

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 schedule of compensation; in procedure,
9 further providing for interest rate accrual on unpaid
10 compensation, for providing notices of compensation to an
11 injured employee's treatment provider, for penalties for a
12 violation of the compensation schedule and for providing a
13 copy of the injury report to an injured employee's treatment
14 provider.

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

17 Section 1. Section 306(f.1)(1)(iii), (2), (3)(i) and (ii)
18 and (5) of the act of June 2, 1915 (P.L.736, No.338), known as
19 the Workers' Compensation Act, reenacted and amended June 21,
20 1939 (P.L.520, No.281), and amended June 24, 1996 (P.L.350,
21 No.57), are amended and the subsection is amended by adding
22 paragraphs to read:

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

1 * * *

2 (f.1) (1) * * *

3 (iii) Nothing in this section shall prohibit an insurer or
4 an employer from contracting with any individual, partnership,
5 association or corporation to provide case management and
6 coordination of services with regard to injured employees[.] or
7 to obtain discounted medical services through a bona fide
8 provider network arrangement: Provided, however, That it shall
9 be unlawful for an insurer, employer or an agent of an insurer
10 or employer to reimburse a provider in an amount less than the
11 reimbursement allowances provided for in paragraph (3)(i) and
12 (ii) unless the provider has executed a legally binding
13 agreement directly and exclusively with the insurer, employer or
14 an agent of the insurer or employer through a bona fide provider
15 network arrangement. Any discount or reimbursement reduction
16 imposed below the allowances set forth in paragraph (3)(i) and
17 (ii) pursuant to a downstream or third party agreement that is
18 not executed by the provider directly and exclusively with the
19 insurer, employer or an agent of the insurer or employer, shall
20 be null and void and shall subject the insurer or employer to
21 sanctions, including, but not limited to, payment of the full
22 amount due and owing pursuant to paragraph (3)(i) and (ii),
23 interest at the rate provided in section 406.1(a), costs and
24 attorney fees if the insurer or employer's position is
25 determined to be unreasonable at the discretion of the finder of
26 fact and other penalties provided in section 435. A provider may
27 file an application for fee review to be entitled to the payment
28 amounts and other penalties set forth in this paragraph. Under
29 this paragraph, a provider shall not be required to file a
30 penalty petition for the department to award penalties under

1 section 435. In the event an insurer or employer enters into an
2 arrangement with any individual or entity pursuant to this
3 paragraph, the insurer or employer shall, within seventy-two
4 (72) hours of executing such arrangement, notify the department
5 of the arrangement and provide the name, address and a list of
6 all services the person or organization will provide pursuant to
7 the arrangement. The department shall have ten (10) days from
8 the date of receipt of such notice to post the information
9 contained in the notification on the Workers Compensation Search
10 Form or its successor on the department's publicly accessible
11 Internet website.

12 (2) Any provider who treats an injured employe shall be
13 required to file periodic reports with the employer on a form
14 prescribed by the department which shall include, where
15 pertinent, history, diagnosis, treatment, prognosis and physical
16 findings. The report shall be filed within ten (10) days of
17 commencing treatment and at least once a month thereafter as
18 long as treatment continues. The employer shall not be liable to
19 pay for such treatment until a report has been filed. Effective
20 January 1, 2016, an insurer or employer shall accept all bills
21 submitted by a provider pursuant to this subsection in an
22 electronic format. On or before November 1, 2015, the department
23 shall create and provide an electronic report to be used by
24 providers and electronic medical record entities to facilitate
25 electronic submission of the report and bills pursuant to
26 paragraph (3)(i).

27 (3) (i) For purposes of this clause, a provider shall not
28 require, request or accept payment for the treatment,
29 accommodations, products or services in excess of one hundred
30 thirteen per centum of the prevailing charge at the seventy-

1 fifth percentile; one hundred thirteen per centum of the
2 applicable fee schedule, the recommended fee or the inflation
3 index charge; one hundred thirteen per centum of the DRG payment
4 plus pass-through costs and applicable cost or day outliers; or
5 one hundred thirteen per centum of any other Medicare
6 reimbursement mechanism, as determined by the Medicare carrier
7 or intermediary, whichever pertains to the specialty service
8 involved, determined to be applicable in this Commonwealth under
9 the Medicare program for comparable services rendered. If the
10 commissioner determines that an allowance for a particular
11 provider group or service under the Medicare program is not
12 reasonable, it may adopt, by regulation, a new allowance. If the
13 prevailing charge, fee schedule, recommended fee, inflation
14 index charge, DRG payment or any other reimbursement has not
15 been calculated under the Medicare program for a particular
16 treatment, accommodation, product or service, the amount of the
17 payment may not exceed eighty per centum of the charge most
18 often made by providers of similar training, experience and
19 licensure for a specific treatment, accommodation, product or
20 service in the geographic area where the treatment,
21 accommodation, product or service is provided. Effective January
22 1, 2016, insurers, employers and their agents shall accept
23 electronically bills from a provider for services rendered under
24 this paragraph and shall implement standard electronic
25 transactions to accept electronic bills consistent with the
26 HIPAA Transaction and Code Set regulations promulgated by the
27 United States Department of Health and Human Services pursuant
28 to 45 CFR Part 162 (relating to administrative requirements).
29 Bills shall be accepted either directly or through the use of a
30 clearinghouse pursuant to 45 CFR 162.930 (relating to additional

1 rules for health care clearinghouses). An insurer or employer
2 shall include with each payment made to a provider for services
3 rendered under this act a detailed written explanation of the
4 benefits paid, delineating the patient name, date of service,
5 codes submitted by the provider and the amount of reimbursement
6 applicable to each code for service submitted.

7 (ii) Commencing on January 1, 1995, the maximum allowance
8 for a health care service covered by subparagraph (i) shall be
9 updated as of the first day of January of each year. The update,
10 which shall be applied to all services performed after January 1
11 of each year, shall be equal to the percentage change in the
12 Statewide average weekly wage. Such updates shall be cumulative.
13 An insurer or employer who fails to implement the reimbursement
14 update required by this paragraph by January 10 of each year
15 shall be required to reimburse providers the full amount of the
16 updated fee allowance, interest at the rate provided in section
17 406.1(a), costs, attorney fees if the insurer or employer's
18 position is determined to be unreasonable at the discretion of
19 the finder of fact and other penalties provided in section 435.
20 A provider may file an application for fee review to obtain the
21 payment amounts and penalties set forth in this paragraph. A
22 provider shall not be required to file a penalty petition for
23 the department to award section 435 penalties under this
24 paragraph.

25 * * *

26 (5) The employer or insurer shall make payment and providers
27 shall submit bills and records in accordance with the provisions
28 of this section. All payments to providers for treatment
29 provided pursuant to this act shall be made within thirty (30)
30 days of receipt of such bills and records unless the employer or

1 insurer disputes the reasonableness or necessity of the
2 treatment provided pursuant to paragraph (6). The nonpayment to
3 providers within thirty (30) days for treatment for which a bill
4 and records have been submitted shall only apply to that
5 particular treatment or portion thereof in dispute; payment must
6 be made timely for any treatment or portion thereof not in
7 dispute. A provider who has submitted the reports and bills
8 required by this section and who disputes the amount or
9 timeliness of the payment from the employer or insurer shall
10 file an application for fee review with the department no more
11 than thirty (30) days following notification of a disputed
12 treatment or ninety (90) days following the original billing
13 date of treatment. If the insurer disputes the reasonableness
14 and necessity of the treatment pursuant to paragraph (6), the
15 period for filing an application for fee review shall be tolled
16 as long as the insurer has the right to suspend payment to the
17 provider pursuant to the provisions of this paragraph. Within
18 thirty (30) days of the filing of such an application, the
19 department shall render an administrative decision. If the
20 administrative decision of the department upholds, in whole or
21 in part, the provider's application for fee review, the
22 department shall award the amount of the unpaid claims, interest
23 at the rate provided in section 406.1(a), costs, attorney fees
24 if the insurer or employers' position is determined to be
25 unreasonable at the discretion of the finder of fact, and other
26 penalties provided in section 435. A provider shall not be
27 required to file a penalty petition for the department to award
28 section 435 penalties under this paragraph. The department shall
29 include an award of attorney fees and interest in the
30 administrative decision and shall authorize a provider to submit

1 a petition for attorney fees concurrent with the filing of any
2 document in support of the application for fee review. An
3 administrative decision rendered by the department or a decision
4 rendered by a hearing officer in favor of the provider's
5 application for fee review, in whole or in part, shall be paid
6 in full by the insurer within thirty (30) days from the date of
7 the department's administrative decision or the hearing
8 officer's decision. Failure to comply with this section by an
9 insurer, absent the timely filing of an appeal to Commonwealth
10 Court pursuant to the provisions of 2 Pa.C.S. Ch. 5 Subch. A
11 (relating to practice and procedure of Commonwealth agencies)
12 and Ch. 7 Subch. A (relating to judicial review of Commonwealth
13 agency action), shall create a right inuring to the benefit of
14 the provider to obtain payment in full, consistent with the
15 department's administrative decision or the hearing officer's
16 decision through a petition filed with a workers' compensation
17 judge pursuant to paragraph (12).

18 * * *

19 (11) It shall be unlawful for any insurer, employer, agent
20 of an insurer or employer, corporation or person to threaten or
21 coerce a provider with any verbal or written communication
22 stating or implying the provider will suffer negative economic,
23 patient access or reimbursement consequences if the provider
24 does not agree to participate in any agreement or network at a
25 discounted reimbursement rate. A provider may file a petition
26 pursuant to paragraph (12) or section 435 to enforce this
27 section.

28 (12) The department shall establish a petition for alleging
29 violations of paragraphs (5) and (11). A petition filed under
30 this section shall be assigned to a workers' compensation judge

1 within seven (7) business days after the filing date. A hearing
2 shall be conducted on such petition within fourteen (14)
3 business days of its assignment to a workers' compensation
4 judge. Proper notice shall be given to all parties as to the
5 time and location of such hearing. A decision on such petition
6 shall be rendered within twenty-one (21) days, provided that no
7 continuance has been granted. The workers' compensation judge's
8 decision shall include findings of fact, the amount of any
9 administrative fines to be imposed as provided herein, the
10 amount of unpaid compensation owed or unpaid medical bills due,
11 attorney fees if the workers' compensation judge determines in
12 his discretion that the insurer or employer's position is
13 unreasonable, interest at the rate of twenty-five per centum per
14 annum, costs and a penalty of fifty per centum of the amount due
15 and owing. Insurers and employers may be penalized the sum of
16 not less than twenty-five dollars (\$25) nor more than one
17 hundred dollars (\$100) for each day of violation. Such
18 administrative penalties shall be paid to the department. The
19 administrative penalty may be imposed if the violation was
20 flagrant, there has been a history of repeat violations on the
21 same claim or where insurers or employers acted in bad faith.
22 Any administrative penalty imposed under this section shall not
23 be considered as compensation for the purpose of any limitation
24 on the total amount of compensation payable or reimbursement due
25 to a provider which is set forth in this act. This section shall
26 not apply to violations that occur beyond the control of
27 insurers or employers.

28 Section 2. Section 406.1(a) of the act, amended July 2, 1993
29 (P.L.190, No.44), is amended to read:

30 Section 406.1. (a) The employer and insurer shall promptly

1 investigate each injury reported or known to the employer and
2 shall proceed promptly to commence the payment of compensation
3 due either pursuant to an agreement upon the compensation
4 payable or a notice of compensation payable as provided in
5 section 407 or pursuant to a notice of temporary compensation
6 payable as set forth in subsection (d), on forms prescribed by
7 the department and furnished by the insurer. The first
8 installment of compensation shall be paid not later than the
9 twenty-first day after the employer has notice or knowledge of
10 the employe's disability. Interest shall accrue on all due and
11 unpaid compensation at the rate of [ten] twenty-five per centum
12 per annum. Any payment of compensation prior or subsequent to an
13 agreement or notice of compensation payable or a notice of
14 temporary compensation payable or greater in amount than
15 provided therein shall, to the extent of the amount of such
16 payment or payments, discharge the liability of the employer
17 with respect to such case.

18 * * *

19 Section 3. Section 407 of the act, amended March 29, 1972
20 (P.L.159, No.61), is amended to read:

21 Section 407. On or after the seventh day after any injury
22 shall have occurred, the employer or insurer and employe or his
23 dependents may agree upon the compensation payable to the
24 employe or his dependents under this act; but any agreement made
25 prior to the seventh day after the injury shall have occurred,
26 or permitting a commutation of payments contrary to the
27 provisions of this act, or varying the amount to be paid or the
28 period during which compensation shall be payable as provided in
29 this act, shall be wholly null and void. It shall be unlawful
30 for any employer to accept a receipt showing the payment of

1 compensation when in fact no such payment has been made.

2 Where payment of compensation is commenced without an
3 agreement, the employer or insurer shall simultaneously give
4 notice of compensation payable to the employe or his dependent,
5 and employe's treating physician or provider, on a form
6 prescribed by the department, identifying such payments as
7 compensation under this act and shall forthwith furnish a copy
8 or copies to the department as required by rules and
9 regulations. It shall be the duty of the department to examine
10 the notice to determine whether it conforms to the provisions of
11 this act and rules and regulations hereunder.

12 All agreements made in accordance with the provisions of this
13 section shall be on a form prescribed by the department, signed
14 by all parties in interest, and a copy or copies thereof
15 forwarded to the department as required by rules and
16 regulations. It shall be the duty of the department to examine
17 the agreement to determine whether it conforms to the provisions
18 of this act and rules and regulations hereunder.

19 All notices of compensation payable and agreements for
20 compensation and all supplemental agreements for the
21 modification, suspension, reinstatement, or termination thereof,
22 and all receipts executed by any injured employe of whatever
23 age, or by any dependent to whom compensation is payable under
24 section three hundred and seven, and who has attained the age of
25 sixteen years, shall be valid and binding unless modified or set
26 aside as hereinafter provided.

27 Section 4. Section 435(d) of the act is amended by adding a
28 subclause to read:

29 Section 435. * * *

30 (d) The department, the board, or any court which may hear

1 any proceedings brought under this act shall have the power to
2 impose penalties as provided herein for violations of the
3 provisions of this act or such rules and regulations or rules of
4 procedure:

5 * * *

6 (iv) Any insurer, employer, agent of an insurer or employer,
7 corporation or person who violates section 306(f.1)(11) shall be
8 subject to a fine of not less than two-hundred dollars (\$200)
9 and not more than one thousand dollars (\$1,000). Such fine,
10 along with costs and reasonable attorney fees, shall be payable
11 to the provider who files a petition to enforce section 306(f.1)
12 (11).

13 * * *

14 Section 5. Section 438(b) of the act, amended July 2, 1993
15 (P.L.190, No.44), is amended to read:

16 Section 438. * * *

17 (b) An employer shall report such injuries to the Department
18 of Labor and Industry by filing directly with the department on
19 the form it prescribes a report of injury within forty-eight
20 hours for every injury resulting in death, and mailing within
21 seven days after the date of injury for all other injuries
22 except those resulting in disability continuing less than the
23 day, shift, or turn in which the injury was received. A copy of
24 this report to the department shall be mailed to the employer's
25 insurer and the employe's treating physician or provider
26 forthwith.

27 * * *

28 Section 6. This act shall take effect in 30 days.