

*Lawrence Chutkan, Co-Chair  
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PENNSYLVANIA

## Workers' Compensation Advisory Council

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*Anthony G. Forte  
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September 7, 2016

Honorable Mauree Gingrich  
Chair, Labor & Industry Committee  
PA House of Representatives  
106 Ryan Office Building  
Harrisburg, PA 17120-2101

Honorable John T. Galloway  
Democrat Chair, Labor & Industry Committee  
PA House of Representatives  
301 Irvis Office Building  
Harrisburg, PA 17120-2140

Re: House Bill 1141 (P.N. 2794)

Dear Chairpersons Gingrich and Galloway:

At its meeting on July 20, 2016, the Workers' Compensation Advisory Council (Council) reviewed HB 1141. After a thorough discussion, it was unanimously decided that the Council would oppose HB 1141. These changes to the Pennsylvania Workers' Compensation Act (WC Act) would not improve the administration of the law. Instead, it would add another layer of bureaucracy that is unnecessary and create an additional, undue burden on the Administration Fund from which the system operates.

HB 1141 appears to be intended to address delays in payment of medical bills under the WC Act. There is already a well-developed process for Fee Review under the WC Act which provides all parties appropriate due process. The procedures proposed in HB 1141 would undermine that process which is available to all health care providers when there are billing disputes.

The WC Act currently requires that overdue payments on medical bills come with an automatic ten (10) percent per annum interest. This has been true for decades, that such bills should include the interest payments. The processes of the WC Act already provide that if the interest is not paid, there are remedies to obtain payment. The Council does not see a need to change these long-standing procedures to increase the interest to a rate higher than the injured worker would receive.

The Council has been advised that these changes would cost the Department of Labor & Industry (Department) up to \$5.5 million over the next two fiscal years in personnel and information technology changes, which in our view, cannot be justified. These costs would be necessary to staff and computerize the necessary documentation that HB 1141 requires. Given the present ability of the Department to address billing issues through the Fee Review process, requiring these changes would be a wasted expense to the Administration Fund.

The rights given the healthcare providers in HB 1141 are far beyond those given any stakeholder currently in the system. The mandatory penalties and interest is beyond what injured workers are entitled and the workers' compensation system is the safety net for them. As it now stands, all penalties go to the injured worker. This would deprive the injured worker the penalty for the problems associated with medical coverage when payments to the providers are delayed. Instead, this bill would create a windfall for healthcare providers, at the expense of the injured worker. The healthcare provider would be able to jump on a one day delay in payment to obtain interest of 25%, penalties of 50% and attorney fees for litigating such a minimal delay.

Further, HB 1141 removes any discretion from the Workers' Compensation Judges (WCJ's) regarding such delays as being worthy of such interest, penalties and attorney fees. We see a potential for a due process issue by removing such discretion from the WCJ's and making their decisions purely ministerial.

The criminal provisions are particularly draconian in the workers' compensation setting. As for the injured worker, it would criminalize the referral by the worker's attorney to a treating physician. The attorney would receive "compensation" by way of fees for representing the injured worker without the predicate case management services or coordination of care. Who is more familiar with the physicians in the area where the injured worker resides than the attorneys who practice in the field daily?

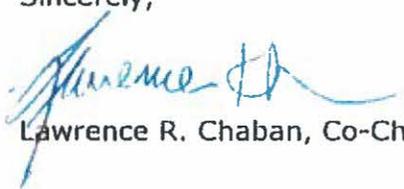
It could also criminalize the creation of required panel providers by employers where rates were negotiated with those providers who are on the panel. As the injured worker must treat with the panel provider for ninety (90) days, and the employer would receive "compensation" with reduced charges, HB 1141 would criminalize such conduct. This upsets the carefully crafted provisions that permit panel providers.

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Overall, the WC Advisory Council believes this legislation is a solution in search of a problem. If the healthcare providers make use of the Fee Review process in a prompt manner, then the questions that HB 1141 appears to raise would be timely addressed. For the foregoing reasons, the WC Advisory Council would ask that the Committee not report HB 1141 to the floor of the House.

Sincerely,

   
Lawrence R. Chaban, Co-Chair - Donald J. Liskay, Co-Chair

cc: Tom Wolf, Governor  
Jake Corman, Majority Leader of the Senate  
Jay Costa, Minority Leader of the Senate  
Dave Reed, Majority Leader of the House  
Frank Dermody, Minority Leader of the House  
Kathy Manderino, Secretary, PA Department of Labor & Industry  
Michael Vovakes, Deputy Secretary for Compensation & Insurance  
Michael Stefan, Director of Legislative Affairs ✓