

STATE OF NEW YORK

242

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL, COLTON, SIMOTAS -- 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 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

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

LBD00028-01-9

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 subdivision (a) of section thirteen~~[, subdivision a,]~~ and
7 subdivision two of section thirteen-k~~[, subdivision two,]~~ of this [~~chap-~~
8 ~~ter~~] article, and for the reasonable value of hospital care in accord-
9 ance with the charges currently in force in hospitals in the same commu-
10 nity for cases coming within the provisions of this chapter. Such award
11 shall be made to the physician, podiatrist, or hospital entitled there-
12 to. A default in the payment of such award may be enforced in the manner
13 provided for the enforcement of compensation awards as set forth in
14 section twenty-six of this [~~chapter~~] article.

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

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

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

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