

STATE OF NEW YORK

406--A

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sens. ROBACH, LATIMER -- 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. The closing paragraph of subdivision (a) of section 13 of
2 the workers' compensation law, as amended by chapter 6 of the laws of
3 2007, is amended to read as follows:

4 The chair shall prepare and establish a schedule for the state, or
5 schedules limited to defined localities, of charges and fees for such
6 medical treatment and care, and including all medical, dental, surgical,
7 optometric or other attendance or treatment, nurse and hospital service,
8 medicine, optometric services, crutches, eye-glasses, false teeth, arti-
9 ficial eyes, orthotics, prosthetic devices, functional assistive and
10 adaptive devices and apparatus in accordance with and to be subject to
11 change pursuant to rules promulgated by the chair. Before preparing such
12 schedule for the state or schedules for limited localities the chair
13 shall request the president of the medical society of the state of New
14 York and the president of the New York state osteopathic medical society
15 to submit to him or her a report on the amount of remuneration deemed by
16 such society to be fair and adequate for the types of medical care to be
17 rendered under this chapter, but consideration shall be given to the
18 view of other interested parties. In the case of physical therapy fees
19 schedules the chair shall request the president of a recognized profes-
20 sional association representing physical therapists in the state of New
21 York to submit to him or her a report on the amount of remuneration
22 deemed by such association to be fair and reasonable for the type of

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

LBD02920-03-7

1 physical therapy services rendered under this chapter, but consideration
2 shall be given to the views of other interested parties. The chair
3 shall also prepare and establish a schedule for the state, or schedules
4 limited to defined localities, of charges and fees for outpatient hospi-
5 tal services not covered under the medical fee schedule previously
6 referred to in this subdivision, to be determined in accordance with and
7 to be subject to change pursuant to rules promulgated by the chair.
8 Before preparing such schedule for the state or schedules for limited
9 localities the chair shall request the president of the hospital associ-
10 ation of New York state to submit to him or her a report on the amount
11 of remuneration deemed by such association to be fair and adequate for
12 the types of hospital outpatient care to be rendered under this chapter,
13 but consideration shall be given to the views of other interested
14 parties. In the case of occupational therapy fees schedules the chair
15 shall request the president of a recognized professional association
16 representing occupational therapists in the state of New York to submit
17 to him or her a report on the amount of remuneration deemed by such
18 association to be fair and reasonable for the type of occupational ther-
19 apy services rendered under this chapter, but consideration shall be
20 given to the views of other interested parties. In the case of massage
21 therapy fee schedules the chair shall request the president of a recog-
22 nized professional association representing licensed massage therapists
23 in the state of New York to submit to him or her a report on the amount
24 of remuneration deemed by such association to be fair and reasonable for
25 the type of occupational therapy services rendered under this chapter,
26 but consideration shall be given to the views of other interested
27 parties. The amounts payable by the employer for such treatment and
28 services shall be the fees and charges established by such schedule.
29 Nothing in this schedule, however, shall prevent voluntary payment of
30 amounts higher or lower than the fees and charges fixed therein, but no
31 physician rendering medical treatment or care, and no physical, licensed
32 massage or occupational therapist rendering their respective physical,
33 massage or occupational therapy services may receive payment in any
34 higher amount unless such increased amount has been authorized by the
35 employer, or by decision as provided in section thirteen-g of this arti-
36 cle. Nothing in this section shall be construed as preventing the
37 employment of a duly authorized physician on a salary basis by an
38 authorized compensation medical bureau or laboratory.

39 § 2. Subdivision 1 of section 13-b of the workers' compensation law is
40 amended by adding a new paragraph (g) to read as follows:

41 (g) Upon the prescription or referral of an authorized physician,
42 massage therapy care may be rendered by a duly licensed massage thera-
43 pist. Where massage therapy care is rendered, records of the patient's
44 condition and progress, together with records of instruction for treat-
45 ment, if any shall be maintained by the message therapist and physician.
46 Said records shall be submitted to the chair on forms and at such times
47 as the chair may require. A duly licensed massage therapist shall not
48 be authorized to perform independent medical examinations.

49 § 3. Subdivision 1 of section 13-g of the workers' compensation law,
50 as amended by chapter 674 of the laws of 1994, is amended to read as
51 follows:

52 (1) Within forty-five days after a bill has been rendered to the
53 employer by the hospital, physician or self-employed physical, licensed
54 massage or occupational therapist who has rendered treatment pursuant to
55 a referral from the injured employee's authorized physician or author-
56 ized podiatrist for treatment to the injured employee, such employer

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

22 In the event that the employer has provided an explanation in writing
23 why the bill has not been paid, in part or in full, within the aforesaid
24 time period, and the parties can not agree as to the value of medical
25 aid rendered under this chapter, such value shall be decided by arbi-
26 tration if requested by the hospital, physician or self-employed phys-
27 ical, licensed massage or occupational therapist, in accordance with the
28 provisions of subdivision two or subdivision three of this section, as
29 appropriate, and rules and regulations promulgated by the chair.

30 Where a physician, physical, licensed massage or occupational thera-
31 pist bill has been determined to be due and owing in accordance with the
32 provisions of this section the board shall include in the amount of the
33 award interest of not more than one and one-half per cent (1 1/2%) per
34 month payable to the physician, physical, licensed massage or occupa-
35 tional therapist, in accordance with the rules and regulations promul-
36 gated by the board. Interest shall be calculated from the forty-fifth
37 day after the bill was rendered or from the thirtieth day after all
38 other questions duly and timely raised in accordance with the provisions
39 of this chapter, relating to the employer's liability for the payment of
40 such amount, shall have been finally determined adversely to the employ-
41 er, whichever is later, in accordance with rules promulgated by the
42 chair.

43 § 4. This act shall take effect immediately.