

STATE OF NEW YORK

5782

2017-2018 Regular Sessions

IN SENATE

April 28, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed 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 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 § 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
25 bill or part thereof which remains unpaid after said forty-five day

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

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

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

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

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

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

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

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

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

1 administrative resolution procedure shall be conclusive upon the parties
2 as to the value of the services in dispute.

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

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

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

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

55 ~~(5)~~ (6) In claims where the employer has failed to secure compen-
56 sation to his or her employees as required by section fifty of this

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

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

16 [~~(6)~~] (7) Notwithstanding any inconsistent provision of law, arbi-
17 tration regarding payments for inpatient hospital services for any
18 patient discharged on or after January first, nineteen hundred ninety-
19 one and prior to December thirty-first, nineteen hundred ninety-six
20 shall be resolved in accordance with paragraph (d) of subdivision three
21 of section twenty-eight hundred seven-c of the public health law.

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

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