9
10 **'[11.] 13.'** Section 9 of P.L.1983, c.296 (C.45:9-37.19) is
11 amended to read as follows:

12 9. No person shall practice physical therapy or act as a physical
13 therapist assistant, whether or not compensation is received or
14 expected, unless the person holds a valid license to practice
15 physical therapy in this State; however, nothing in this section shall
16 be construed to:

17 a. Prohibit any student enrolled in a school or post-graduate
18 course of physical therapy or in a course of study for training as a
19 physical therapist assistant that is approved or recognized by the
20 board from performing physical therapy or acting as a physical
21 therapist assistant, as appropriate, which is necessary to his course
22 of study;

23 b. Prohibit any person licensed to practice in this State under
24 any other law from engaging in the practice for which the person is
25 licensed, provided that: the procedures or duties performed by that
26 person are within the scope of that person's practice as established
27 by law and the accepted standards of practice of the profession for
28 which the person is licensed; and the person does not represent
29 himself as a physical therapist or physical therapist assistant, or as
30 practicing or offering to practice physical therapy; or

31 c. Prohibit any person employed by an agency, bureau or
32 division of the federal government from practicing physical therapy
33 within the scope of his official duties.

34 (cf: P.L.2003, c.18, s.5)

35
36 **'[12.] 14.'** Section 22 of P.L.2003, c.18 (C.45:9-37.34c) is
37 amended to read as follows:

38 22. a. It shall be considered an unlawful practice of physical
39 therapy if a physical therapist does not immediately refer an
40 individual to a health care professional licensed to practice
41 dentistry, podiatry or medicine and surgery, or other appropriate
42 licensed health care professional, if the physical therapist has
43 reasonable cause to believe that physical therapy is contraindicated
44 or symptoms or conditions are present, including, but not limited to,
45 nonmuscular and nonskeletal symptoms or conditions and
46 conditions of the central nervous system, that require services
47 outside the scope of a physical therapist's practice.

1 b. A licensed physical therapist shall refer a patient to a health
 2 care professional licensed to practice dentistry, podiatry, or
 3 medicine and surgery, or other appropriate licensed health care
 4 professional if:

5 (1) The licensed physical therapist during the examination,
 6 evaluation, or intervention has reason to believe that physical
 7 therapy is contraindicated or symptoms or conditions are present
 8 that require services outside the scope of practice of the licensed
 9 physical therapist; or

10 (2) The patient has failed to demonstrate reasonable progress
 11 within 30 days of the date of the initial treatment.

12 c. Not more than 30 days from the date of initial treatment of
 13 functional limitation or pain, a licensed physical therapist shall
 14 inform the patient's licensed health care professional of record
 15 regarding the patient's plan of care. In the event the patient has no
 16 identified licensed health care professional of record, the licensed
 17 physical therapist shall inform a licensed health care professional of
 18 the patient's choice.

19 Nothing in this subsection shall be construed to interrupt or delay
 20 a patient's continuing treatment by a physical therapist.

21 (cf: P.L.2003, c.18, s.22)

22
 23 ¹[13. Section 24 of P.L.2003, c.18 (C.45:9-37.34e) is amended
 24 to read as follows:

25 24. No person other than a natural person shall be licensed as,
 26 hold itself out to be licensed as, or practice as, a physical therapist
 27 or a physical therapist assistant. Every physical therapist or
 28 physical therapist assistant employed by a physical therapy
 29 corporation, as defined by section 1 of P.L. , c. (C.)
 30 (pending before the Legislature as this bill), or other business entity
 31 properly organized and operating pursuant to law, shall assume
 32 professional responsibility for the practice of physical therapy or
 33 acting as a physical therapist assistant that is provided under the
 34 auspices of the corporation or other business entity. The board shall
 35 establish regulations to effectuate the provisions of this section,
 36 which shall include, but shall not be limited to, a statement of the
 37 responsibilities of licensees under this section.

38 (cf: P.L.2003, c.18, s.24)]¹

39
 40 ¹[14.] 15.¹ This act shall take effect on the first day of the
 41 seventh month next following enactment, and shall apply to any
 42 health benefits plan delivered, issued, executed or renewed, or
 43 approved for issuance or renewal in this State, on or after the
 44 effective date; but the Commissioner of Banking and Insurance may
 45 take any anticipatory administrative action in advance thereof as
 46 shall be necessary for the implementation of this act.