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:

Section 1. The closing paragraph of subdivision (a) of section 13 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for such medical treatment and care, and including all medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the medical society of the state of New York and the president of the New York state osteopathic medical society to submit to him or her a report on the amount of remuneration deemed by such society to be fair and adequate for the types of medical care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. In the case of physical therapy fees schedules the chair shall request the president of a recognized professional association representing physical therapists in the state of New York to submit to him or her a report on the amount of remuneration 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.

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physical therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The chair shall also prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for outpatient hospital services not covered under the medical fee schedule previously referred to in this subdivision, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the hospital association of New York state to submit to him or her a report on the amount of remuneration deemed by such association to be fair and adequate for the types of hospital outpatient care to be rendered under this chapter, but consideration shall be given to the views of other interested parties. In the case of occupational therapy fees schedules the chair shall request the president of a recognized professional association representing occupational therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of occupational therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. **In the case of massage therapy fee schedules the chair shall request the president of a recognized professional association representing licensed massage therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of occupational therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties.** The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule. Nothing in this schedule, however, shall prevent voluntary payment of amounts higher or lower than the fees and charges fixed therein, but no physician rendering medical treatment or care, and no physical**, licensed massage** or occupational therapist rendering their respective physical**, massage** or occupational therapy services may receive payment in any higher amount unless such increased amount has been authorized by the employer, or by decision as provided in section thirteen-g of this article. Nothing in this section shall be construed as preventing the employment of a duly authorized physician on a salary basis by an authorized compensation medical bureau or laboratory.

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

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

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

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

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

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

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

§ 4. This act shall take effect immediately.