

5783--B

Cal. No. 621

2015-2016 Regular Sessions

I N   S E N A T E

June 3, 2015

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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.

LBD11425-05-6

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.