STATE OF NEW YORK

6349

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. ALCANTARA -- (at request of the Workers Compensation Board) -- 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 extending the board's authority to resolve medical bill disputes and simplify the process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 13-b of the workers' compensation law, as amended by chapter 1068 of the laws of 1960, the section heading, subdivisions 1 and 2 as amended by chapter 473 of the laws of 2000 and subdivision 3 as amended by section 85 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

§ 13-b. Authorization of physicians, medical bureaus and laboratories by the chair. 1. [~~Upon the recommendation of the medical society of the county in which the physician's office is located or of a board designated by such county society or of a board representing duly licensed physicians of any other school of medical practice in such county, the chair may authorize physicians licensed to practice medicine in the state of New York to render medical care under this chapter and to perform independent medical examinations in accordance with subdivision four of section thirteen-a of this article. If, within sixty days after the chair requests such recommendations the medical society of such county or board fails to act, or if there is no such society in such county, the chair shall designate a board of three outstanding physicians, who shall make the requisite recommendations.~~

~~No such authorization shall be made in the absence of a recommendation of the appropriate society or board or of a review and recommendation by the medical appeals unit. No person shall render medical care or conduct independent medical examinations under this chapter without such authorization by the chair, provided, that:~~

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

LBD10066-01-7

~~(a)~~] As used in this title, the following definitions shall have the following meanings unless their context requires otherwise:

a. "Acupuncturist" shall mean licensed as having completed a formal course of study and having passed an examination in accordance with the education law, the regulations of the commissioner of education, and the requirements of the board of regents. Acupuncturists are required by the education law to advise, in writing, each patient of the requirement that he or she consult with a physician for the condition or conditions necessitating acupuncture care, as prescribed by the education law.

b. "Authorization agreement" shall mean an agreement between the chair and the provider signed by the provider desirous of rendering medical care and/or treatment to claimant or claimants injured in the course of their employment and/or to conduct independent medical examinations.

c. "Chair" of the board shall mean either the chair or the chair's designee.

d. "Chiropractor" shall mean licensed and having completed two years of preprofessional college study and a four-year resident program in chiropractic in accordance with the education law, and consistent with the licensing requirements of the commissioner of education.

e. "Nurse practitioner" shall mean a licensed professional nurse certified by a national certifying body as having completed the required educational program in accordance with the education law and the regulations of the commissioner of education.

f. "Occupational therapist" shall mean licensed as having a bachelor's or master's degree in occupational therapy from a registered program with the education department or receipt of a diploma or degree resulting from completion of not less than four years of postsecondary study, which includes the professional study of occupational therapy in accordance with the education law and the regulations of the commissioner of education.

g. "Physical therapist" shall mean licensed as having completed a master's degree or higher in physical therapy in accordance with the education law and the licensing requirements of the commissioner of education.

h. "Physician" shall mean licensed with a degree of doctor of medicine, M.D., or doctor of osteopathy, D.O., or an equivalent degree in accordance with the education law and the licensing requirements of the state board of medicine and the regulations of the commissioner of education.

i. "Physician assistant" shall mean a licensed provider who has graduated from a two-to-four year state-approved physician assistant program, has passed a licensing examination, and whose actions and duties are within the scope of practice of the supervising physician, in accordance with the education law and the regulations of the commissioner of education.

j. "Podiatrist" shall mean licensed as having received a doctoral degree in podiatry in accordance with the regulations of the commissioner of education and the education law, and must satisfactorily meet all other requirements of the state board for podiatry.

k. "Provider" shall mean a duly licensed acupuncturist, chiropractor, independent medical examiner, nurse practitioner, physical therapist, physician, physician's assistant, podiatrist, psychologist, or social worker subject to an authorization agreement.

l. "Psychologist" shall mean licensed as having received a doctoral degree in psychology from a program of psychology registered with the state education department or the substantial equivalent thereof in

accordance with the education law, the requirements of the state board for psychology, and the regulations of the commissioner of education.

m. "Social worker" shall mean licensed clinical social worker. A licensed clinical social worker has completed a master's of social work that includes completion of a core curriculum of at least twelve credit hours of clinical courses or the equivalent post-graduate clinical coursework, in accordance with the education law and the commissioner of education.

2. Any [~~physician~~] provider licensed [~~to practice medicine~~] pursuant to the education law to provide medical care and treatment in the state of New York may render emergency [~~medical~~] care and treatment in an emergency hospital or urgent care setting providing emergency treatment under this chapter without authorization by the chair under this section; [~~and~~]

[~~(b)~~] (a) Such licensed [~~physician~~] provider as identified in this subdivision who is [~~a member of a constituted medical staff of any hospital~~] on staff at any hospital or urgent care center providing emergency treatment may [~~render~~] continue such medical care under this chapter while an injured employee remains a patient in such hospital or urgent care setting; and

[~~(c)~~] (b) Under the [~~active and personal~~] direct supervision of an authorized [~~physician~~] provider, medical care may be rendered by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such [~~physician~~] provider to the chair on such forms and at such times as the chair may require.

[~~(d) Upon the referral which may be directive as to treatment of an authorized physician physical therapy care may be rendered by a duly licensed physical therapist. Where physical 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 physical therapist and physician. Said records shall be submitted to the chair on such forms and at such times as the chair may require.~~

~~(e) Upon the prescription or referral of an authorized physician occupational therapy care may be rendered by a duly licensed occupational therapist. Where occupational 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 occupational therapist and physician. Said records shall be submitted to the chair on forms and at such times as the chair may require.~~

~~(f)~~] (c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized [~~physician~~] provider, the employer or carrier shall arrange for such examination to be performed by a qualified [~~physician~~] provider in a medical facility convenient to the claimant.

[~~2.~~] (d) Upon the prescription or referral of an authorized physician, care or treatment may be rendered to an injured employee by an authorized physical therapist, occupational therapist or acupuncturist provided the conditions and the treatment performed are among the conditions that the physical therapist, occupational therapist or acupuncturist is authorized to treat pursuant to the education law or the regulations of the commissioner of education. Where any such care or

treatment is rendered, records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist, occupational therapist or acupuncturist rendering treatment and by the referring physician. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(e) A record, report or opinion of a physical therapist, occupational therapist, acupuncturist or physician assistant shall not be considered as evidence of (1) the causal relationship of any condition to an accident or occupational disease under this chapter or (2) disability or the degree thereof, nor may any such provider perform an independent medical examination concerning a claim under this chapter.

3. A [~~physician licensed to practice medicine in the state of New York who is~~] provider properly licensed or certified pursuant to the regulations of the commissioner of education and the requirements of the education law desirous of being authorized to render medical care under this chapter and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter shall [~~file an application for authorization under this chapter with the medical society in the county in which his or her office is located, or with a board designated by such society, or with a board designated by the chair as provided in this section. In such application the applicant shall state his or her training and qualifications, and shall agree to limit his or her professional activities under this chapter to such medical care and independent medical examinations, as his or her experience and training qualify him or her to render. The applicant shall further agree to refrain~~] sign an authorization agreement. The provider agrees to abide by the terms, conditions, and limitations outlined in the authorization agreement, including, but not limited to refraining from subsequently treating for remuneration, as a private patient, any person seeking medical treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of [~~physicians~~] providers authorized to render medical care or to conduct independent medical examinations under this chapter, or if the person seeking such treatment, or submitting to an independent medical examination, has been transferred from his or her care in accordance with the provisions of this chapter. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such [~~physician~~] provider for payment for treatment rendered by a [~~physician~~] provider after he or she has been removed from the list of [~~physicians~~] providers authorized to render medical care or to conduct independent medical examinations under this chapter, or after the injured person was transferred from his or her care in accordance with the provisions of this chapter. [~~The medical society or the board designated by it, or the board as otherwise provided under this section, if it deems such licensed physician duly qualified, shall recommend to the chair that such physician be authorized to render medical care and/or conduct independent medical examinations under this chapter, and such recommendation and authorization shall specify the character of the medical care or independent medical examination which such physician is qualified and authorized to render under this chapter. Such recommendations shall be advisory to the chair only and shall not be binding or conclusive upon him or her. The licensed physician may present to the medical society or board,~~

~~evidences of additional qualifications at any time subsequent to his or her original application. If the medical society or board fails to recommend to the chair that a physician be authorized to render medical care and/or to conduct independent medical examinations under this chapter, the physician may appeal to the medical appeals unit. The medical society or the board designated by it, or the board as otherwise provided under this section, may upon its own initiative, or shall upon request of the chair, review at any time the qualifications of any physician as to the character of the medical care or independent medical examinations which such physician has theretofore been authorized to render under this chapter and may recommend to the chair that such physician be authorized to render medical care or to conduct independent medical examinations thereafter of the character which such physician is then qualified to render. On such advisory recommendation the chair may review and after reasonable investigation may revise the authorization of a physician in respect to the character of medical care and/or to conduct independent medical examinations which he or she is authorized to render. If the medical society or board recommends to the chair that a physician be authorized to render medical care and/or to conduct independent medical examinations under this chapter of a character different from the character of medical care or independent medical examinations he or she has been theretofore authorized to render, such physician may appeal from such recommendation to the medical appeals unit.~~

~~3.~~] 4. Laboratories and bureaus engaged in x-ray diagnosis or treatment or in physiotherapy or other therapeutic procedures and which participate in the diagnosis or treatment of injured [~~workmen~~] claimants under this chapter shall be operated or supervised by [~~qualified physicians duly~~] providers authorized under this chapter and shall be subject to the provisions of section thirteen-c of this article. The person in charge of diagnostic clinical laboratories duly authorized under this chapter shall possess the qualifications established by the public health and health planning council for approval by the state commissioner of health or, in the city of New York, the qualifications approved by the board of health of said city and shall maintain the standards of work required for such approval.

§ 2. Section 13-d of the workers' compensation law, as amended by chapter 459 of the laws of 1944, the section heading and subdivisions 1 and 2 as amended and paragraph (d) of subdivision 2 as added by chapter 473 of the laws of 2000, paragraphs (a) and (b) of subdivision 2 as amended and subdivision 5 as added by chapter 6 of the laws of 2007 and subdivision 4 as amended by chapter 1068 of the laws of 1960, is amended to read as follows:

§ 13-d. Removal of [~~physicians~~] providers from lists of those authorized to render medical care or to conduct independent medical examinations. 1. [~~The medical society of the county in which the physician's office is located at the time or a board designated by such county society or a board representing duly licensed physicians of any other school of medical practice in such county shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized physician as herein provided under rules and procedure to be prescribed by the medical appeals unit, and shall report evidence of such misconduct, with their findings and recommendation with respect thereto, to the chair. Failure to commence such investigation within sixty days from the date the charges are referred to the society by the chair or submit findings and recommendations relating to the charges within one hundred eighty days from the date the charges are~~

~~referred shall empower the chair to appoint, as a hearing officer, a member of the board, employee, or other qualified hearing officer to hear and report on the charges to the chair. A qualified hearing officer, who is neither a member of the board, or employee thereof shall be paid at a reasonable per diem rate to be fixed by the chair.~~

~~Such investigation, hearing, findings, recommendation and report may be made by the society or board of an adjoining county upon the request of the medical society of the county in which the alleged misconduct or infraction of this chapter occurred, subject to the time limit and conditions set forth herein. The medical appeals unit shall review the findings and recommendation of such medical society or board, or hearing officer appointed by the chair upon application of the accused physician and may reopen the matter and receive further evidence. The findings, decision and recommendation of such society, board or hearing officer appointed by the chair or medical appeals unit shall be advisory to the chair only, and shall not be binding or conclusive upon him or her.~~

~~2.~~] The chair shall [~~remove from the list of physicians authorized to~~] temporarily suspend, revoke, or otherwise limit the authorization of any provider to render medical care under this chapter, or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a of this article, [~~the name of any physician who he or she shall find~~] should he or she find, after reasonable investigation [~~is disqualified because such physician:~~], that such provider has failed to render competent, professional, or quality medical care and treatment under this chapter.

2. A provider's failure to provide the standard of care or his or her breach of the duty to provide competent, professional, or quality medical care and treatment under this chapter can be found in the following acts of misconduct:

(a) has [~~been guilty of~~] committed professional, medical, or other misconduct or incompetency in connection with rendering medical services under the law or has violated any of the specified grounds for unprofessional conduct as more fully set forth in the education law, specifically the rules of the board of regents, the office of professions, or the regulations of the commissioner of the department of education; or

(b) has exceeded the limits of his or her professional competence in rendering medical care or in conducting independent medical examinations under the law[~~,~~] or has made materially false statements [~~regarding his or her qualifications in his or her application for the recommendation of the medical society or board as provided in section thirteen-b of this article~~] in connection with the authorization agreement; or

(c) has failed to transmit copies of medical reports to claimant's attorney or licensed representative as provided in subdivision (f) of section thirteen of this article; or has failed to submit full and truthful medical reports of all his or her findings to the employer, and directly to the chair or the board within the time limits provided in subdivision four of section thirteen-a of this article with the exception of injuries which do not require (1) more than ordinary first aid or more than two treatments by a physician or person rendering first aid, or (2) loss of time from regular duties of one day beyond the working day or shift; or

(d) knowingly made a false statement or representation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter; or

(e) has solicited, or has employed another to solicit for himself or herself or for another, professional treatment, examination or care of an injured employee in connection with any claim under this chapter; or

(f) has refused to appear before, to testify, to submit to a deposition, or to answer upon request of, the chair, board, medical appeals unit or any duly authorized officer of the state, any legal question, or to produce any relevant book [~~or~~], paper, or response concerning his or her conduct under any authorization [~~granted to him or her under this chapter~~] agreement; or

(g) has directly or indirectly [~~requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical or surgical care, an independent medical examination, diagnosis or treatment or service, including X-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, X-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, under this chapter; except that reasonable payment, not exceeding the technical component fee permitted in the medical fee schedule, established under this chapter for X-ray examinations, diagnosis or treatment, may be made by a physician duly authorized as a roentgenologist to any hospital furnishing facilities and equipment for such examination, diagnosis or treatment, provided such hospital does not also submit a charge for the same services. Nothing contained in this paragraph shall prohibit such physicians who practice as partners, in groups or as a professional corporation or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations, or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.~~] while temporarily suspended, benefited from the splitting or pooling of fees by managing or directing a medical practice employing or hiring other authorized providers to render treatment under this chapter, supervised care and treatment under this chapter, or submitted for reimbursement board forms for services rendered under this chapter; or

(h) has violated any of the provisions outlined in section thirteen of this section, the rules, policies, and regulations promulgated by the board, the provider's medical license requirements, as more fully set forth in the public health law and the education law, or the requirements set forth in the authorization agreement; or

(i) has been subject to a condition, limitation, or finding by the department of health in a report, determination, or any type of order resulting from allegations of misconduct.

3. [~~Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce him to violate the provisions of paragraph (g) of subdivision two of this section shall be guilty of a misdemeanor~~] Once suspended, revoked, or limited, a surgeon may provided only required and necessary post-surgical care and treatment to a workers' compensation patient recovering from a surgical procedure performed within a reasonable time-frame prior to the effective date of the provider's authorization suspension or revocation.

4. [~~Nothing~~] In addition to the power or duty of the chair to temporarily suspend, revoke, or otherwise limit the authorization of a provider in the event that one of the acts of professional, medical, or other misconduct is found to exist, nothing in this section shall be construed as limiting in any respect the [~~power or duty of the chairman~~] chair's authority to [~~investigate instances of misconduct, either before or after investigation by a medical society or board as herein provided, or to temporarily suspend the authorization of any physician that he may believe to be guilty of such misconduct~~] impose a fine not to exceed five thousand dollars.

[~~5. Whenever the department of health shall conduct an investigation with respect to charges of professional or other misconduct by a physician which results in a report, determination or consent order that includes a finding of professional or other misconduct or incompetency by such physician, the chair shall have full power and authority to temporarily suspend, revoke or otherwise limit the authorization under this chapter of any physician upon such finding by the department of health that the physician has been guilty of professional or other misconduct. The recommendations of the department of health shall be advisory to the chair only and shall not be binding or conclusive upon the chair.~~]

§ 3. Section 13-g of the workers' compensation law, as added by chapter 258 of the laws of 1935, subdivision 1 as amended by chapter 674 of the laws of 1994, subdivisions 2 and 3 as amended by section 4 of part GG of chapter 57 of the laws of 2013, subdivision 4 as amended by section 3 of part D of chapter 55 of the laws of 2015, subdivision 5 as amended by chapter 578 of the laws of 1959 and subdivision 6 as amended by chapter 639 of the laws of 1996, is amended to read as follows:

§ 13-g. Payment of bills for medical care. (1) Within forty-five days after a bill for medical care or supplies delivered pursuant to section thirteen of this article has been rendered to the employer [~~by the hospital, physician or self-employed physical 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 or occupational therapist in writing~~] medical care provider or supplier in the format prescribed by the chair 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 or occupational therapist~~] medical care provider or supplier within such forty-five day period that payment is not being made, the [~~hospital, physician, self-employed physical therapist or self-employed occupational therapist~~] medical care provider or supplier may notify the board in the format prescribed by 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 or occupational therapist, in accordance with the provisions of subdivision two or subdivision three of this section, as appropriate, and~~] as set forth in rules and regulations promulgated by the chair.

Where a [~~physician, physical or occupational therapist~~] bill for medical care or supplies 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~~] percent (1 1/2%) per month payable to the [~~physician, physical or occupational therapist~~] medical care provider or supplier, 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.

(2) (a) If the parties fail to agree to the value of medical aid rendered under this chapter and the amount of the disputed bill is one thousand dollars or less, or if the amount of the disputed medical bill exceeds one thousand dollars and the [~~health~~] medical care provider or supplier expressly so requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. [~~The chair shall appoint a physician who is a member in good standing of the medical society of the state of New York to determine the value of such disputed medical bill. Where the physician whose charges are being arbitrated is a member in good standing of the New York osteopathic society, the value of such disputed bill shall be determined by a member in good standing of the New York osteopathic society appointed by the chair. Where the physician whose charges are being arbitrated is a member in good standing of the New York homeopathic society, the value of such disputed bill shall be determined by a member in good standing of the New York homeopathic society appointed by the chair. Where the value of physical therapy services or occupational therapy services is at issue, such value shall be determined by a member in good standing of a recognized professional association representing its respective profession in the state of New York appointed by the chair.~~] Decisions rendered under the single arbitrator process shall be conclusive upon the parties as to the value of the services in dispute.

(b) If the parties fail to agree as to the value of medical aid rendered under this chapter and the amount of the disputed bill exceeds one thousand dollars, such value shall be decided by an arbitration committee unless the health care provider expressly requests a single

arbitrator process in accordance with paragraph (a) of this subdivision. The arbitration committee shall [~~consist of one physician designated by the president of the medical society of the county in which the medical services were rendered, one physician who is a member of the medical society of the state of New York, appointed by the employer or carrier, and one physician, also a member of the medical society of the state of New York, appointed by the chair of the workers' compensation board. If the physician whose charges are being arbitrated is a member in good standing of the New York osteopathic society or the New York homeopathic society, the members of such arbitration committee shall be physicians of such organization, one to be appointed by the president of that organization, one by the employer or carrier and the third by the chair of the workers' compensation board. Where the value of physical therapy services is at issue and the amount of the disputed bill exceeds one thousand dollars, the arbitration committee shall consist of a member in good standing of a recognized professional association representing physical therapists in the state of New York appointed by the president of such organization, a physician designated by the employer or carrier and a physician designated by the chair of the workers' compensation board provided however, that the chair finds that there are a sufficient number of physical therapy arbitrations in a geographical area comprised of one or more counties to warrant a committee so comprised. In all other cases where the value of physical therapy services is at issue and the amount of the disputed bill exceeds one thousand dollars, the arbitration committee shall be similarly selected and identical in composition, provided that the physical therapist member shall serve without remuneration, and provided further that in the event a physical therapist is not available, the committee shall be comprised of three physicians designated in the same manner as in cases where the value of medical aid is at issue.~~

~~(c) Where the value of occupational therapy services is at issue the arbitration committee shall consist of a member in good standing of a recognized professional association representing occupational therapists in the state of New York appointed by the president of such organization; a physician designated by the employer or carrier and a physician designated by the chair of the workers' compensation board provided, however, that the chair finds that there are a sufficient number of occupational therapy arbitrations in a geographical area comprised of one or more counties to warrant a committee so comprised. In all other cases where the value of occupational therapy services is at issue and the amount of the disputed bill exceeds one thousand dollars, the arbitration committee shall be similarly selected and identical in composition, provided that the occupational therapist member shall serve without remuneration, and provided further that in the event an occupational therapist is not available, the committee shall be comprised of three physicians designated in the same manner as in cases where the value of medical aid is at issue.~~] **have three members designated by the chair in constitution with the medical director's office of the workers' compensation board.** The majority decision of any such arbitration committee shall be conclusive upon the parties as to the value of the services in dispute.

(3) [~~(a) If an employer shall have notified the hospital in writing, as provided in subdivision one of this section, why the bill has not been paid, in part or in full, and the amount of the disputed bill is one thousand dollars or less, or where the amount of the disputed medical bill exceeds one thousand dollars and the hospital expressly so~~

~~requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a physician in good standing licensed to practice in New York state to determine the value of such disputed bill. Decisions rendered under the administrative resolution procedure shall be conclusive upon the parties as to the value of the services in dispute.~~

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

~~(4)~~] A provider initiating an arbitration, including a single arbitrator process, pursuant to this section shall not pay a fee to cover the costs related to the conduct of such arbitration. [~~Each member of an arbitration committee for medical bills, and each member of an arbitration committee for hospital bills shall be entitled to receive and shall be paid a fee for each day's attendance at an arbitration session in any one count in an amount fixed by the chair of the workers' compensation board.~~

~~(5)~~] **(4)** In claims where the employer has failed to secure compensation to his employees as required by section fifty of this chapter, the board may make an award for the value of medical [~~and podiatry~~] services**, supplies** or treatment rendered to such employees, in accordance with the schedules of fees and charges prepared and established under the provisions of [~~section thirteen, subdivision a, and section thirteen-k, subdivision two, of~~] this chapter[~~, and for the reasonable value of hospital care in accordance with the charges currently in force in hospitals in the same community for cases coming within the provisions of this chapter~~]. Such award shall be made to the [~~physician, podiatrist, or hospital~~] **medical care provider or supplier** entitled thereto. A default in the payment of such award may be enforced in the manner provided for the enforcement of compensation awards as set forth in section twenty-six of this [~~chapter~~] **article**.

In all cases coming under this subdivision the payment of the claim [~~of the physician, podiatrist, or hospital for medical, podiatry, or surgical services or treatment~~] **for medical care or supplies** shall be subordinate to that of the claimant or his **or her** beneficiaries.

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

§ 4. Subdivisions 1 and 2 and paragraphs (a) and (b) of subdivision 3 of section 13-k of the workers' compensation law, subdivisions 1 as added by chapter 787 of the laws of 1952 and subdivision 2 and para-

graphs (a) and (b) of subdivision 3 as amended by chapter 473 of the laws of 2000, are amended to read as follows:

1. When the term "chairman" is hereinafter used, it shall be deemed to mean the [~~chairman~~] chair of the [~~workmen's~~] workers' compensation board of the state of New York.

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury to the foot which injury or resultant condition therefrom may lawfully be treated by a duly registered and licensed podiatrist of the state of New York, may select to treat him or her any podiatrist authorized by the chair to render podiatry care, as hereinafter provided. If the injury or condition is one which is without the limits prescribed by the education law for podiatry care and treatment, or the injuries involved affect other parts of the body in addition to the foot, the said podiatrist must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have overall supervision of the treatment of said patient including the future treatment to be administered to the patient by the podiatrist. If for any reason during the period when podiatry treatment and care is required, the employee wishes to transfer his or her treatment and care to another authorized podiatrist he or she may do so, in accordance with rules prescribed by the chair, provided however that the employer shall be liable for the proper fees of the original podiatrist for the care and treatment he or she shall have rendered. [~~A podiatrist licensed and registered to practice podiatry in the state of New York who is desirous of being authorized to render podiatry care under this section and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision three of this section shall file an application for authorization under this section with the podiatry practice committee. In such application he or she shall agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking podiatry treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of podiatrists authorized to render podiatry care or to conduct independent medical examinations under this chapter, or if the person seeking such treatment has been transferred from his or her care in accordance with the provisions of this section. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such podiatrist for payment for treatment rendered by a podiatrist after he or she has been removed from the list of podiatrists authorized to render podiatry care or to conduct independent medical examinations under this section, or after the injured person was transferred from his or her care in accordance with the provisions of this section. The podiatry practice committee if it deems such licensed podiatrist duly qualified shall recommend to the chair that such podiatrist be authorized to render podiatry care and/or to conduct independent medical examinations under this section. Such recommendation shall be advisory to the chair only and shall not be binding or conclusive upon him or her.~~] The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for podiatry treatment and care, 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

podiatry practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of podiatry care to be rendered under this chapter, but consideration shall be given to the view 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.

(a) No claim for podiatry care or treatment shall be valid and enforceable as against the employer or employee unless within forty-eight hours following the first treatment the podiatrist giving such care or treatment furnish to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier and the claimant each shall be entitled to have the claimant examined by a qualified podiatrist authorized by the chair in accordance with [~~subdivision two of this~~] section **thirteen-b** and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's podiatrist, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation for any period during which he or she has refused to submit to such examination.

§ 5. Subdivisions 1 and 2 and paragraphs (a) and (b) of subdivision 3 of section 13-l of the workers' compensation law, subdivision 1 as added by chapter 940 of the laws of 1973 and subdivision 2 and paragraphs (a) and (b) of subdivision 3 as amended by chapter 473 of the laws of 2000, are amended to read as follows:

1. Where the term "chairman" is hereinafter used, it shall be deemed to mean the [~~chairman~~] **chair** of the [~~workmen's~~] **workers'** compensation board of the state of New York.

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury which consists solely of a condition which may lawfully be treated by a chiropractor as defined in section sixty-five hundred fifty-one of the education law may select to treat him or her, any duly registered and licensed chiropractor of the state of New York, authorized by the chair to render chiropractic care as hereinafter provided. If the injury or condition is one which is outside the limits prescribed by the education law for chiropractic care and treatment, the said chiropractor must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have supervision of the treatment of said condition including the future treatment to be administered to the patient by the chiropractor. [~~A chiropractor licensed and registered to practice chiropractic in the state of New York, who is desirous of being authorized to render chiropractic care under this section and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision three of this section shall file an application for authorization under this section with the chiropractic practice committee. In such application he or she shall agree to refrain from subse-~~

~~quently treating for remuneration, as a private patient, any person seeking chiropractic treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of chiropractors authorized to render chiropractic care or to conduct independent medical examinations under this chapter, or if the person seeking such treatment has been transferred from his or her care in accordance with the provisions of this section. This agreement shall run to the benefit of the injured person so treated, or examined, and shall be available to him or her as a defense in any action by such chiropractor for payment rendered by a chiropractor after he or she has been removed from the list of chiropractors authorized to render chiropractic care or to conduct independent medical examinations under this section, or after the injured person was transferred from his or her care in accordance with the provisions of this section. The chiropractic practice committee if it deems such licensed chiropractor duly qualified shall recommend to the chair that such be authorized to render chiropractic care and/or to conduct independent medical examinations under this section. Such recommendations shall be advisory to the chair only and shall not be binding or conclusive upon him or her.~~] The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities of charges and fees for chiropractic treatment and care, 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 chiropractic practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of chiropractic care to be rendered under this chapter, but consideration shall be given to the view 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.

(a) No claim for chiropractic care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the chiropractor giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified chiropractor authorized by the chair in accordance with [~~subdivision two of this~~] section **thirteen-b** and section one hundred thirty-seven of this chapter at a medical facility convenient to the claimant and in the presence of the claimant's chiropractor, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

§ 6. Subdivisions 1, 2 and 3 and paragraphs (a) and (b) of subdivision 4 of section 13-m of the worker's compensation law, subdivisions 1 and 2 as added by chapter 589 of the laws of 1989 and subdivision 3 and para-

graphs (a) and (b) of subdivision 4 as amended by chapter 473 of the laws of 2000, are amended to read as follows:

1. Where the term "chairman" is hereinafter used, it shall be deemed to mean the [~~chairman~~] **chair** of the workers' compensation board of the state of New York.

2. (a) An injured employee, injured under circumstances which make such injury compensable under this article, may lawfully be treated[~~, upon the referral of an authorized physician,~~] by a psychologist, duly registered and licensed by the state of New York, authorized by the chairman to render psychological care pursuant to [~~this~~] section **thirteen-b of this article**. Such services shall be within the scope of such psychologist's specialized training and qualifications as defined in article one hundred fifty-three of the education law.

(b) Medical bureaus, medical centers jointly operated by labor and management representatives, hospitals and health maintenance organizations, authorized to provide medical care pursuant to section thirteen-c of this [~~chapter~~] **article**, may provide psychological services when required[~~, upon the referral of an authorized physician, provided such care is rendered by a duly registered, licensed and authorized psychologist, as required by this section~~].

(c) A psychologist rendering service pursuant to this section shall maintain records of the patient's psychological condition and treatment, and such records or reports shall be submitted to the [~~chairman~~] **chair** on such forms and at such times as the [~~chairman~~] **chair** may require.

3. [~~A psychologist, licensed and registered to practice psychology in the state of New York, who is desirous of being authorized to render psychological care under this section and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of this section shall file an application for authorization under this section with the psychology practice committee. The applicant shall agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking psychological treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of psychologists authorized to render psychological care under this chapter. This agreement shall run to the benefit of the injured person so treated, and shall be available as a defense in any action by such psychologist for payment for treatment rendered by such psychologist after being removed from the list of psychologists authorized to render psychological care or to conduct independent medical examinations under this section. The psychology practice committee if it deems such licensed psychologist duly qualified shall recommend to the chair that such person be authorized to render psychological care and/or to conduct independent medical examinations under this section. Such recommendations shall be only advisory to the chair and shall not be binding or conclusive.~~] The chair shall prepare and establish a schedule for the state or schedules limited to defined localities of charges and fees for psychological treatment and care, to be determined in accordance with and 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 psychology practice committee to submit to such chair a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of psychological care to be rendered under this chapter, but consideration shall be given to the view 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.

(a) No claim for psychological care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the psychologist giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified psychologist, authorized by the chair in accordance with [~~**subdivision three of this**~~] section **thirteen-b** and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's psychologist, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law.