AN ACT

Amending the act of June 2, 1915 (P.L.736, No.338), entitled "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 liability and compensation, further providing for prescription drugs and the treatment of work-related injuries; and, in procedure, further providing for peer review.

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

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

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

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

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

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

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

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

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

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

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

(e) The cost of implementation of the formulary.

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

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

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

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

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

* * *

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

* * *

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

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

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

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

(C) The department shall enter an agreement with the
selected nationally recognized certification or accreditation organization to provide for the certification or accreditation process for utilization review organizations and employees of utilization review organizations, including the costs of any audits required for the certification or accreditation process. The department shall make reasonable attempts to negotiate a reduction of the cost of the certification or accreditation process. An entity approved as a utilization review organization by the department prior to the effective date of this clause, including a surviving association that results from the merger of two or more utilization review organizations under 15 Pa.C.S. Ch. 3 Subch. C (relating to merger), shall be eligible to participate in the initial certification or accreditation process at no cost to the entity. After January 1, 2020, an entity approved as a utilization review organization shall be eligible to participate in the process to renew its certification or accreditation at no cost to the entity. An entity for which the department has incurred costs under this subclause shall reimburse the department for its costs related to the most recent certification or accreditation for the entity, if the entity does not successfully obtain the initial or renewal certification or accreditation. The actual amount of the cost to the department for the certification or accreditation process under this subclause, not to exceed one million five-hundred thousand dollars ($1,500,000) annually, shall be transferred to the department from the Workers' Compensation Administration Fund.

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

* * *
Section 2. Section 420 of the act is amended to read:
Section 420. (a) The board, the department or a workers'
compensation judge, if it or he deem it necessary, may, of its
or his own motion, either before, during, or after any hearing,
make or cause to be made an investigation of the facts set forth
in the petition or answer or facts pertinent in any injury under
this act. The board, department or workers' compensation judge
may appoint one or more impartial physicians or surgeons to
examine the injuries of the plaintiff and report thereon, or may
employ the services of such other experts as shall appear
necessary to ascertain the facts. The workers' compensation
judge when necessary or appropriate or upon request of a party
in order to rule on requests for review filed under section
306(f.1), or under other provisions of this act, may ask for an
opinion from peer review about the reasonableness or necessity
[or frequency] of treatment under section 306(f.1). The peer
review report or the peer report of any physician, surgeon, or
expert appointed by the department or by a workers' compensation
judge, including the report of a peer review organization, shall
be filed with the board or workers' compensation judge, as the
case may be, and shall be a part of the record and open to
inspection as such. The workers' compensation judge shall
consider the report as evidence but shall not be bound by such
report.
(b) The board or workers' compensation judge, as the case may be, shall fix the compensation of such physicians, surgeons, and experts, and other peer review organizations which, when so fixed, shall be paid out of the Workmen's Compensation Administration Fund.

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

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

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