

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:

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

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

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

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

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

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

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

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

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

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

9 (2) If the parties fail to agree as to the value of medical aid
10 rendered under this chapter, such value shall be decided by an arbi-
11 tration committee consisting of one physician designated by the presi-
12 dent of the medical society of the county in which the medical services
13 were rendered, one physician who is a member of the medical society of
14 the state of New York, appointed by the employer or carrier, and one
15 physician, also a member of the medical society of the state of New
16 York, appointed by the [chairman] CHAIR of the workers' compensation
17 board. The majority decision of any such committee shall be conclusive
18 upon the parties as to the value of the services rendered. If the physi-
19 cian whose charges are being arbitrated is a member in good standing of
20 the New York osteopathic society or the New York homeopathic society,
21 the members of such arbitration committee shall be physicians of such
22 organization, one to be appointed by the president of that organization,
23 one by the employer or carrier and the third by the [chairman] CHAIR of
24 the workers' compensation board. Where the value of physical therapy
25 services is at issue the arbitration committee shall consist of a member
26 in good standing of a recognized professional association representing
27 physical therapists in the state of New York appointed by the president
28 of such organization, a physician designated by the employer or carrier
29 and a physician designated by the [chairman] CHAIR of the workers'
30 compensation board provided however, that the [chairman] CHAIR finds
31 that there are a sufficient number of physical therapy arbitrations in a
32 geographical area comprised of one or more counties to warrant a commit-
33 tee so comprised. In all other cases where the value of physical therapy
34 services is at issue, the arbitration committee shall be similarly
35 selected and identical in composition, provided that the physical thera-
36 pist member shall serve without remuneration, and provided further that
37 in the event a physical therapist is not available, the committee shall
38 be comprised of three physicians designated in the same manner as in
39 cases where the value of medical aid is at issue.

40 Where the value of occupational therapy services is at issue the arbi-
41 tration committee shall consist of a member in good standing of a recog-
42 nized professional association representing occupational therapists in
43 the state of New York appointed by the president of such organization; a
44 physician designated by the employer or carrier and a physician desig-
45 nated by the [chairman] CHAIR of the workers' compensation board
46 provided, however, that the [chairman] CHAIR finds that there are a
47 sufficient number of occupational therapy arbitrations in a geographical
48 area comprised of one or more counties to warrant a committee so
49 comprised. In all other cases where the value of occupational therapy
50 services is at issue, the arbitration committee shall be similarly
51 selected and identical in composition, provided that the occupational
52 therapist member shall serve without remuneration, and provided further
53 that in the event an occupational therapist is not available, the
54 committee shall be comprised of three physicians designated in the same
55 manner as in cases where the value of medical aid is at issue.

56 S 3. This act shall take effect immediately.