

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 18 Session of 2017

INTRODUCED BY MACKENZIE, A. HARRIS, HEFFLEY, MILLARD, TOPPER, IRVIN, SAYLOR AND GILLEN, FEBRUARY 13, 2017

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 14, 2017

AN ACT

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

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

13 Section 1. Section 306(f.1)(3)(vi) of the act of June 2, 1915 <--
14 (P.L.736, No.338), known as the Workers' Compensation Act, is
15 amended by adding a provision and paragraph (6) is amended by
16 adding a subclause to read:

17 SECTION 1. SECTION 306(F.1)(6)(II) OF THE ACT OF JUNE 2, <--
18 1915 (P.L.736, NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT,
19 IS AMENDED, PARAGRAPH (3)(VI) IS AMENDED BY ADDING A SUBCLAUSE
20 AND PARAGRAPH (6) IS AMENDED BY ADDING A SUBPARAGRAPH TO READ:

21 Section 306. The following schedule of compensation is

1 hereby established:

2 * * *

3 (f.1) * * *

4 (3) * * *

5 (vi) * * *

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

12 (I) Within thirty (30) days of the effective date of this
13 provision SUBCLAUSE, the department shall solicit public <--
14 comments regarding the selection of a prescription drug
15 formulary under this provision. The public comment period shall
16 be at least thirty (30) days but not more than ninety (90) days. <--
17 DURING THE PUBLIC COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT <--
18 AT LEAST ONE PUBLIC HEARING ON THE SELECTION OF A DRUG
19 FORMULARY. The department shall publish notice of the public
20 comment period AND PUBLIC HEARINGS in the Pennsylvania Bulletin. <--

21 (II) Within thirty (30) days after close of the public
22 comment period under subprovision (I), the department shall
23 publish notice of its selection of a THE prescription drug <--
24 formulary SELECTED in the Pennsylvania Bulletin. The <--
25 prescription drug formulary shall take effect ~~thirty (30)~~ ONE <--
26 HUNDRED EIGHTY (180) days after the publication required by this
27 subprovision.

28 (III) IN SELECTING A NATIONALLY RECOGNIZED, EVIDENCE-BASED <--
29 PRESCRIPTION DRUG FORMULARY FOR ADOPTION, THE DEPARTMENT SHALL
30 CONSIDER THE FOLLOWING FACTORS:

1 (A) WHETHER THE FORMULARY FOCUSES ON MEDICAL TREATMENT
2 SPECIFIC TO WORKERS' COMPENSATION.

3 (B) WHETHER THE BASIS FOR THE FORMULARY IS READILY APPARENT
4 AND PUBLICLY AVAILABLE.

5 (C) WHETHER THE FORMULARY INCLUDES MEASURES TO AID IN
6 MANAGEMENT OF OPIOID MEDICATIONS.

7 (D) WHETHER THE FORMULARY APPROPRIATELY LIMITS BOTH DURATION
8 AND DOSAGE OF PRESCRIPTIONS.

9 (E) THE COST OF IMPLEMENTATION OF THE FORMULARY.

10 (IV) THE DEPARTMENT SHALL ANNUALLY REVIEW UPDATES ISSUED BY
11 THE FORMULARY PUBLISHER TO THE SELECTED FORMULARY AND BY
12 NOVEMBER 1 EACH YEAR SHALL SOLICIT PUBLIC COMMENTS REGARDING THE
13 UPDATES PROPOSED FOR ADOPTION BY PUBLISHING NOTICE OF THE
14 PROPOSED UPDATES AND A PUBLIC COMMENT PERIOD IN THE PENNSYLVANIA
15 BULLETIN. THE PUBLIC COMMENT PERIOD FOR UPDATES TO THE ADOPTED
16 FORMULARY SHALL BE AT LEAST TWENTY (20) DAYS, BUT NOT MORE THAN
17 THAN THIRTY (30) DAYS. WITHIN THIRTY (30) DAYS AFTER THE CLOSE
18 OF THE PUBLIC COMMENT PERIOD, THE DEPARTMENT SHALL PUBLISH
19 NOTICE OF THE ADOPTED UPDATES IN THE PENNSYLVANIA BULLETIN. THE
20 PUBLISHED UPDATES SHALL TAKE EFFECT THIRTY (30) DAYS AFTER THE
21 PUBLICATION REQUIRED BY THIS SUBPROVISION.

22 ~~(III)~~ (V) The department shall ensure that the current <--
23 prescription drug formulary is available through its publicly
24 accessible Internet website for reference by physicians and the
25 general public.

26 ~~(IV)~~ (VI) The PRESCRIPTION OF DRUGS THAT IS CONSISTENT WITH <--
27 OR RECOMMENDED BY THE PRESCRIPTION DRUG FORMULARY SHALL BE
28 CONSIDERED REASONABLE AND NECESSARY FOR THE PURPOSES OF
29 PARAGRAPH (6). EXCEPT IN CASES OF MEDICAL NECESSITY UNDER
30 SUBPROVISION (VII), THE prescription of drugs that is not

1 consistent with or recommended by the prescription drug
2 formulary selected by the department shall not be considered
3 reasonable and necessary for the purposes of paragraph (6).

4 (VII) THE PRESCRIPTION OF DRUGS THAT IS NOT CONSISTENT WITH <--
5 OR RECOMMENDED BY THE PRESCRIPTION DRUG FORMULARY MAY ONLY BE
6 CONSIDERED REASONABLE AND NECESSARY FOR THE PURPOSES OF
7 PARAGRAPH (6) IF THE TREATING HEALTH CARE PROVIDER HAS SUBMITTED
8 DOCUMENTATION OF MEDICAL NECESSITY, INCLUDING EVIDENCE-BASED
9 ANALYSIS OF THE REASON FOR THE EXCEPTION, TO THE INSURER OR
10 SELF-INSURED EMPLOYER AT THE TIME OF THE INITIAL PRESCRIPTION.
11 THE DOCUMENTATION OF MEDICAL NECESSITY SHALL BE ON A FORM
12 PRESCRIBED BY THE DEPARTMENT.

13 (VIII) WITHIN EIGHTEEN (18) CALENDAR MONTHS FOLLOWING THE
14 EFFECTIVE DATE OF THE PRESCRIPTION DRUG FORMULARY SELECTED UNDER
15 THIS SUBCLAUSE, THE PENNSYLVANIA COMPENSATION RATINGS BUREAU
16 SHALL CALCULATE THE SAVINGS ACHIEVED THROUGH THE IMPLEMENTATION
17 OF THE PRESCRIPTION DRUG FORMULARY. FOR THE CALENDAR YEAR
18 IMMEDIATELY FOLLOWING THIS CALCULATION, THE AMOUNT OF SAVINGS
19 SHALL BE USED TO PROVIDE AN IMMEDIATE REDUCTION IN RATES, EQUAL
20 TO THE SAVINGS, APPLICABLE TO EMPLOYERS' WORKERS' COMPENSATION
21 POLICIES.

22 * * *

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

28 * * *

29 (II) THE DEPARTMENT SHALL ASSIGN A REQUEST FOR UTILIZATION <--
30 REVIEW TO A UTILIZATION REVIEW ORGANIZATION AT RANDOM. THE

1 UTILIZATION REVIEW ORGANIZATION SHALL ISSUE A WRITTEN REPORT OF
2 ITS FINDINGS AND CONCLUSIONS WITHIN THE TIME FRAME REQUIRED BY
3 THE NATIONALLY RECOGNIZED ACCREDITATION STANDARDS ADOPTED BY THE
4 DEPARTMENT UNDER SUBPARAGRAPH (V). IN NO CASE SHALL THE REPORT
5 OF FINDINGS AND CONCLUSIONS BE ISSUED MORE THAN THIRTY (30) DAYS
6 AFTER THE RECEIPT OF A REQUEST.

7 * * *

8 (v) The department shall approve only those utilization
9 review organizations that it determines have obtained
10 certification as a utilization review entity under section 2151 <--
11 of the Insurance Company Law of 1921. OR ACCREDITATION BY A <--
12 NATIONALLY RECOGNIZED ORGANIZATION WITH CERTIFICATION OR
13 ACCREDITATION STANDARDS APPROPRIATE FOR RESOLVING UTILIZATION
14 ISSUES FOR WORKERS' COMPENSATION PROGRAMS. THE FOLLOWING SHALL
15 APPLY:

16 (A) WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF THIS
17 CLAUSE, THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
18 BULLETIN OF THE SPECIFIC NATIONALLY RECOGNIZED CERTIFICATION OR
19 ACCREDITATION THAT WILL BE REQUIRED IN ORDER TO BE APPROVED AS A
20 UTILIZATION REVIEW ORGANIZATION.

21 (B) UPON PUBLICATION UNDER SUBCLAUSE (A), AN ENTITY WITHOUT
22 THE APPROPRIATE CERTIFICATION OR ACCREDITATION MAY NOT ENGAGE IN
23 UTILIZATION REVIEW UNDER THIS ACT, EXCEPT THAT AN ENTITY
24 APPROVED AS A UTILIZATION REVIEW ORGANIZATION BY THE DEPARTMENT
25 PRIOR TO THE EFFECTIVE DATE OF THIS CLAUSE MAY CONTINUE TO
26 ENGAGE IN UTILIZATION REVIEW FOR UP TO EIGHTEEN (18) CALENDAR
27 MONTHS AFTER THE PUBLICATION OF NOTICE UNDER SUBCLAUSE (A). IF
28 THE DEPARTMENT DETERMINES THAT AN ENTITY APPROVED AS A
29 UTILIZATION REVIEW ORGANIZATION BY THE DEPARTMENT PRIOR TO THE
30 EFFECTIVE DATE OF THIS CLAUSE IS ACTIVELY ATTEMPTING TO ACHIEVE

1 THE SELECTED CERTIFICATION OR ACCREDITATION, THE ENTITY SHALL
2 NOT BE REQUIRED TO APPLY FOR REAUTHORIZATION DURING THE
3 EIGHTEEN-MONTH PERIOD. A UTILIZATION REVIEW ORGANIZATION SHALL
4 ADHERE TO THE REVIEW STANDARDS OF THE SELECTED NATIONALLY
5 RECOGNIZED CERTIFICATION OR ACCREDITATION ORGANIZATION FOR ALL
6 UTILIZATION REVIEW WHERE THE DATE OF THE INJURY IS AT LEAST
7 EIGHTEEN (18) CALENDAR MONTHS AFTER THE PUBLICATION OF NOTICE
8 UNDER SUBCLAUSE (A).

9 (C) THE DEPARTMENT SHALL ENTER AN AGREEMENT WITH THE
10 SELECTED NATIONALLY RECOGNIZED CERTIFICATION OR ACCREDITATION
11 ORGANIZATION TO PROVIDE FOR THE CERTIFICATION OR ACCREDITATION
12 PROCESS FOR UTILIZATION REVIEW ORGANIZATIONS AND EMPLOYEES OF
13 UTILIZATION REVIEW ORGANIZATIONS, INCLUDING THE COSTS OF ANY
14 AUDITS REQUIRED FOR THE CERTIFICATION OR ACCREDITATION PROCESS.
15 THE DEPARTMENT SHALL MAKE REASONABLE ATTEMPTS TO NEGOTIATE A
16 REDUCTION OF THE COST OF THE CERTIFICATION OR ACCREDITATION
17 PROCESS. AN ENTITY APPROVED AS A UTILIZATION REVIEW ORGANIZATION
18 BY THE DEPARTMENT PRIOR TO THE EFFECTIVE DATE OF THIS CLAUSE,
19 INCLUDING A SURVIVING ASSOCIATION THAT RESULTS FROM THE MERGER
20 OF TWO OR MORE UTILIZATION REVIEW ORGANIZATIONS UNDER 15 PA.C.S.
21 CH. 3 SUBCH. C (RELATING TO MERGER), SHALL BE ELIGIBLE TO
22 PARTICIPATE IN THE INITIAL CERTIFICATION OR ACCREDITATION
23 PROCESS AT NO COST TO THE ENTITY. AFTER JANUARY 1, 2020, AN
24 ENTITY APPROVED AS A UTILIZATION REVIEW ORGANIZATION SHALL BE
25 ELIGIBLE TO PARTICIPATE IN THE PROCESS TO RENEW ITS
26 CERTIFICATION OR ACCREDITATION AT NO COST TO THE ENTITY. AN
27 ENTITY FOR WHICH THE DEPARTMENT HAS INCURRED COSTS UNDER THIS
28 SUBCLAUSE SHALL REIMBURSE THE DEPARTMENT FOR ITS COSTS RELATED
29 TO THE MOST RECENT CERTIFICATION OR ACCREDITATION FOR THE
30 ENTITY, IF THE ENTITY DOES NOT SUCCESSFULLY OBTAIN THE INITIAL

1 OR RENEWAL CERTIFICATION OR ACCREDITATION. THE ACTUAL AMOUNT OF
2 THE COST TO THE DEPARTMENT FOR THE CERTIFICATION OR
3 ACCREDITATION PROCESS UNDER THIS SUBCLAUSE, NOT TO EXCEED ONE
4 MILLION FIVE-HUNDRED THOUSAND DOLLARS (\$1,500,000) ANNUALLY,
5 SHALL BE TRANSFERRED TO THE DEPARTMENT FROM THE WORKERS'
6 COMPENSATION ADMINISTRATION FUND.

7 (D) THE DEPARTMENT SHALL CONDUCT OUTREACH TO ALL ENTITIES
8 APPROVED AS UTILIZATION REVIEW ORGANIZATIONS BY THE DEPARTMENT
9 PRIOR TO THE EFFECTIVE DATE OF THIS CLAUSE. THE OUTREACH SHALL
10 INCLUDE PROVIDING EACH ENTITY WITH NOTICE OF THE REQUIREMENTS OF
11 THIS CLAUSE, GUIDANCE ON HOW THIS CLAUSE WILL BE ENFORCED BY THE
12 DEPARTMENT AND INFORMATION ON HOW THE ENTITY MAY PARTICIPATE IN
13 THE REQUIRED CERTIFICATION OR ACCREDITATION PROCESS AT NO COST
14 UNDER SUBCLAUSE (C).

15 * * *

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

17 Section 420. (a) The board, the department or a workers'
18 compensation judge, if it or he deem it necessary, may, of its
19 or his own motion, either before, during, or after any hearing,
20 make or cause to be made an investigation of the facts set forth
21 in the petition or answer or facts pertinent in any injury under
22 this act. The board, department or workers' compensation judge
23 may appoint one or more impartial physicians or surgeons to
24 examine the injuries of the plaintiff and report thereon, or may
25 employ the services of such other experts as shall appear
26 necessary to ascertain the facts. The workers' compensation
27 judge when necessary or appropriate or upon request of a party
28 in order to rule on requests for review filed under section
29 306(f.1), or under other provisions of this act, may ask for an
30 opinion from peer review about the reasonableness or necessity

1 [or frequency] of treatment under section 306(f.1). The peer
2 review report or the peer report of any physician, surgeon, or
3 expert appointed by the department or by a workers' compensation
4 judge, including the report of a peer review organization, shall
5 be filed with the board or workers' compensation judge, as the
6 case may be, and shall be a part of the record and open to
7 inspection as such. The workers' compensation judge shall
8 consider the report as evidence but shall not be bound by such
9 report.

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

15 (c) Peer review performed under this section and peer review
16 organizations used under this section shall comply with the
17 requirements established under section 306(f.1)(6).

18 SECTION 3. WITHIN EIGHT MONTHS OF THE EFFECTIVE DATE OF THIS <--
19 ACT, THE DEPARTMENT OF LABOR AND INDUSTRY SHALL PROPOSE
20 REGULATIONS TO IMPLEMENT THE AMENDMENT OR ADDITION OF SECTION
21 306(F.1)(3)(VI)(J) AND (6)(II) AND (V) OF THE ACT.

22 Section 3 4. This act shall take effect in 60 days. <--