
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 936 Session of
2017

INTRODUCED BY WHITE, SCARNATI, REGAN, ARGALL, MCGARRIGLE,
STEFANO, HUTCHINSON, RESCHENTHALER, AUMENT, YAW, MENSCH,
KILLION, LANGERHOLC AND EICHELBERGER, OCTOBER 20, 2017

REFERRED TO LABOR AND INDUSTRY, OCTOBER 20, 2017

AN ACT

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

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

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

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

18 * * *

19 (f.1) * * *

20 (3) * * *

21 (vi) * * *

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

7 (I) Within thirty (30) days of the effective date of this
8 subclause, the department shall solicit public comments
9 regarding the selection of a prescription drug formulary under
10 this provision. The public comment period shall be ninety (90)
11 days. During the public comment period, the department shall
12 conduct at least one public hearing on the selection of a drug
13 formulary. The department shall publish notice of the public
14 comment period and public hearings in the Pennsylvania Bulletin.

15 (II) Within thirty (30) days after close of the public
16 comment period under subprovision (I), the department shall
17 publish notice of the prescription drug formulary selected in
18 the Pennsylvania Bulletin. The prescription drug formulary shall
19 take effect one hundred eighty (180) days after the publication
20 required by this subprovision.

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

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

26 (b) Whether the basis for the formulary is readily apparent
27 and publicly available.

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

30 (d) Whether the formulary appropriately limits both duration

1 and dosage of prescriptions.

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

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

15 (V) The department shall ensure that the current
16 prescription drug formulary is available through its publicly
17 accessible Internet website for reference by physicians and the
18 general public.

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

27 (VII) The prescription of drugs that is not consistent with
28 or recommended by the prescription drug formulary may only be
29 considered reasonable and necessary for the purposes of
30 paragraph (6) if the treating health care provider has submitted

1 documentation of medical necessity, including evidence-based
2 analysis of the reason for the exception, to the insurer or
3 self-insured employer at the time of the initial prescription.
4 The documentation of medical necessity shall be on a form
5 prescribed by the department.

6 (VIII) Within eighteen (18) calendar months following the
7 effective date of the prescription drug formulary selected under
8 this subclause, the Pennsylvania Compensation Ratings Bureau
9 shall calculate the savings achieved through the implementation
10 of the prescription drug formulary. For the calendar year
11 immediately following this calculation, the amount of savings
12 shall be used to provide an immediate reduction in rates, equal
13 to the savings, applicable to employers' workers' compensation
14 policies.

15 * * *

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

21 * * *

22 (ii) The department shall assign a request for utilization
23 review to a utilization review organization at random. The
24 utilization review organization shall issue a written report of
25 its findings and conclusions within the time frame required by
26 the nationally recognized accreditation standards adopted by the
27 department under subparagraph (v). In no case shall the report
28 of findings and conclusions be issued more than thirty (30) days
29 after the receipt of a request.

30 * * *

1 (v) The department shall approve only those utilization
2 review organizations that it determines have obtained
3 certification or accreditation by a nationally recognized
4 organization with certification or accreditation standards
5 appropriate for resolving utilization issues for workers'
6 compensation programs. The following shall apply:

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

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

30 (C) The department shall enter an agreement with the

1 selected nationally recognized certification or accreditation
2 organization to provide for the certification or accreditation
3 process for utilization review organizations and employes of
4 utilization review organizations, including the costs of any
5 audits required for the certification or accreditation process.
6 The department shall make reasonable attempts to negotiate a
7 reduction of the cost of the certification or accreditation
8 process. An entity approved as a utilization review organization
9 by the department prior to the effective date of this clause,
10 including a surviving association that results from the merger
11 of two or more utilization review organizations under 15 Pa.C.S.
12 Ch. 3 Subch. C (relating to merger), shall be eligible to
13 participate in the initial certification or accreditation
14 process at no cost to the entity. After January 1, 2020, an
15 entity approved as a utilization review organization shall be
16 eligible to participate in the process to renew its
17 certification or accreditation at no cost to the entity. An
18 entity for which the department has incurred costs under this
19 subclause shall reimburse the department for its costs related
20 to the most recent certification or accreditation for the
21 entity, if the entity does not successfully obtain the initial
22 or renewal certification or accreditation. The actual amount of
23 the cost to the department for the certification or
24 accreditation process under this subclause, not to exceed one
25 million five-hundred thousand dollars (\$1,500,000) annually,
26 shall be transferred to the department from the Workers'
27 Compensation Administration Fund.

28 (D) The department shall conduct outreach to all entities
29 approved as utilization review organizations by the department
30 prior to the effective date of this clause. The outreach shall

1 include providing each entity with notice of the requirements of
2 this clause, guidance on how this clause will be enforced by the
3 department and information on how the entity may participate in
4 the required certification or accreditation process at no cost
5 under subclause (C).

6 * * *

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

8 Section 420. (a) The board, the department or a workers'
9 compensation judge, if it or he deem it necessary, may, of its
10 or his own motion, either before, during, or after any hearing,
11 make or cause to be made an investigation of the facts set forth
12 in the petition or answer or facts pertinent in any injury under
13 this act. The board, department or workers' compensation judge
14 may appoint one or more impartial physicians or surgeons to
15 examine the injuries of the plaintiff and report thereon, or may
16 employ the services of such other experts as shall appear
17 necessary to ascertain the facts. The workers' compensation
18 judge when necessary or appropriate or upon request of a party
19 in order to rule on requests for review filed under section
20 306(f.1), or under other provisions of this act, may ask for an
21 opinion from peer review about the reasonableness or necessity
22 [or frequency] of treatment under section 306(f.1). The peer
23 review report or the peer report of any physician, surgeon, or
24 expert appointed by the department or by a workers' compensation
25 judge, including the report of a peer review organization, shall
26 be filed with the board or workers' compensation judge, as the
27 case may be, and shall be a part of the record and open to
28 inspection as such. The workers' compensation judge shall
29 consider the report as evidence but shall not be bound by such
30 report.

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

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

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

13 Section 4. This act shall take effect in 60 days.