

AMENDMENTS TO HOUSE BILL NO. 18

Sponsor: REPRESENTATIVE MACKENZIE

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1 Amend Bill, page 1, lines 1 through 10, by striking out all
2 of said lines and inserting

3 Amending the act of June 2, 1915 (P.L.736, No.338), entitled
4 "An act defining the liability of an employer to pay damages
5 for injuries received by an employe in the course of
6 employment; establishing an elective schedule of
7 compensation; providing procedure for the determination of
8 liability and compensation thereunder; and prescribing
9 penalties," in liability and compensation, further providing
10 for prescription drugs and the treatment of work-related
11 injuries; in procedure, further providing for peer review;
12 and, in insurance fraud, further providing for compensation
13 to other persons.

14 Amend Bill, page 1, lines 17 through 21; pages 2 through 7,
15 lines 1 through 30; page 8, lines 1 through 22; by striking out
16 all of said lines on said pages and inserting

17 Section 1. Section 306(f.1)(3)(iii) and (6)(ii) of the act
18 of June 2, 1915 (P.L.736, No.338), known as the Workers'
19 Compensation Act, are amended, paragraph (3)(vi) is amended by
20 adding a subclause and paragraph (6) is amended by adding a
21 subparagraph to read:

22 Section 306. The following schedule of compensation is
23 hereby established:

- 24 * * *
- 25 (f.1) * * *
- 26 (3) * * *

27 (iii) Notwithstanding any other provision of law, it is
28 unlawful for a provider to refer a person for laboratory,
29 physical therapy, rehabilitation, chiropractic, radiation
30 oncology, psychometric, pharmacy, home infusion therapy or
31 diagnostic imaging, goods or services pursuant to this section
32 if the provider has a financial interest with the person or in
33 the entity that receives the referral. It is unlawful for a
34 provider to enter into an arrangement or scheme such as a cross-
35 referral arrangement, which the provider knows or should know

1 has a principal purpose of assuring referrals by the provider to
2 a particular entity which, if the provider directly made
3 referrals to such entity, would be in violation of this section.
4 No claim for payment shall be presented by an entity to any
5 individual, third-party payer or other entity for a service
6 furnished pursuant to a referral prohibited under this section.

7 * * *

8 (vi) * * *

9 (J) The department shall select a nationally recognized,
10 evidence-based prescription drug formulary appropriate for
11 resolving issues related to drugs prescribed for or related to
12 the treatment of work-related injuries, including, but not
13 limited to, the type, dosage and duration of prescriptions. The
14 following shall apply:

15 (I) Within thirty (30) days of the effective date of this
16 subclause, the department shall solicit public comments
17 regarding the selection of a prescription drug formulary under
18 this provision. The public comment period shall be ninety (90)
19 days. During the public comment period, the department shall
20 conduct at least one public hearing on the selection of a drug
21 formulary. The department shall publish notice of the public
22 comment period and public hearings in the Pennsylvania Bulletin.

23 (II) Within thirty (30) days after close of the public
24 comment period under subprovision (I), the department shall
25 publish notice of the prescription drug formulary selected in
26 the Pennsylvania Bulletin. The prescription drug formulary shall
27 take effect one hundred eighty (180) days after the publication
28 required by this subprovision.

29 (III) In selecting a nationally recognized, evidence-based
30 prescription drug formulary for adoption, the department shall
31 consider the following factors:

32 (a) Whether the formulary focuses on medical treatment
33 specific to workers' compensation.

34 (b) Whether the basis for the formulary is readily apparent
35 and publicly available.

36 (c) Whether the formulary includes measures to aid in
37 management of opioid medications.

38 (d) Whether the formulary appropriately limits both duration
39 and dosage of prescriptions.

40 (e) The cost of implementation of the formulary.

41 (f) Whether the entity that has developed the formulary has
42 instituted procedures and safeguards to prevent conflicts of
43 interest with regard to the selection or denial of any
44 particular medication, or its type, dosage or duration for use
45 in the formulary.

46 (IV) The department may not select a drug formulary
47 developed by an entity that has a financial interest in the
48 selection or denial of any particular medication, or its type,
49 dosage or duration for use in the formulary, or any similar
50 conflict of interest.

51 (V) The department shall annually review updates issued by

1 the formulary publisher to the selected formulary and by
2 November 1 each year shall solicit public comments regarding the
3 updates proposed for adoption by publishing notice of the
4 proposed updates and a public comment period in the Pennsylvania
5 Bulletin. The public comment period for updates to the adopted
6 formulary shall be at least twenty (20) days, but not more than
7 than thirty (30) days. Within thirty (30) days after the close
8 of the public comment period, the department shall publish
9 notice of the adopted updates in the Pennsylvania Bulletin. The
10 published updates shall take effect thirty (30) days after the
11 publication required by this subprovision.

12 (VI) The department shall ensure that the current
13 prescription drug formulary is available through its publicly
14 accessible Internet website for reference by physicians and the
15 general public.

16 (VII) The prescription of drugs that is consistent with or
17 recommended by the prescription drug formulary shall be
18 considered reasonable and necessary for the purposes of
19 paragraph (6). Except in cases of medical necessity under
20 subprovision (VII), the prescription of drugs that is not
21 consistent with or recommended by the prescription drug
22 formulary selected by the department shall not be considered
23 reasonable and necessary for the purposes of paragraph (6).

24 (VIII) The prescription of drugs that is not consistent with
25 or recommended by the prescription drug formulary may only be
26 considered reasonable and necessary for the purposes of
27 paragraph (6) if the treating health care provider has submitted
28 documentation of medical necessity, including evidence-based
29 analysis of the reason for the exception, to the insurer or
30 self-insured employer at the time of the initial prescription.
31 The documentation of medical necessity shall be on a form
32 prescribed by the department.

33 (IX) Within eighteen (18) calendar months following the
34 effective date of the prescription drug formulary selected under
35 this subclause, the Pennsylvania Compensation Ratings Bureau
36 shall calculate the savings achieved through the implementation
37 of the prescription drug formulary. For the calendar year
38 immediately following this calculation, the amount of savings
39 shall be used to provide an immediate reduction in rates, equal
40 to the savings, applicable to employers' workers' compensation
41 policies.

42 * * *

43 (6) Except in those cases in which a workers' compensation
44 judge asks for an opinion from peer review under section 420,
45 disputes as to reasonableness or necessity of treatment by a
46 health care provider shall be resolved in accordance with the
47 following provisions:

48 * * *

49 (ii) The department shall assign a request for utilization
50 review to a utilization review organization at random. The
51 utilization review organization shall issue a written report of

1 its findings and conclusions within the time frame required by
2 the nationally recognized accreditation standards adopted by the
3 department under subparagraph (v). In no case shall the report
4 of findings and conclusions be issued more than thirty (30) days
5 after the receipt of a request.

6 * * *

7 (v) The department shall approve only those utilization
8 review organizations that it determines have obtained
9 certification or accreditation by a nationally recognized
10 organization with certification or accreditation standards
11 appropriate for resolving utilization issues for workers'
12 compensation programs. The following shall apply:

13 (A) Within thirty (30) days of the effective date of this
14 clause, the department shall publish notice in the Pennsylvania
15 Bulletin of the specific nationally recognized certification or
16 accreditation that will be required in order to be approved as a
17 utilization review organization.

18 (B) Upon publication under subclause (A), an entity without
19 the appropriate certification or accreditation may not engage in
20 utilization review under this act, except that an entity
21 approved as a utilization review organization by the department
22 prior to the effective date of this clause may continue to
23 engage in utilization review for up to eighteen (18) calendar
24 months after the publication of notice under subclause (A). If
25 the department determines that an entity approved as a
26 utilization review organization by the department prior to the
27 effective date of this clause is actively attempting to achieve
28 the selected certification or accreditation, the entity shall
29 not be required to apply for reauthorization during the
30 eighteen-month period. A utilization review organization shall
31 adhere to the review standards of the selected nationally
32 recognized certification or accreditation organization for all
33 utilization review where the date of the injury is at least
34 eighteen (18) calendar months after the publication of notice
35 under subclause (A).

36 (C) The department shall enter an agreement with the
37 selected nationally recognized certification or accreditation
38 organization to provide for the certification or accreditation
39 process for utilization review organizations and employes of
40 utilization review organizations, including the costs of any
41 audits required for the certification or accreditation process.
42 The department shall make reasonable attempts to negotiate a
43 reduction of the cost of the certification or accreditation
44 process. An entity approved as a utilization review organization
45 by the department prior to the effective date of this clause,
46 including a surviving association that results from the merger
47 of two or more utilization review organizations under 15 Pa.C.S.
48 Ch. 3 Subch. C (relating to merger), shall be eligible to
49 participate in the initial certification or accreditation
50 process at no cost to the entity. After January 1, 2020, an
51 entity approved as a utilization review organization shall be

1 eligible to participate in the process to renew its
2 certification or accreditation at no cost to the entity. An
3 entity for which the department has incurred costs under this
4 subclause shall reimburse the department for its costs related
5 to the most recent certification or accreditation for the
6 entity, if the entity does not successfully obtain the initial
7 or renewal certification or accreditation. The actual amount of
8 the cost to the department for the certification or
9 accreditation process under this subclause, not to exceed one
10 million five-hundred thousand dollars (\$1,500,000) annually,
11 shall be transferred to the department from the Workers'
12 Compensation Administration Fund.

13 (D) The department shall conduct outreach to all entities
14 approved as utilization review organizations by the department
15 prior to the effective date of this clause. The outreach shall
16 include providing each entity with notice of the requirements of
17 this clause, guidance on how this clause will be enforced by the
18 department and information on how the entity may participate in
19 the required certification or accreditation process at no cost
20 under subclause (C).

21 * * *

22 Section 2. Section 420 of the act is amended to read:

23 Section 420. (a) The board, the department or a workers'
24 compensation judge, if it or he deem it necessary, may, of its
25 or his own motion, either before, during, or after any hearing,
26 make or cause to be made an investigation of the facts set forth
27 in the petition or answer or facts pertinent in any injury under
28 this act. The board, department or workers' compensation judge
29 may appoint one or more impartial physicians or surgeons to
30 examine the injuries of the plaintiff and report thereon, or may
31 employ the services of such other experts as shall appear
32 necessary to ascertain the facts. The workers' compensation
33 judge when necessary or appropriate or upon request of a party
34 in order to rule on requests for review filed under section
35 306(f.1), or under other provisions of this act, may ask for an
36 opinion from peer review about the reasonableness or necessity
37 [or frequency] of treatment under section 306(f.1). The peer
38 review report or the peer report of any physician, surgeon, or
39 expert appointed by the department or by a workers' compensation
40 judge, including the report of a peer review organization, shall
41 be filed with the board or workers' compensation judge, as the
42 case may be, and shall be a part of the record and open to
43 inspection as such. The workers' compensation judge shall
44 consider the report as evidence but shall not be bound by such
45 report.

46 (b) The board or workers' compensation judge, as the case
47 may be, shall fix the compensation of such physicians, surgeons,
48 and experts, and other peer review organizations which, when so
49 fixed, shall be paid out of the Workmen's Compensation
50 Administration Fund.

51 (c) Peer review performed under this section and peer review

1 organizations used under this section shall comply with the
2 requirements established under section 306(f.1)(6).

3 Section 3. Section 1103 of the act is amended by adding a
4 subsection to read:

5 Section 1103. * * *

6 (d) With respect to a workers' compensation insurance
7 benefit or claim, a lawyer may not refer a client to a health
8 care facility or pharmacy in which the lawyer holds a direct or
9 indirect ownership interest.

10 Section 4. Within eight months of the effective date of this
11 act, the Department of Labor and Industry shall propose
12 regulations to implement the amendment or addition of section
13 306(f.1)(3)(vi)(J) and (6)(ii) and (v) of the act.

14 Section 5. This act shall take effect in 60 days.