

# STATE OF NEW YORK

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15

2017-2018 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2017

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Introduced by M. of A. CAHILL, COLTON -- read once and referred to the  
Committee on Labor

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 Assem-  
bly, 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 § 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  
20 being made, the hospital, physician, pharmacist, self-employed physical  
21 therapist or self-employed occupational therapist may notify the chair  
22 in writing that the bill has not been paid and request that the board  
23 make an award for payment of such bill. The board or the chair may make  
24 an award not in excess of the established fee schedules for any such

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

LBD01659-01-7

1 bill or part thereof which remains unpaid after said forty-five day  
2 period or thirty days after all other questions duly and timely raised  
3 in accordance with the provisions of this chapter, relating to the  
4 employer's liability for the payment of such amount, shall have been  
5 finally determined adversely to the employer, whichever is later, in  
6 accordance with rules promulgated by the chair, and such award may be  
7 collected in like manner as an award of compensation. The chair shall  
8 assess the sum of fifty dollars against the employer for each such award  
9 made by the board, which sum shall be paid into the state treasury.

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

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

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

52 (b) If the parties fail to agree as to the value of medical aid  
53 rendered under this chapter and the amount of the disputed bill exceeds  
54 one thousand dollars, such value shall be decided by an arbitration  
55 committee unless the health care provider expressly requests a single  
56 arbitrator process in accordance with paragraph (a) of this subdivision.

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

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

49 (3) (a) If an employer shall have notified the hospital in writing, as  
50 provided in subdivision one of this section, why the bill has not been  
51 paid, in part or in full, and the amount of the disputed bill is one  
52 thousand dollars or less, or where the amount of the disputed medical  
53 bill exceeds one thousand dollars and the hospital expressly so  
54 requests, such value shall be decided by a single arbitrator process,  
55 pursuant to rules promulgated by the chair. The chair shall appoint a  
56 physician in good standing licensed to practice in New York state to

1 determine the value of such disputed bill. Decisions rendered under the  
2 administrative resolution procedure shall be conclusive upon the parties  
3 as to the value of the services in dispute.

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

19 (4) (a) If an employer shall have notified the pharmacist in writing,  
20 as provided in subdivision one of this section, why the bill has not  
21 been paid, in part or in full, and the pharmacist expressly so requests,  
22 the value and liability shall be decided by a single arbitrator process,  
23 pursuant to rules promulgated by the chair. The chair shall appoint a  
24 pharmacist in good standing licensed to practice in New York state to  
25 determine the value and liability of such disputed bill. Decisions  
26 rendered under the administrative resolution procedure shall be conclu-  
27 sive upon the parties as to the value and liability of the prescription  
28 in dispute.

29 (b) If an employer shall have notified the pharmacist in writing, as  
30 provided in subdivision one of this section, why the bill has not been  
31 paid, in part or in full, the amount of the disputed bill exceeds five  
32 hundred dollars, and the bill has a common vendor, provider, and payer,  
33 the value of such bill shall be determined by an arbitration committee  
34 appointed by the chair for that purpose, which committee shall consider  
35 all of the charges of the pharmacist, unless the pharmacist expressly  
36 requests a single arbitrator process pursuant to paragraph (a) of this  
37 subdivision. The arbitration committee shall consist of three pharma-  
38 cists in good standing licensed to practice in New York state to deter-  
39 mine the value and liability of such disputed bill. One member of the  
40 committee may be nominated by the chair, one member may be nominated by  
41 the professional pharmacy association affiliated with the complainant  
42 and one member may be nominated by the employer or insurance carrier.  
43 The majority decision of any such committee shall be conclusive upon the  
44 parties as to the value of the services rendered. The chair shall make  
45 reasonable rules and regulations consistent with the provisions of this  
46 section.

47 (5) A provider initiating an arbitration, including a single arbitra-  
48 tor process, pursuant to this section shall not pay a fee to cover the  
49 costs related to the conduct of such arbitration. Each member of an  
50 arbitration committee for medical bills, ~~and~~ each member of an arbi-  
51 tration committee for hospital bills and each member of an arbitration  
52 committee for pharmacy bills shall be entitled to receive and shall be  
53 paid a fee for each day's attendance at an arbitration session in any  
54 one count in an amount fixed by the chair of the workers' compensation  
55 board.

1    [~~(5)~~] (6) In claims where the employer has failed to secure compen-  
2 sation to his or her employees as required by section fifty of this  
3 chapter, the board may make an award for the value of medical and podia-  
4 try services or treatment rendered to such employees, in accordance with  
5 the schedules of fees and charges prepared and established under the  
6 provisions of section thirteen, subdivision a, and section thirteen-k,  
7 subdivision two, of this chapter, and for the reasonable value of hospi-  
8 tal care in accordance with the charges currently in force in hospitals  
9 in the same community for cases coming within the provisions of this  
10 chapter. Such award shall be made to the physician, podiatrist, or  
11 hospital entitled thereto. A default in the payment of such award may be  
12 enforced in the manner provided for the enforcement of compensation  
13 awards as set forth in section twenty-six of this [~~chapter~~] article.

14    In all cases coming under this subdivision the payment of the claim of  
15 the physician, podiatrist, or hospital for medical, podiatry, or surgi-  
16 cal services or treatment shall be subordinate to that of the claimant  
17 or his or her beneficiaries.

18    [~~(6)~~] (7) Notwithstanding any inconsistent provision of law, arbi-  
19 tration regarding payments for inpatient hospital services for any  
20 patient discharged on or after January first, nineteen hundred ninety-  
21 one and prior to December thirty-first, nineteen hundred ninety-six  
22 shall be resolved in accordance with paragraph (d) of subdivision three  
23 of section twenty-eight hundred seven-c of the public health law.

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

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