S T A T E O F N E W Y O R K

4243--A

2011-2012 Regular Sessions

I N S E N A T E

March 24, 2011

Introduced by Sens. GALLIVAN, LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to authorizing certain care and treatment to injured employees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 13 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(a) The employer shall promptly provide for an injured employee such medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus for such period as the nature of the injury or the process of recovery may require. The employer shall be liable for the payment of the expenses of medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus, as well as artificial members of the body or other devices or appliances necessary in the first instance to replace, support or relieve a portion or part of the body resulting from and necessitated by the injury of an employee, for such period as the nature of the injury or the process of recovery may require, and the employer shall also be liable for replacements or repairs of such artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances necessitated by ordinary wear or loss or damage to a prosthesis, with or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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without bodily injury to the employee. Damage to or loss of a prosthetic device shall be deemed an injury except that no disability benefits shall be payable with respect to such injury under section fifteen of this article. Such a replacement or repair of artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances or the providing of medical treatment and care as defined herein shall not constitute the payment of compensation under section twenty-five-a of this article. All fees and other charges for such treatment and services shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for such medical treatment and care, and including all medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the medical society of the state of New York and the president of the New York state osteopathic medical society to submit to him or her a report on the amount of remuneration deemed by such society to be fair and adequate for the types of medical care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. In the case of physical therapy fees schedules the chair shall request the president of a recognized professional association representing physical therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of physical therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The chair shall also prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for outpatient hospital services not covered under the medical fee schedule previously referred to in this subdivision, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the hospital association of New York state to submit to him or her a report on the amount of remuneration deemed by such association to be fair and adequate for the types of hospital outpatient care to be rendered under this chapter, but consideration shall be given to the views of other interested parties. In the case of occupational therapy fees schedules the chair shall request the president of a recognized professional association representing occupational therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of occupational therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. IN THE CASE OF MASSAGE THERAPY FEE SCHEDULES THE CHAIR SHALL REQUEST THE PRESIDENT OF A RECOGNIZED PROFESSIONAL ASSOCIATION REPRESENTING LICENSED MASSAGE THERAPISTS IN THE STATE OF NEW YORK TO SUBMIT TO HIM OR HER A REPORT ON THE AMOUNT OF REMUNERATION DEEMED BY SUCH ASSOCIATION TO BE FAIR AND REASONABLE FOR THE TYPE OF OCCUPATIONAL THERAPY SERVICES RENDERED UNDER THIS CHAPTER,

BUT CONSIDERATION SHALL BE GIVEN TO THE VIEWS OF OTHER INTERESTED PARTIES. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule. Nothing in this schedule, however, shall prevent voluntary payment of amounts higher or lower than the fees and charges fixed therein, but no physician rendering medical treatment or care, and no physical, LICENSED MASSAGE or occupational therapist rendering their respective physical, MASSAGE or occupational therapy services may receive payment in any higher amount unless such increased amount has been authorized by the employer, or by decision as provided in section thirteen-g of this article. Nothing in this section shall be construed as preventing the employment of a duly authorized physician on a salary basis by an authorized compensation medical bureau or laboratory.

S 2. Subdivisions 1 and 2 of section 13-g of the workers' compensation law, subdivision 1 as amended by chapter 674 of the laws of 1994 and subdivision 2 as amended by chapter 649 of the laws of 1985, are amended to read as follows:

(1) Within forty-five days after a bill has been rendered to the employer by the hospital, physician or self-employed physical, LICENSED MASSAGE or occupational therapist who has rendered treatment pursuant to a referral from the injured employee's authorized physician or authorized podiatrist for treatment to the injured employee, such employer must pay the bill or notify the hospital, physician or self-employed physical, LICENSED MASSAGE or occupational therapist in writing that the bill is not being paid and explain the reasons for non-payment. In the event that the employer fails to make payment or notify the hospital, physician or self-employed physical, LICENSED MASSAGE or occupational therapist within such forty-five day period that payment is not being made, the hospital, physician, self-employed physical therapist OR SELF-EMPLOYED LICENSED MASSAGE THERAPIST or self-employed occupational therapist may notify the chair in writing that the bill has not been paid and request that the board make an award for payment of such bill. The board or the chair may make an award not in excess of the established fee schedules for any such bill or part thereof which remains unpaid after said forty-five day period or thirty days after all other questions duly and timely raised in accordance with the provisions of this chapter, relating to the employer's liability for the payment of such amount, shall have been finally determined adversely to the employer, whichever is later, in accordance with rules promulgated by the chair, and such award may be collected in like manner as an award of compensation. The chair shall assess the sum of fifty dollars against the employer for each such award made by the board, which sum shall be paid into the state treasury.

In the event that the employer has provided an explanation in writing why the bill has not been paid, in part or in full, within the aforesaid time period, and the parties can not agree as to the value of medical aid rendered under this chapter, such value shall be decided by arbitration if requested by the hospital, physician or self-employed physical, LICENSED MASSAGE or occupational therapist, in accordance with the provisions of subdivision two or subdivision three of this section, as appropriate, and rules and regulations promulgated by the chair.

Where a physician, physical, LICENSED MASSAGE or occupational therapist bill has been determined to be due and owing in accordance with the provisions of this section the board shall include in the amount of the award interest of not more than one and one-half per cent (1 1/2%) per month payable to the physician, physical, LICENSED MASSAGE or occupa-

tional therapist, in accordance with the rules and regulations promulgated by the board. Interest shall be calculated from the forty-fifth day after the bill was rendered or from the thirtieth day after all other questions duly and timely raised in accordance with the provisions of this chapter, relating to the employer's liability for the payment of such amount, shall have been finally determined adversely to the employer, whichever is later, in accordance with rules promulgated by the chair.

(2) If the parties fail to agree as to the value of medical aid rendered under this chapter, such value shall be decided by an arbitration committee consisting of one physician designated by the president of the medical society of the county in which the medical services were rendered, one physician who is a member of the medical society of the state of New York, appointed by the employer or carrier, and one physician, also a member of the medical society of the state of New York, appointed by the [chairman] CHAIR of the workers' compensation board. The majority decision of any such committee shall be conclusive upon the parties as to the value of the services rendered. If the physician whose charges are being arbitrated is a member in good standing of the New York osteopathic society or the New York homeopathic society, the members of such arbitration committee shall be physicians of such organization, one to be appointed by the president of that organization, one by the employer or carrier and the third by the [chairman] CHAIR of the workers' compensation board. Where the value of physical therapy services is at issue the arbitration committee shall consist of a member in good standing of a recognized professional association representing physical therapists in the state of New York appointed by the president of such organization, a physician designated by the employer or carrier and a physician designated by the [chairman] CHAIR of the workers' compensation board provided however, that the [chairman] CHAIR finds that there are a sufficient number of physical therapy arbitrations in a geographical area comprised of one or more counties to warrant a committee so comprised. In all other cases where the value of physical therapy services is at issue, the arbitration committee shall be similarly selected and identical in composition, provided that the physical therapist member shall serve without remuneration, and provided further that in the event a physical therapist is not available, the committee shall be comprised of three physicians designated in the same manner as in cases where the value of medical aid is at issue.

Where the value of occupational therapy services is at issue the arbitration committee shall consist of a member in good standing of a recognized professional association representing occupational therapists in the state of New York appointed by the president of such organization; a physician designated by the employer or carrier and a physician designated by the [chairman] CHAIR of the workers' compensation board provided, however, that the [chairman] CHAIR finds that there are a sufficient number of occupational therapy arbitrations in a geographical area comprised of one or more counties to warrant a committee so comprised. In all other cases where the value of occupational therapy services is at issue, the arbitration committee shall be similarly selected and identical in composition, provided that the occupational therapist member shall serve without remuneration, and provided further that in the event an occupational therapist is not available, the committee shall be comprised of three physicians designated in the same manner as in cases where the value of medical aid is at issue.

S 3. This act shall take effect immediately.