

5090

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the establishment of rates of payment and delivery of health care services

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

1 Section 1. The closing paragraph of subdivision (a) of section 13 of
2 the workers' compensation law, as amended by chapter 6 of the laws of
3 2007, is amended to read as follows:
4 The chair, *IN CONSULTATION WITH THE BOARD'S MEDICAL DIRECTOR*, shall
5 BIENNIALY prepare and establish a schedule for the state, or schedules
6 limited to defined localities, of charges and fees for such medical
7 treatment and care, and including all medical, dental, surgical, optome-
8 tric or other attendance or treatment, nurse and hospital service, medi-
9 cine, optometric services, crutches, eye-glasses, false teeth, artifi-
10 cial eyes, orthotics, prosthetic devices, functional assistive and
11 adaptive devices and apparatus in accordance with and to be subject to
12 change pursuant to rules promulgated by the chair. Before preparing such
13 schedule for the state or schedules for limited localities the chair
14 shall request the president of the medical society of the state of New
15 York and the president of the New York state osteopathic medical society
16 to submit to him or her a report on the amount of remuneration deemed by
17 such society to be fair and adequate for the types of medical care to be
18 rendered under this chapter, but consideration shall be given to the
19 view of other interested parties. In the case of physical therapy fees
20 schedules the chair shall request the president of [a recognized profes-
21 sional association representing physical therapists in the state of New
22 York] *THE NEW YORK PHYSICAL THERAPY ASSOCIATION* to submit to him or her
23 a report on the amount of remuneration deemed by such association to be
24 fair and reasonable for the type of physical therapy services rendered
25 under this chapter, but consideration shall be given to the views of

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

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1 other interested parties. The chair shall also prepare and establish a
2 schedule for the state, or schedules limited to defined localities, of
3 charges and fees for outpatient hospital services not covered under the
4 medical fee schedule previously referred to in this subdivision, to be
5 determined in accordance with and to be subject to change pursuant to
6 rules promulgated by the chair. Before preparing such schedule for the
7 state or schedules for limited localities the chair shall request the
8 president of the hospital association of New York state to submit to him
9 or her a report on the amount of remuneration deemed by such association
10 to be fair and adequate for the types of hospital outpatient care to be
11 rendered under this chapter, but consideration shall be given to the
12 views of other interested parties. In the case of occupational therapy
13 fees schedules the chair shall request the president of a recognized
14 professional association representing occupational therapists in the
15 state of New York to submit to him or her a report on the amount of
16 remuneration deemed by such association to be fair and reasonable for
17 the type of occupational therapy services rendered under this chapter,
18 but consideration shall be given to the views of other interested
19 parties. The amounts payable by the employer for such treatment and
20 services shall be the fees and charges established by such schedule.
21 Nothing in this schedule, however, shall prevent voluntary payment of
22 amounts higher or lower than the fees and charges fixed therein, but no
23 physician rendering medical treatment or care, and no physical or occu-
24 pational therapist rendering their respective physical or occupational
25 therapy services may receive payment in any higher amount unless such
26 increased amount has been authorized by the employer, or by decision as
27 provided in section thirteen-g of this article. Nothing in this section
28 shall be construed as preventing the employment of a duly authorized
29 physician on a salary basis by an authorized compensation medical bureau
30 or laboratory.

31 S 2. Subdivision 2 of section 13-k of the workers' compensation law,
32 as amended by chapter 473 of the laws of 2000, is amended to read as
33 follows:

34 2. An employee injured under circumstances which make such injury
35 compensable under this article, when care is required for an injury to
36 the foot which injury or resultant condition therefrom may lawfully be
37 treated by a duly registered and licensed podiatrist of the state of New
38 York, may select to treat him or her any podiatrist authorized by the
39 chair to render podiatry care, as hereinafter provided. If the injury or
40 condition is one which is without the limits prescribed by the education
41 law for podiatry care and treatment, or the injuries involved affect
42 other parts of the body in addition to the foot, the said podiatrist
43 must so advise the said injured employee and instruct him or her to
44 consult a physician of said employee's choice for appropriate care and
45 treatment. Such physician shall thenceforth have overall supervision of
46 the treatment of said patient including the future treatment to be
47 administered to the patient by the podiatrist. If for any reason during
48 the period when podiatry treatment and care is required, the employee
49 wishes to transfer his or her treatment and care to another authorized
50 podiatrist he or she may do so, in accordance with rules prescribed by
51 the chair, provided however that the employer shall be liable for the
52 proper fees of the original podiatrist for the care and treatment he or
53 she shall have rendered. A podiatrist licensed and registered to prac-
54 tice podiatry in the state of New York who is desirous of being author-
55 ized to render podiatry care under this section and/or to conduct inde-
56 pendent medical examinations in accordance with paragraph (b) of

1 subdivision three of this section shall file an application for authori-
2 zation under this section with the podiatry practice committee. In such
3 application he or she shall agree to refrain from subsequently treating
4 for remuneration, as a private patient, any person seeking podiatry
5 treatment, or submitting to an independent medical examination, in
6 connection with, or as a result of, any injury compensable under this
7 chapter, if he or she has been removed from the list of podiatrists
8 authorized to render podiatry care or to conduct independent medical
9 examinations under this chapter, or if the person seeking such treatment
10 has been transferred from his or her care in accordance with the
11 provisions of this section. This agreement shall run to the benefit of
12 the injured person so treated or examined, and shall be available to him
13 or her as a defense in any action by such podiatrist for payment for
14 treatment rendered by a podiatrist after he or she has been removed from
15 the list of podiatrists authorized to render podiatry care or to conduct
16 independent medical examinations under this section, or after the
17 injured person was transferred from his or her care in accordance with
18 the provisions of this section. The podiatry practice committee if it
19 deems such licensed podiatrist duly qualified shall recommend to the
20 chair that such podiatrist be authorized to render podiatry care and/or
21 to conduct independent medical examinations under this section. Such
22 recommendation shall be advisory to the chair only and shall not be
23 binding or conclusive upon him or her. The chair, IN CONSULTATION WITH
24 THE BOARD'S MEDICAL DIRECTOR, shall BIENNIALY prepare and establish a
25 schedule for the state, or schedules limited to defined localities, of
26 charges and fees for podiatry treatment and care, to be determined in
27 accordance with and to be subject to change pursuant to rules promulgat-
28 ed by the chair. Before preparing such schedule for the state or sched-
29 ules for limited localities the chair shall request the podiatry prac-
30 tice committee to submit to him or her a report on the amount of
31 remuneration deemed by such committee to be fair and adequate for the
32 types of podiatry care to be rendered under this chapter, but consider-
33 ation shall be given to the view of other interested parties. The
34 amounts payable by the employer for such treatment and services shall be
35 the fees and charges established by such schedule.

36 S 3. Subdivision 2 of section 13-1 of the workers' compensation law,
37 as amended by chapter 473 of the laws of 2000, is amended to read as
38 follows:

39 2. An employee injured under circumstances which make such injury
40 compensable under this article, when care is required for an injury
41 which consists solely of a condition which may lawfully be treated by a
42 chiropractor as defined in section sixty-five hundred fifty-one of the
43 education law may select to treat him or her, any duly registered and
44 licensed chiropractor of the state of New York, authorized by the chair
45 to render chiropractic care as hereinafter provided. If the injury or
46 condition is one which is outside the limits prescribed by the education
47 law for chiropractic care and treatment, the said chiropractor must so
48 advise the said injured employee and instruct him or her to consult a
49 physician of said employee's choice for appropriate care and treatment.
50 Such physician shall thenceforth have supervision of the treatment of
51 said condition including the future treatment to be administered to the
52 patient by the chiropractor. A chiropractor licensed and registered to
53 practice chiropractic in the state of New York, who is desirous of being
54 authorized to render chiropractic care under this section and/or to
55 conduct independent medical examinations in accordance with paragraph
56 (b) of subdivision three of this section shall file an application for

1 authorization under this section with the chiropractic practice commit-
2 tee. In such application he or she shall agree to refrain from subse-
3 quently treating for remuneration, as a private patient, any person
4 seeking chiropractic treatment, or submitting to an independent medical
5 examination, in connection with, or as a result of, any injury compensa-
6 ble under this chapter, if he or she has been removed from the list of
7 chiropractors authorized to render chiropractic care or to conduct inde-
8 pendent medical examinations under this chapter, or if the person seek-
9 ing such treatment has been transferred from his or her care in accord-
10 ance with the provisions of this section. This agreement shall run to
11 the benefit of the injured person so treated, or examined, and shall be
12 available to him or her as a defense in any action by such chiropractor
13 for payment rendered by a chiropractor after he or she has been removed
14 from the list of chiropractors authorized to render chiropractic care or
15 to conduct independent medical examinations under this section, or after
16 the injured person was transferred from his or her care in accordance
17 with the provisions of this section. The chiropractic practice committee
18 if it deems such licensed chiropractor duly qualified shall recommend to
19 the chair that such be authorized to render chiropractic care and/or to
20 conduct independent medical examinations under this section. Such recom-
21 mendations shall be advisory to the chair only and shall not be binding
22 or conclusive upon him or her. The chair, IN CONSULTATION WITH THE
23 BOARD'S MEDICAL DIRECTOR, shall BIENNIALY prepare and establish a sche-
24 dule for the state, or schedules limited to defined localities of charg-
25 es and fees for chiropractic treatment and care, to be determined in
26 accordance with and to be subject to change pursuant to rules promulgat-
27 ed by the chair. Before preparing such schedule for the state or sched-
28 ules for limited localities the chair shall request the chiropractic
29 practice committee to submit to him or her a report on the amount of
30 remuneration deemed by such committee to be fair and adequate for the
31 types of chiropractic care to be rendered under this chapter, but
32 consideration shall be given to the view of other interested parties,
33 the amounts payable by the employer for such treatment and services
34 shall be the fees and charges established by such schedule.

35 S 4. Subdivision 3 of section 13-m of the workers' compensation law,
36 as amended by chapter 473 of the laws of 2000, is amended to read as
37 follows:

38 3. A psychologist, licensed and registered to practice psychology in
39 the state of New York, who is desirous of being authorized to render
40 psychological care under this section and/or to conduct independent
41 medical examinations in accordance with paragraph (b) of subdivision
42 four of this section shall file an application for authorization under
43 this section with the psychology practice committee. The applicant shall
44 agree to refrain from subsequently treating for remuneration, as a
45 private patient, any person seeking psychological treatment, or submit-
46 ting to an independent medical examination, in connection with, or as a
47 result of, any injury compensable under this chapter, if he or she has
48 been removed from the list of psychologists authorized to render psycho-
49 logical care under this chapter. This agreement shall run to the benefit
50 of the injured person so treated, and shall be available as a defense in
51 any action by such psychologist for payment for treatment rendered by
52 such psychologist after being removed from the list of psychologists
53 authorized to render psychological care or to conduct independent
54 medical examinations under this section. The psychology practice commit-
55 tee if it deems such licensed psychologist duly qualified shall recom-
56 mend to the chair that such person be authorized to render psychological

1 care and/or to conduct independent medical examinations under this
2 section. Such recommendations shall be only advisory to the chair and
3 shall not be binding or conclusive. The chair, IN CONSULTATION WITH THE
4 BOARD'S MEDICAL DIRECTOR, shall BIENNIALY prepare and establish a sche-
5 dule for the state or schedules limited to defined localities of charges
6 and fees for psychological treatment and care, to be determined in
7 accordance with and be subject to change pursuant to rules promulgated
8 by the chair. Before preparing such schedule for the state or schedules
9 for limited localities the chair shall request the psychology practice
10 committee to submit to such chair a report on the amount of remuneration
11 deemed by such committee to be fair and adequate for the types of
12 psychological care to be rendered under this chapter, but consideration
13 shall be given to the view of other interested parties. The amounts
14 payable by the employer for such treatment and services shall be the
15 fees and charges established by such schedule.

16 S 5. Notwithstanding the provisions of section one of this act or of
17 any other law, rule or regulation to the contrary, a revision to the fee
18 schedules established pursuant to sections 13, 13-k, 13-l and 13-m of
19 the workers' compensation law existing as of the effective date of this
20 act shall be published by the chair of the workers' compensation board
21 on behalf of such board no later than one year following the effective
22 date of this act. Subsequent biennial schedules shall be published in
23 final form on January fifteenth every other year. Nothing in this
24 section shall limit the authority of the chair of the workers' compen-
25 sation board to make adjustments in the fee schedule other than at the
26 biennial publication.

27 S 6. This act shall take effect immediately.