PRINTER'S NO. 1810

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1187 Session of 2018

INTRODUCED BY WHITE, SCARNATI, WARD, LANGERHOLC, REGAN, FOLMER, BARTOLOTTA, VULAKOVICH, RESCHENTHALER, BROWNE, ARGALL, KILLION, YAW, AUMENT AND STEFANO, JUNE 1, 2018

REFERRED TO LABOR AND INDUSTRY, JUNE 1, 2018

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)(3)(vi)(A) and (6)(ii) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, are amended, paragraph (3)(vi) is amended by adding subclauses 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) (A) [The] Except as otherwise provided in subclause (A.1), the reimbursement for prescription drugs and professional pharmaceutical services shall be limited to one hundred ten per centum of the average wholesale price (AWP) of the product, calculated on a per unit basis, as of the date of dispensing.

(A.1) All prescriptions of compounded drugs, reimbursement shall be limited to one hundred ten per centum of the average wholesale price of each ingredient in the compounded drug, based on the original manufacturers National Drug Code (NDC) number.

* * *

(J) The department, in consultation with the Department of Health and the Department of Drug and Alcohol Programs and the appropriate licensing boards under the Department of State, shall develop evidence-based prescription guidelines appropriate to the prescription of pain medication drugs prescribed for or related to the treatment of work-related injuries, including, but not limited to, the type, dosage and duration of prescriptions, and specifically including opioid medications and any other pain medications the departments recognize as potentially addictive. The following shall apply:

(I) Within thirty (30) days of the effective date of this subclause, the department shall solicit public comments regarding the development of these prescription guidelines. The public comment period shall be ninety (90) days, during which time the department shall also hold at least three public hearings. The department shall publish notice of the public comment period and public hearings in the Pennsylvania Bulletin.

(II) Within thirty (30) days after the close of the public comment period under subprovision (I), the department shall publish these prescription guidelines in the Pennsylvania

Bulletin. The prescription guidelines shall apply to any prescription of pain medication drugs for or related to the treatment of work-related injuries made after thirty (30) days from the date of the publication.

(III) In developing the evidence-based prescription guidelines, the department shall consider the following factors:

(a) That the guidelines assure injured workers access to reliable, safe and effective prescription pain medications.

(b) That the guidelines appropriately limit both duration and dosage of all prescribed pain medication drugs and include consideration of treatment options beyond the prescription of pain medication drugs.

(c) That the guidelines include measures to aid in the management of all pain medications, specifically including opioid medications.

(IV) The department shall receive, and shall at least annually solicit through notice in the Pennsylvania Bulletin, recommendations to revise its evidence-based prescription guidelines for pain medications in furtherance of the factors in subprovision (III). The department may revise these guidelines, after consultation with the Department of Health and the Department of Drug and Alcohol Programs and the appropriate licensure boards under the Department of State. The department shall publish notice of revisions to the guidelines in the Pennsylvania Bulletin and the revisions shall take effect thirty (30) days after the date of publication.

(V) The department shall ensure that these prescription guidelines are available through the department's publicly accessible Internet website for reference by physicians and the general public.

(VI) The prescription of drugs consistent with or recommended by the department's evidence-based prescription guidelines shall be considered reasonable and necessary for the purposes of this subclause. The prescription of drugs not consistent with or recommended by the department's evidence-based prescription guidelines shall nonetheless be considered reasonable and necessary for the purposes of this paragraph if the prescribing physician has submitted documentation explaining the medical necessity of the prescription to the insurer or self-insured employer at the time of the initial prescription on a form prescribed by the department. An insurer or self-insured employer shall accept such prescription unless the prescription is determined not to be reasonable and necessary by a utilization review organization in accordance with paragraph (6).

(K) The department, in consultation with the Department of Health and the Department of Drug and Alcohol Programs and the appropriate licensing boards under the Department of State, shall develop a program for educating and explaining its evidence-based prescription guidelines on or before the effective date of the prescription guidelines. All workers compensation judges and all utilization review organizations shall participate in this program within sixty (60) days of the effective date of these prescription guidelines. The department shall offer the program to all providers at locations and times it deems appropriate. To the extent the program is presented in written or video form, the department shall make it available through the department's publicly accessible Internet website.

* * *

(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 subparagraph, 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 subparagraph 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 employes 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 subparagraph, 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 subparagraph. The outreach shall include providing each entity with notice of the requirements of this subparagraph, 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. The Pennsylvania Compensation Rating Bureau shall include in its annual loss cost filing to the Insurance Department a calculation of any savings achieved through the amendment of section 306(f.1) of the act and shall reduce the filing to reflect those savings, subject to the Insurance Department's review and approval.

Section 4. The Department of Labor and Industry shall submit on or before January 1 of each year a report to the General

Assembly on the impact of the amendment of section 306(f.1) of the act on the prescription of pain medications to injured workers, including any recommendations for changes in the regulation of those prescriptions.

Section 5. This act shall take effect in 60 days.