

5783--B

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2015-2016 Regular Sessions

I N S E N A T E

June 3, 2015

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the workers' compensation law, in relation to payment of bills for pharmaceutical services

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

1 Section 1. Section 13-g of the workers' compensation law, as added by
2 chapter 258 of the laws of 1935, subdivision 1 as amended by chapter 674
3 of the laws of 1994, subdivisions 2 and 3 as amended by section 4 of
4 part GG of chapter 57 of the laws of 2013, subdivision 4 as amended by
5 section 3 of part D of chapter 55 of the laws of 2015, subdivision 5 as
6 amended by chapter 578 of the laws of 1959, and subdivision 6 as amended
7 by chapter 639 of the laws of 1996, is amended to read as follows:
8 S 13-g. Payment of bills for medical care. (1) Within forty-five days
9 after a bill has been rendered to the employer by the hospital, physi-
10 cian, PHARMACIST, or self-employed physical or occupational therapist
11 who has rendered treatment OR DISPENSED MEDICATION pursuant to a refer-
12 ral OR PRESCRIPTION from the injured employee's authorized physician or
13 authorized podiatrist for treatment to the injured employee, such
14 employer must pay the bill or notify the hospital, physician, PHARMA-
15 CIST, or self-employed physical or occupational therapist in writing
16 that the bill is not being paid and explain the reasons for non-payment.
17 In the event that the employer fails to make payment or notify the
18 hospital, physician, PHARMACIST, or self-employed physical or occupa-
19 tional therapist within such forty-five day period that payment is not

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

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1 being made, the hospital, physician, PHARMACIST, self-employed physical
2 therapist or self-employed occupational therapist may notify the chair
3 in writing that the bill has not been paid and request that the board
4 make an award for payment of such bill. The board or the chair may make
5 an award not in excess of the established fee schedules for any such
6 bill or part thereof which remains unpaid after said forty-five day
7 period or thirty days after all other questions duly and timely raised
8 in accordance with the provisions of this chapter, relating to the
9 employer's liability for the payment of such amount, shall have been
10 finally determined adversely to the employer, whichever is later, in
11 accordance with rules promulgated by the chair, and such award may be
12 collected in like manner as an award of compensation. The chair shall
13 assess the sum of fifty dollars against the employer for each such award
14 made by the board, which sum shall be paid into the state treasury.

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

23 Where a physician, PHARMACIST, OR physical or occupational therapist
24 bill has been determined to be due and owing in accordance with the
25 provisions of this section the board shall include in the amount of the
26 award interest of not more than one and one-half per cent (1 1/2%) per
27 month payable to the physician, PHARMACIST, OR physical or occupational
28 therapist, in accordance with the rules and regulations promulgated by
29 the board. Interest shall be calculated from the forty-fifth day after
30 the bill was rendered or from the thirtieth day after all other ques-
31 tions duly and timely raised in accordance with the provisions of this
32 chapter, relating to the employer's liability for the payment of such
33 amount, shall have been finally determined adversely to the employer,
34 whichever is later, in accordance with rules promulgated by the chair.

35 (2) (a) If the parties fail to agree to the value of medical aid
36 rendered under this chapter and the amount of the disputed bill is one
37 thousand dollars or less, or if the amount of the disputed medical bill
38 exceeds one thousand dollars and the health care provider expressly so
39 requests, such value shall be decided by a single arbitrator process,
40 pursuant to rules promulgated by the chair. The chair shall appoint a
41 physician who is a member in good standing of the medical society of the
42 state of New York to determine the value of such disputed medical bill.
43 Where the physician whose charges are being arbitrated is a member in
44 good standing of the New York osteopathic society, the value of such
45 disputed bill shall be determined by a member in good standing of the
46 New York osteopathic society appointed by the chair. Where the physician
47 whose charges are being arbitrated is a member in good standing of the
48 New York homeopathic society, the value of such disputed bill shall be
49 determined by a member in good standing of the New York homeopathic
50 society appointed by the chair. Where the value of physical therapy
51 services or occupational therapy services is at issue, such value shall
52 be determined by a member in good standing of a recognized professional
53 association representing its respective profession in the state of New
54 York appointed by the chair. Decisions rendered under the single arbi-
55 trator process shall be conclusive upon the parties as to the value of
56 the services in dispute.

1 (b) If the parties fail to agree as to the value of medical aid
2 rendered under this chapter and the amount of the disputed bill exceeds
3 one thousand dollars, such value shall be decided by an arbitration
4 committee unless the health care provider expressly requests a single
5 arbitrator process in accordance with paragraph (a) of this subdivision.
6 The arbitration committee shall consist of one physician designated by
7 the president of the medical society of the county in which the medical
8 services were rendered, one physician who is a member of the medical
9 society of the state of New York, appointed by the employer or carrier,
10 and one physician, also a member of the medical society of the state of
11 New York, appointed by the chair of the workers' compensation board. If
12 the physician whose charges are being arbitrated is a member in good
13 standing of the New York osteopathic society or the New York homeopathic
14 society, the members of such arbitration committee shall be physicians
15 of such organization, one to be appointed by the president of that
16 organization, one by the employer or carrier and the third by the chair
17 of the workers' compensation board. Where the value of physical therapy
18 services is at issue and the amount of the disputed bill exceeds one
19 thousand dollars, the arbitration committee shall consist of a member in
20 good standing of a recognized professional association representing
21 physical therapists in the state of New York appointed by the president
22 of such organization, a physician designated by the employer or carrier
23 and a physician designated by the chair of the workers' compensation
24 board provided however, that the chair finds that there are a sufficient
25 number of physical therapy arbitrations in a geographical area comprised
26 of one or more counties to warrant a committee so comprised. In all
27 other cases where the value of physical therapy services is at issue and
28 the amount of the disputed bill exceeds one thousand dollars, the arbi-
29 tration committee shall be similarly selected and identical in composi-
30 tion, provided that the physical therapist member shall serve without
31 remuneration, and provided further that in the event a physical thera-
32 pist is not available, the committee shall be comprised of three physi-
33 cians designated in the same manner as in cases where the value of
34 medical aid is at issue.

35 (c) Where the value of occupational therapy services is at issue the
36 arbitration committee shall consist of a member in good standing of a
37 recognized professional association representing occupational therapists
38 in the state of New York appointed by the president of such organiza-
39 tion; a physician designated by the employer or carrier and a physician
40 designated by the chair of the workers' compensation board provided,
41 however, that the chair finds that there are a sufficient number of
42 occupational therapy arbitrations in a geographical area comprised of
43 one or more counties to warrant a committee so comprised. In all other
44 cases where the value of occupational therapy services is at issue and
45 the amount of the disputed bill exceeds one thousand dollars, the arbi-
46 tration committee shall be similarly selected and identical in composi-
47 tion, provided that the occupational therapist member shall serve with-
48 out remuneration, and provided further that in the event an occupational
49 therapist is not available, the committee shall be comprised of three
50 physicians designated in the same manner as in cases where the value of
51 medical aid is at issue. The majority decision of any such arbitration
52 committee shall be conclusive upon the parties as to the value of the
53 services in dispute.

54 (3) (a) If an employer shall have notified the hospital in writing, as
55 provided in subdivision one of this section, why the bill has not been
56 paid, in part or in full, and the amount of the disputed bill is one

1 thousand dollars or less, or where the amount of the disputed medical
2 bill exceeds one thousand dollars and the hospital expressly so
3 requests, such value shall be decided by a single arbitrator process,
4 pursuant to rules promulgated by the chair. The chair shall appoint a
5 physician in good standing licensed to practice in New York state to
6 determine the value of such disputed bill. Decisions rendered under the
7 administrative resolution procedure shall be conclusive upon the parties
8 as to the value of the services in dispute.

9 (b) If an employer shall have notified the hospital in writing, as
10 provided in subdivision one of this section, why the bill has not been
11 paid, in part or in full, and the amount of the disputed bill exceeds
12 one thousand dollars, the value of such bill shall be determined by an
13 arbitration committee appointed by the chair for that purpose, which
14 committee shall consider all of the charges of the hospital, unless the
15 hospital expressly requests a single arbitrator process pursuant to
16 paragraph (a) of this subdivision. The committee shall consist of three
17 physicians. One member of the committee may be nominated by the chair
18 upon recommendation of the president of the hospital association of New
19 York state and one member may be nominated by the employer or insurance
20 carrier. The majority decision of any such committee shall be conclusive
21 upon the parties as to the value of the services rendered. The chair may
22 make reasonable rules and regulations consistent with the provisions of
23 this section.

24 (4) (A) IF AN EMPLOYER SHALL HAVE NOTIFIED THE PHARMACIST IN WRITING,
25 AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, WHY THE BILL HAS NOT
26 BEEN PAID, IN PART OR IN FULL, AND THE PHARMACIST EXPRESSLY SO REQUESTS,
27 THE VALUE AND LIABILITY SHALL BE DECIDED BY A SINGLE ARBITRATOR PROCESS,
28 PURSUANT TO RULES PROMULGATED BY THE CHAIR. THE CHAIR SHALL APPOINT A
29 PHARMACIST IN GOOD STANDING LICENSED TO PRACTICE IN NEW YORK STATE TO
30 DETERMINE THE VALUE AND LIABILITY OF SUCH DISPUTED BILL. DECISIONS
31 RENDERED UNDER THE ADMINISTRATIVE RESOLUTION PROCEDURE SHALL BE CONCLU-
32 SIVE UPON THE PARTIES AS TO THE VALUE AND LIABILITY OF THE PRESCRIPTION
33 IN DISPUTE.

34 (B) IF AN EMPLOYER SHALL HAVE NOTIFIED THE PHARMACIST IN WRITING, AS
35 PROVIDED IN SUBDIVISION ONE OF THIS SECTION, WHY THE BILL HAS NOT BEEN
36 PAID, IN PART OR IN FULL, THE AMOUNT OF THE DISPUTED BILL EXCEEDS FIVE
37 HUNDRED DOLLARS, AND THE BILL HAS A COMMON VENDOR, PROVIDER, AND PAYER,
38 THE VALUE OF SUCH BILL SHALL BE DETERMINED BY AN ARBITRATION COMMITTEE
39 APPOINTED BY THE CHAIR FOR THAT PURPOSE, WHICH COMMITTEE SHALL CONSIDER
40 ALL OF THE CHARGES OF THE PHARMACIST, UNLESS THE PHARMACIST EXPRESSLY
41 REQUESTS A SINGLE ARBITRATOR PROCESS PURSUANT TO PARAGRAPH (A) OF THIS
42 SUBDIVISION. THE ARBITRATION COMMITTEE SHALL CONSIST OF THREE PHARMA-
43 CISTS IN GOOD STANDING LICENSED TO PRACTICE IN NEW YORK STATE TO DETER-
44 MINE THE VALUE AND LIABILITY OF SUCH DISPUTED BILL. ONE MEMBER OF THE
45 COMMITTEE MAY BE NOMINATED BY THE CHAIR, ONE MEMBER MAY BE NOMINATED BY
46 THE PROFESSIONAL PHARMACY ASSOCIATION AFFILIATED WITH THE COMPLAINANT
47 AND ONE MEMBER MAY BE NOMINATED BY THE EMPLOYER OR INSURANCE CARRIER.
48 THE MAJORITY DECISION OF ANY SUCH COMMITTEE SHALL BE CONCLUSIVE UPON THE
49 PARTIES AS TO THE VALUE OF THE SERVICES RENDERED. THE CHAIR SHALL MAKE
50 REASONABLE RULES AND REGULATIONS CONSISTENT WITH THE PROVISIONS OF THIS
51 SECTION.

52 [(4)] (5) A provider initiating an arbitration, including a single
53 arbitrator process, pursuant to this section shall not pay a fee to
54 cover the costs related to the conduct of such arbitration. Each member
55 of an arbitration committee for medical bills, [and] each member of an
56 arbitration committee for hospital bills AND EACH MEMBER OF AN ARBI-

1 TRATION COMMITTEE FOR PHARMACY BILLS shall be entitled to receive and
2 shall be paid a fee for each day's attendance at an arbitration session
3 in any one count in an amount fixed by the chair of the workers' compen-
4 sation board.

5 [(5)] (6) In claims where the employer has failed to secure compen-
6 sation to his OR HER employees as required by section fifty of this
7 chapter, the board may make an award for the value of medical and podia-
8 try services or treatment rendered to such employees, in accordance with
9 the schedules of fees and charges prepared and established under the
10 provisions of section thirteen, subdivision a, and section thirteen-k,
11 subdivision two, of this chapter, and for the reasonable value of hospi-
12 tal care in accordance with the charges currently in force in hospitals
13 in the same community for cases coming within the provisions of this
14 chapter. Such award shall be made to the physician, podiatrist, or
15 hospital entitled thereto. A default in the payment of such award may be
16 enforced in the manner provided for the enforcement of compensation
17 awards as set forth in section twenty-six of this [chapter] ARTICLE.

18 In all cases coming under this subdivision the payment of the claim of
19 the physician, podiatrist, or hospital for medical, podiatry, or surgi-
20 cal services or treatment shall be subordinate to that of the claimant
21 or his OR HER beneficiaries.

22 [(6)] (7) Notwithstanding any inconsistent provision of law, arbi-
23 tration regarding payments for inpatient hospital services for any
24 patient discharged on or after January first, nineteen hundred ninety-
25 one and prior to December thirty-first, nineteen hundred ninety-six
26 shall be resolved in accordance with paragraph (d) of subdivision three
27 of section twenty-eight hundred seven-c of the public health law.

28 S 2. The chair of the workers' compensation board shall promulgate
29 such regulations as he or she deems appropriate to carry out the
30 purposes of this act. Such regulations may include, but are not limited
31 to, what defenses, if any, may be available to employers or carriers in
32 arbitration to determine the value or liability of a pharmaceutical bill
33 pursuant to the provisions of this act.

34 S 3. This act shall take effect on the one hundred twentieth day after
35 it shall have become a law; provided that, effective immediately, the
36 addition, amendment, and/or repeal of any rules and regulations neces-
37 sary to implement the provisions of this act on its effective date are
38 authorized and directed to be completed on or before such effective
39 date.