

4243

2011-2012 Regular Sessions

I N   S E N A T E

March 24, 2011

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Introduced by Sen. GALLIVAN -- 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 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:

1     Section 1. Subdivision (a) of section 13 of the workers' compensation  
2     law, as amended by chapter 6 of the laws of 2007, is amended to read as  
3     follows:  
4     (a) The employer shall promptly provide for an injured employee such  
5     medical, dental, surgical, optometric or other attendance or treatment,  
6     nurse and hospital service, medicine, optometric services, crutches,  
7     eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
8     devices, functional assistive and adaptive devices and apparatus for  
9     such period as the nature of the injury or the process of recovery may  
10    require. The employer shall be liable for the payment of the expenses of  
11    medical, dental, surgical, optometric or other attendance or treatment,  
12    nurse and hospital service, medicine, optometric services, crutches,  
13    eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
14    devices, functional assistive and adaptive devices and apparatus, as  
15    well as artificial members of the body or other devices or appliances  
16    necessary in the first instance to replace, support or relieve a portion  
17    or part of the body resulting from and necessitated by the injury of an  
18    employee, for such period as the nature of the injury or the process of  
19    recovery may require, and the employer shall also be liable for replace-  
20    ments or repairs of such artificial members of the body or such other  
21    devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-  
22    ic devices, functional assistive and adaptive devices or appliances  
23    necessitated by ordinary wear or loss or damage to a prosthesis, with or  
24    without bodily injury to the employee. Damage to or loss of a prosthetic  
25    device shall be deemed an injury except that no disability benefits

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

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1 shall be payable with respect to such injury under section fifteen of  
2 this article. Such a replacement or repair of artificial members of the  
3 body or such other devices, eye-glasses, false teeth, artificial eyes,  
4 orthotics, prosthetic devices, functional assistive and adaptive devices  
5 or appliances or the providing of medical treatment and care as defined  
6 herein shall not constitute the payment of compensation under section  
7 twenty-five-a of this article. All fees and other charges for such  
8 treatment and services shall be limited to such charges as prevail in  
9 the same community for similar treatment of injured persons of a like  
10 standard of living.

11 The chair shall prepare and establish a schedule for the state, or  
12 schedules limited to defined localities, of charges and fees for such  
13 medical treatment and care, and including all medical, dental, surgical,  
14 optometric or other attendance or treatment, nurse and hospital service,  
15 medicine, optometric services, crutches, eye-glasses, false teeth, arti-  
16 ficial eyes, orthotics, prosthetic devices, functional assistive and  
17 adaptive devices and apparatus in accordance with and to be subject to  
18 change pursuant to rules promulgated by the chair. Before preparing such  
19 schedule for the state or schedules for limited localities the chair  
20 shall request the president of the medical society of the state of New  
21 York and the president of the New York state osteopathic medical society  
22 to submit to him or her a report on the amount of remuneration deemed by  
23 such society to be fair and adequate for the types of medical care to be  
24 rendered under this chapter, but consideration shall be given to the  
25 view of other interested parties. In the case of physical therapy fees  
26 schedules the chair shall request the president of a recognized profes-  
27 sional association representing physical therapists in the state of New  
28 York to submit to him or her a report on the amount of remuneration  
29 deemed by such association to be fair and reasonable for the type of  
30 physical therapy services rendered under this chapter, but consideration  
31 shall be given to the views of other interested parties. The chair  
32 shall also prepare and establish a schedule for the state, or schedules  
33 limited to defined localities, of charges and fees for outpatient hospi-  
34 tal services not covered under the medical fee schedule previously  
35 referred to in this subdivision, to be determined in accordance with and  
36 to be subject to change pursuant to rules promulgated by the chair.  
37 Before preparing such schedule for the state or schedules for limited  
38 localities the chair shall request the president of the hospital associ-  
39 ation of New York state to submit to him or her a report on the amount  
40 of remuneration deemed by such association to be fair and adequate for  
41 the types of hospital outpatient care to be rendered under this chapter,  
42 but consideration shall be given to the views of other interested  
43 parties. In the case of occupational therapy fees schedules the chair  
44 shall request the president of a recognized professional association  
45 representing occupational therapists in the state of New York to submit  
46 to him or her a report on the amount of remuneration deemed by such  
47 association to be fair and reasonable for the type of occupational ther-  
48 apy services rendered under this chapter, but consideration shall be  
49 given to the views of other interested parties. IN THE CASE OF MASSAGE  
50 THERAPY FEE SCHEDULES THE CHAIR SHALL REQUEST THE PRESIDENT OF A RECOG-  
51 NIZED PROFESSIONAL ASSOCIATION REPRESENTING LICENSED MASSAGE THERAPISTS  
52 IN THE STATE OF NEW YORK TO SUBMIT TO HIM OR HER A REPORT ON THE AMOUNT  
53 OF REMUNERATION DEEMED BY SUCH ASSOCIATION TO BE FAIR AND REASONABLE FOR  
54 THE TYPE OF OCCUPATIONAL THERAPY SERVICES RENDERED UNDER THIS CHAPTER,  
55 BUT CONSIDERATION SHALL BE GIVEN TO THE VIEWS OF OTHER INTERESTED  
56 PARTIES. The amounts payable by the employer for such treatment and

1 services shall be the fees and charges established by such schedule.  
2 Nothing in this schedule, however, shall prevent voluntary payment of  
3 amounts higher or lower than the fees and charges fixed therein, but no  
4 physician rendering medical treatment or care, and no physical, LICENSED  
5 MASSAGE or occupational therapist rendering their respective physical,  
6 MASSAGE or occupational therapy services may receive payment in any  
7 higher amount unless such increased amount has been authorized by the  
8 employer, or by decision as provided in section thirteen-g of this arti-  
9 cle. Nothing in this section shall be construed as preventing the  
10 employment of a duly authorized physician on a salary basis by an  
11 authorized compensation medical bureau or laboratory.

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

16 (1) Within forty-five days after a bill has been rendered to the  
17 employer by the hospital, physician or self-employed physical, LICENSED  
18 MASSAGE or occupational therapist who has rendered treatment pursuant to  
19 a referral from the injured employee's authorized physician or author-  
20 ized podiatrist for treatment to the injured employee, such employer  
21 must pay the bill or notify the hospital, physician or self-employed  
22 physical, LICENSED MASSAGE or occupational therapist in writing that the  
23 bill is not being paid and explain the reasons for non-payment. In the  
24 event that the employer fails to make payment or notify the hospital,  
25 physician or self-employed physical, LICENSED MASSAGE or occupational  
26 therapist within such forty-five day period that payment is not being  
27 made, the hospital, physician, self-employed physical therapist OR  
28 SELF-EMPLOYED LICENSED MASSAGE THERAPIST or self-employed occupational  
29 therapist may notify the chair in writing that the bill has not been  
30 paid and request that the board make an award for payment of such bill.  
31 The board or the chair may make an award not in excess of the estab-  
32 lished fee schedules for any such bill or part thereof which remains  
33 unpaid after said forty-five day period or thirty days after all other  
34 questions duly and timely raised in accordance with the provisions of  
35 this chapter, relating to the employer's liability for the payment of  
36 such amount, shall have been finally determined adversely to the employ-  
37 er, whichever is later, in accordance with rules promulgated by the  
38 chair, and such award may be collected in like manner as an award of  
39 compensation. The chair shall assess the sum of fifty dollars against  
40 the employer for each such award made by the board, which sum shall be  
41 paid into the state treasury.

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

50 Where a physician, physical, LICENSED MASSAGE or occupational thera-  
51 pist bill has been determined to be due and owing in accordance with the  
52 provisions of this section the board shall include in the amount of the  
53 award interest of not more than one and one-half per cent (1 1/2%) per  
54 month payable to the physician, physical, LICENSED MASSAGE or occupa-  
55 tional therapist, in accordance with the rules and regulations promul-  
56 gated by the board. Interest shall be calculated from the forty-fifth

1 day after the bill was rendered or from the thirtieth day after all  
2 other questions duly and timely raised in accordance with the provisions  
3 of this chapter, relating to the employer's liability for the payment of  
4 such amount, shall have been finally determined adversely to the employ-  
5 er, whichever is later, in accordance with rules promulgated by the  
6 chair.

7 (2) If the parties fail to agree as to the value of medical aid  
8 rendered under this chapter, such value shall be decided by an arbi-  
9 tration committee consisting of one physician designated by the presi-  
10 dent of the medical society of the county in which the medical services  
11 were rendered, one physician who is a member of the medical society of  
12 the state of New York, appointed by the employer or carrier, and one  
13 physician, also a member of the medical society of the state of New  
14 York, appointed by the [chairman] CHAIR of the workers' compensation  
15 board. The majority decision of any such committee shall be conclusive  
16 upon the parties as to the value of the services rendered. If the physi-  
17 cian whose charges are being arbitrated is a member in good standing of  
18 the New York osteopathic society or the New York homeopathic society,  
19 the members of such arbitration committee shall be physicians of such  
20 organization, one to be appointed by the president of that organization,  
21 one by the employer or carrier and the third by the [chairman] CHAIR of  
22 the workers' compensation board. Where the value of physical therapy  
23 services is at issue the arbitration committee shall consist of a member  
24 in good standing of a recognized professional association representing  
25 physical therapists in the state of New York appointed by the president  
26 of such organization, a physician designated by the employer or carrier  
27 and a physician designated by the [chairman] CHAIR of the workers'  
28 compensation board provided however, that the [chairman] CHAIR finds  
29 that there are a sufficient number of physical therapy arbitrations in a  
30 geographical area comprised of one or more counties to warrant a commit-  
31 tee so comprised. In all other cases where the value of physical therapy  
32 services is at issue, the arbitration committee shall be similarly  
33 selected and identical in composition, provided that the physical thera-  
34 pist member shall serve without remuneration, and provided further that  
35 in the event a physical therapist is not available, the committee shall  
36 be comprised of three physicians designated in the same manner as in  
37 cases where the value of medical aid is at issue. WHERE THE VALUE OF  
38 MASSAGE THERAPY SERVICES IS AT ISSUE THE ARBITRATION COMMITTEE SHALL  
39 CONSIST OF A MEMBER IN GOOD STANDING OF A RECOGNIZED PROFESSIONAL ASSO-  
40 CIATION REPRESENTING LICENSED MASSAGE THERAPISTS IN THE STATE OF NEW  
41 YORK APPOINTED BY THE PRESIDENT OF SUCH ORGANIZATION, A PHYSICIAN DESIG-  
42 NATED BY THE EMPLOYER OR CARRIER AND A PHYSICIAN DESIGNATED BY THE CHAIR  
43 OF THE WORKERS' COMPENSATION BOARD PROVIDED HOWEVER, THAT THE CHAIR  
44 FINDS THAT THERE ARE A SUFFICIENT NUMBER OF MASSAGE THERAPY ARBITRATIONS  
45 IN A GEOGRAPHICAL AREA COMPRISED OF ONE OR MORE COUNTIES TO WARRANT A  
46 COMMITTEE SO COMPRISED. IN ALL OTHER CASES WHERE THE VALUE OF MASSAGE  
47 THERAPY SERVICES IS AT ISSUE, THE ARBITRATION COMMITTEE SHALL BE SIMI-  
48 LARLY SELECTED AND IDENTICAL IN COMPOSITION, PROVIDED THAT THE LICENSED  
49 MASSAGE THERAPIST MEMBER SHALL SERVE WITHOUT REMUNERATION, AND PROVIDED  
50 FURTHER THAT IN THE EVENT A LICENSED MASSAGE THERAPIST IS NOT AVAILABLE,  
51 THE COMMITTEE SHALL BE COMPRISED OF THREE PHYSICIANS DESIGNATED IN THE  
52 SAME MANNER AS IN CASES WHERE THE VALUE OF MEDICAL AID IS AT ISSUE.

53 Where the value of occupational therapy services is at issue the arbi-  
54 tration committee shall consist of a member in good standing of a recog-  
55 nized professional association representing occupational therapists in  
56 the state of New York appointed by the president of such organization; a

1 physician designated by the employer or carrier and a physician desig-  
2 nated by the [chairman] CHAIR of the workers' compensation board  
3 provided, however, that the [chairman] CHAIR finds that there are a  
4 sufficient number of occupational therapy arbitrations in a geographical  
5 area comprised of one or more counties to warrant a committee so  
6 comprised. In all other cases where the value of occupational therapy  
7 services is at issue, the arbitration committee shall be similarly  
8 selected and identical in composition, provided that the occupational  
9 therapist member shall serve without remuneration, and provided further  
10 that in the event an occupational therapist is not available, the  
11 committee shall be comprised of three physicians designated in the same  
12 manner as in cases where the value of medical aid is at issue.

13 S 3. This act shall take effect immediately.