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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1141 Session of 2015

INTRODUCED BY SAYLOR, GROVE, WARD, PHILLIPS-HILL, MILLARD, HEFFLEY, MILNE, KAUFFMAN, A. HARRIS, EVERETT AND BAKER, FEBRUARY 2, 2016

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 2, 2016

AN ACT

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," in interpretation and definitions, further providing for definitions; in liability and compensation, further providing for schedule of compensation; and, in procedure, further providing for compensation with or without agreement and for reporting of injuries by employers.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "health care provider" in section 109 of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281) and added July 2, 1993 (P.L.190, No.44), is amended and the section is amended by adding definitions to read:

Section 109. In addition to the definitions set forth in this article, the following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Case management" means the planning and coordination of health care services by a medical case manager or coordinator with the goal of assisting an injured worker to restore as nearly as possible the worker's pre-injury level of physical function. The term includes any of the following:

(1) Case assessment.

(2) Development, implementation and coordination of a care plan with health care providers, the injured worker and the injured worker's family.

(3) Evaluation of treatment results.

(4) Planning for community reentry and return to work.

(5) Management of health care treatment and utilization control.

(6) Referral for further vocational rehabilitation services, including the participation and educational retraining.

* * *

"Health care provider" means any person, corporation, facility or institution licensed or otherwise authorized by the Commonwealth to provide health care services and which has obtained a valid National Provider Identifier, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employe or agent of such person acting in the course and scope of employment or agency related to health care services. The term does not include any person, partnership, association or corporation which is not licensed by an agency of the Commonwealth to perform health care services and has not obtained a National Provider Identifier.

* * *

"National Provider Identifier" means a unique identification number obtained by a health care provider from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, or a successor agency, in accordance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

* * *

Section 2. Section 306(f.1)(1)(i) and (iii), (2), (3)(i) and (ii) and (5) of the act, amended June 24, 1996 (P.L.350, No.57), are amended and the subsection is amended by adding paragraphs to read:

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

* * *

(f.1) (1) (i) The employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, including an additional opinion when invasive surgery may be necessary, medicines and supplies, as and when needed. Provided an employer establishes a list of at least six designated health care providers, no more than four of whom may be a coordinated care organization and no fewer than three of whom shall be physicians, the employe shall be required to visit one of the physicians or other health care providers so designated and shall continue to visit the same or another designated physician or health care provider for a period of ninety (90) days from the date of the first visit: Provided, however, That the employer shall not include on the list any person, partnership, association or corporation, including a network, which is not licensed by an agency of the Commonwealth to perform health care services and has not obtained a National Provider Identifier, or a physician or other health care provider who is employed, owned or controlled by the employer or the employer's insurer unless employment, ownership or control is disclosed on the list. Should invasive surgery for an employe be prescribed by a physician or other health care provider so designated by the employer, the employe shall be permitted to receive an additional opinion from any health care provider of the employe's own choice. If the additional opinion differs from the opinion provided by the physician or health care provider so designated by the employer, the employe shall determine which course of treatment to follow: Provided, That the second opinion provides a specific and detailed course of treatment. If the employe chooses to follow the procedures designated in the second opinion, such procedures shall be performed by one of the physicians or other health care providers so designated by the employer for a period of ninety (90) days from the date of the visit to the physician or other health care provider of the employe's own choice. Should the employe not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such applicable period. It shall be the duty of the employer to provide a clearly written notification of the employe's rights and duties under this section to the employe. The employer shall further ensure that the employe has been informed and that he understands these rights and duties. This duty shall be evidenced only by the employe's written acknowledgment of having been informed and having understood his rights and duties. Any failure of the employer to provide and evidence such notification shall relieve the employe from any notification duty owed, notwithstanding any provision of this act to the contrary, and the employer shall remain liable for all rendered treatment. Subsequent treatment may be provided by any health care provider of the employe's own choice. Any employe who, next following termination of the applicable period, is provided treatment from a nondesignated health care provider shall notify the employer within five (5) days of the first visit to said health care provider. Failure to so notify the employer will relieve the employer from liability for the payment for the services rendered prior to appropriate notice if such services are determined pursuant to paragraph (6) to have been unreasonable or unnecessary.

* * *

(iii) Nothing in this section shall prohibit an insurer or an employer from contracting with any individual, partnership, association or corporation to provide case management and coordination of services with regard to injured employes[.] <u>or to obtain discounted medical services through a bona fide provider network arrangement. It shall be unlawful for an insurer, employer or an agent of an insurer or employer to reimburse a provider in an amount less than the reimbursement allowances provided for under paragraph (3)(i) and (ii) unless the provider has executed a legally binding agreement directly and exclusively with the insurer or employer, or an agent of the insurer or employer through a bona fide provider network arrangement. Any discount or reimbursement reduction imposed below the allowances set forth under paragraph (3)(i) and (ii) pursuant to a downstream or third party agreement that is not executed by the provider directly and exclusively with the</u>

insurer, employer, or an agent of the insurer or employer, shall be null and void, and shall subject the insurer or employer to sanctions, including, but not limited to, payment of the full amount due and owing pursuant to paragraph (3)(i) and (ii), interest at the rate of twenty-five per centum per annum, costs and attorney fees, if the insurer or employer's position is determined to be unreasonable at the discretion of the finder of fact, and a penalty of fifty per centum of the amount due and owing. A provider shall have the right to enforce this subparagraph through a petition filed with a workers' compensation judge pursuant to paragraph (12). In the event an insurer or employer enters into an arrangement with any individual or entity pursuant to this subparagraph, the insurer or employer shall, within seventy-two (72) hours of executing such arrangement, notify the department of the arrangement and provide the name, address and a list of all services the person or organization will provide pursuant to the arrangement. The department shall have ten (10) days from the date of receipt of such notice to post the information contained in the notice on its publicly accessible Internet website in a conspicuous location. Any individual, partnership, association or corporation which knowingly receives compensation or anything of value to refer, recommend, steer or otherwise direct any injured employe to a health care provider without performing bona fide case management and coordination of care services for the injured employe shall be guilty of a felony of the third degree and, upon conviction thereof, shall be sentenced to pay a fine of no more than one hundred thousand dollars ($100,000) or double the value of the compensation or exchange of anything of value received, or to undergo imprisonment for a period of not more than seven years, or both.

(2) Any provider who treats an injured employe shall be required to file periodic reports with the employer on a form prescribed by the department which shall include, where pertinent, history, diagnosis, treatment, prognosis and physical findings. The report shall be filed within ten (10) days of commencing treatment and at least once a month thereafter as long as treatment continues. The employer shall not be liable to pay for such treatment until a report has been filed. Beginning January 1, 2017, an insurer or employer shall accept all reports submitted by a provider pursuant to this paragraph in an electronic format. On or before November 1, 2016, the department shall create and provide an electronic report to be used by providers and electronic medical record entities to facilitate electronic submission of the report and electronic submission of bills pursuant to paragraph (3)(i).

(3) (i) For purposes of this clause, a provider shall not require, request or accept payment for the treatment, accommodations, products or services in excess of one hundred thirteen per centum of the prevailing charge at the seventy-fifth percentile; one hundred thirteen per centum of the applicable fee schedule, the recommended fee or the inflation index charge; one hundred thirteen per centum of the DRG payment plus pass-through costs and applicable cost or day outliers; or one hundred thirteen per centum of any other Medicare reimbursement mechanism, as determined by the Medicare carrier or intermediary, whichever pertains to the specialty service involved, determined to be applicable in this Commonwealth under the Medicare program for comparable services rendered. If the commissioner determines that an allowance for a particular

provider group or service under the Medicare program is not reasonable, it may adopt, by regulation, a new allowance. If the prevailing charge, fee schedule, recommended fee, inflation index charge, DRG payment or any other reimbursement has not been calculated under the Medicare program for a particular treatment, accommodation, product or service, the amount of the payment may not exceed eighty per centum of the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided. <u>Beginning January 1, 2017, insurers, employers and their agents shall accept electronically all submitted bills from a provider for services rendered by a provider under this subparagraph and subparagraph (ii) and shall implement standard electronic transactions to accept electronic bills consistent with regulations relating to HIPAA transactions and code sets promulgated by the United States Department of Health and Human Services pursuant to 45 CFR Pt. 162 (relating to administrative requirements), and shall accept such bills either directly or through the use of a clearinghouse pursuant to 45 CFR § 162.930 (relating to additional rules for health care clearinghouses). An insurer or employer shall include with each payment made to a provider for services rendered under this act a detailed written explanation of the benefits paid, delineating the patient name, date of service, codes submitted by the provider and the amount of reimbursement applicable to each code for service submitted.</u>

(ii) Commencing on January 1, 1995, the maximum allowance for a health care service covered by subparagraph (i) shall be updated as of the first day of January of each year. The update, which shall be applied to all services performed after January 1 of each year, shall be equal to the percentage change in the Statewide average weekly wage. Such updates shall be cumulative. <u>An insurer or employer who fails to implement the reimbursement update required by this subparagraph by January 2 of each year shall be required to reimburse providers the full amount of the updated fee allowance, interest at the rate of twenty-five per centum per annum, costs, attorney fees, if the insurer or employer's position is determined to be unreasonable at the discretion of the finder of fact, and a penalty of fifty per centum of the amount due and owing. A provider shall not be required to file a fee review petition to be entitled to these payment amounts. A provider shall have the right to enforce this subparagraph through a petition filed with a workers' compensation judge pursuant to paragraph (12).</u>

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(5) The employer or insurer shall make payment and providers shall submit bills and records in accordance with the provisions of this section. All payments to providers for treatment provided pursuant to this act shall be made within thirty (30) days of receipt of such bills and records unless the employer or insurer disputes the reasonableness or necessity of the treatment provided pursuant to paragraph (6). The nonpayment to providers within thirty (30) days for treatment for which a bill and records have been submitted shall only apply to that particular treatment or portion thereof in dispute; payment must be made timely for any treatment or portion thereof not in dispute. A provider who has submitted the reports and bills required by this section and who disputes the amount or timeliness of the payment from the employer or insurer shall

file an application for fee review with the department no more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment. If the insurer disputes the reasonableness and necessity of the treatment pursuant to paragraph (6), the period for filing an application for fee review shall be tolled as long as the insurer has the right to suspend payment to the provider pursuant to the provisions of this paragraph. Within thirty (30) days of the filing of such an application, the department shall render an administrative decision. If the administrative decision of the department upholds, in whole or in part, the provider's application for fee review, the department shall award the amount of the unpaid claims, interest at the rate of twenty-five per centum per annum to the provider, costs, and attorney fees, if the insurer or employers' position is determined to be unreasonable at the discretion of the finder of fact, and a penalty of fifty per centum of the amount due and owing. The department shall include an award of attorney fees and interest in the administrative decision and shall authorize a provider to submit a petition for attorney fees concurrent with the filing of any document in support of the fee petition. An administrative decision rendered by the department in favor of the provider's fee review petition, in whole or in part, shall be paid in full by the insurer within thirty (30) days from the date of the department's administrative decision. Failure to comply with this paragraph by an insurer, absent the timely filing of an appeal to Commonwealth Court pursuant to 2 Pa.C.S. (relating to administrative law and procedure), shall create a right inuring to the benefit of the provider to obtain payment in full consistent with the department's administrative decision through a petition filed with a workers' compensation judge pursuant to paragraph (12).

* * *

(11) It shall be unlawful for any insurer, employer, agent of an insurer or employer, corporation or person to solicit a provider to accept discounts or reimbursement below the allowances provided for in paragraph (3)(i) and (ii) by the use of any threat or coercion in any verbal or written communications stating or implying the provider will suffer negative economic, patient access or reimbursement consequences if the provider does not agree to participate in any agreement or network at a discounted reimbursement rate.

(12) The department shall establish a petition for alleging violations of paragraphs (1)(iii), (3)(ii) and (5) and section 406.1 to ensure violations of the standards set forth in paragraphs (1)(iii), (3)(ii) and (5) and section 406.1 are promptly enforced. A petition filed under this paragraph shall be assigned to a workers' compensation judge within seven (7) business days after the filing date. A hearing shall be conducted on such petition within fourteen (14) business days of its assignment to a workers' compensation judge. Proper notice shall be given to all parties as to the time and location of such hearing. A decision on such petition shall be rendered within twenty-one (21) days, provided that no continuance has been granted. The workers' compensation judge's decision shall include findings of fact, the amount of any administrative fines to be imposed, the amount of unpaid compensation owed or unpaid medical bills due, attorney fees, if the workers' compensation judge determines in the judge's discretion that the insurer or employer's position is unreasonable, interest at the rate of

<u>twenty-five per centum per annum, costs and a penalty fifty per centum of the amount due and owing. Insurers and employers may be penalized the sum of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) for each day of violation. Such administrative penalties shall be paid to the department. The administrative penalty may be imposed if the violation was flagrant, there has been history of repeat violations on the same claim, or where insurers or employers acted in bad faith. Any administrative penalty imposed under this paragraph shall not be considered as compensation for the purpose of any limitation on the total amount of compensation payable or reimbursement due to a provider which is set forth in this act. This paragraph shall not apply to violations that occur beyond the control of insurers or employers.</u>

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Section 3. Section 407 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 407. On or after the seventh day after any injury shall have occurred, the employer or insurer and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the seventh day after the injury shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void. It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made.

Where payment of compensation is commenced without an agreement, the employer or insurer shall simultaneously give notice of compensation payable to the employe or his dependent, <u>and the employe's treating physician or provider,</u> on a form prescribed by the department, identifying such payments as compensation under this act and shall forthwith furnish a copy or copies to the department as required by rules and regulations. <u>The employe's treating physician or provider shall have the right to electronically access the notice of compensation payable retained by the department applicable to the treating physician or provider's treatment or services rendered to the employe. Within thirty (30) days of the effective date of the amendment of this section, the department shall develop and implement a procedure to allow the employe's treating physician or provider electronic access to the notice of compensation payable consistent with prevailing security standards.</u> It shall be the duty of the department to examine the notice to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All agreements made in accordance with the provisions of this section shall be on a form prescribed by the department, signed by all parties in interest, and a copy or copies thereof forwarded to the department as required by rules and regulations. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All notices of compensation payable and agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any injured employe of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding unless modified or set aside as hereinafter provided.

Section 4. Section 438 of the act, amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 438. (a) An employer shall report all injuries received by employes in the course of or resulting from their employment immediately to the employer's insurer. If the employer is self-insured such injuries shall be reported to the person responsible for management of the employer's compensation program.

(b) An employer shall report such injuries to the Department of Labor and Industry by filing directly with the department on the form it prescribes a report of injury within forty-eight hours for every injury resulting in death, and mailing within seven days after the date of injury for all other injuries except those resulting in disability continuing less than the day, shift, or turn in which the injury was received. A copy of this report to the department shall be mailed to the employer's insurer and the employe's treating physician or provider forthwith. The employe's treating physician or provider shall have the right to electronically access injury reports retained by the department applicable to the treating physician or provider's treatment or services rendered to the employe. Within thirty (30) days of the effective date of the amendment of this section, the department shall develop and implement a procedure to allow the employe's treating physician or provider electronic access to the injury reports consistent with prevailing security standards.

(c) Reports of injuries filed with the department under this section shall not be evidence against the employer or the employer's insurer in any proceeding either under this act or otherwise. Such reports may be made available by the department to other State or Federal agencies for study or informational purposes.

Section 5. This act shall take effect in 30 days.