

House Bill 1800

We write to share with you recent legislative developments. The Pennsylvania House Labor and Industry Committee is considering House Bill No. 1800. The bill has not yet been up for vote or approved into law. The committee received testimony regarding the bill on March 17, 2016.

The bill proposes establishing a set of standards for medical care for injured workers, which in a utilization review setting, would establish a more precise measure for whether care in question is reasonable and necessary. The bill seeks to set up a “panel” of doctors and providers to establish standards relating to the duration, frequency, and type of care for individual specific injuries.

Preliminary indications reveal that the bill may not enjoy bi-partisanship support.

A copy of the proposed legislation is attached. If enacted it could serve to potentially contain costs for Employers’ and carriers’ relating to medical treatment for injured workers, as well as aim to add standards to the utilization review process and litigation.

The Dombrowski Group P.C. (610) 640-1556

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1800 Session of
2015

INTRODUCED BY MACKENZIE, COHEN, GROVE, A. HARRIS, HEFFLEY,
MCNEILL AND MILLARD, DECEMBER 18, 2015

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, DECEMBER 18, 2015

AN ACT

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, "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 interpretation and definitions, further providing for definitions; in liability and compensation, further providing for schedule of compensation; and, in procedure, further providing for investigations and peer review.

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

Section 1. The definition of "utilization review organizations" in section 109 of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281) and added July 2, 1993 (P.L.190, No.44), is amended to read:

Section 109. In addition to the definitions set forth in this article, the following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Utilization review organizations" shall be those organizations consisting of an impartial physician, surgeon or other health care provider or a panel of such professionals and providers as [authorized] approved by the [Secretary] Department of Labor and Industry and published as a list in the form of a notice in the Pennsylvania Bulletin for the purpose of reviewing the reasonableness and necessity of treatment by a health care provider pursuant to section 306(f.1) (6).

Section 2. Section 306(f.1) (6) of the act, amended June 24, 1996 (P.L.350, No.57), is amended to read:

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

* * *

(f.1) * * *

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

[(i) The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employe, employer or insurer. The department shall authorize utilization review organizations to perform utilization review under this act. Utilization review of all treatment rendered by a health care provider shall be

performed by a provider licensed in the same profession and having the same or similar specialty as that of the provider of the treatment under review. Organizations not authorized by the department may not engage in such utilization review.]

(i) For purposes of this section, reasonable and necessary treatments, services, products or accommodations shall be those treatments, services, products or accommodations that are consistent with or recommended by evidence-based medical treatment guidelines selected and referenced by the department by publication in the Pennsylvania Bulletin. In selecting the guidelines, the department shall choose from nationally recognized treatment guidelines appropriate for resolving issues relating to treatment for work-related injuries. The department shall allow modifications from the guidelines based on a panel of providers as provided in subparagraph (ii), following public notice and the opportunity for comment.

(ii) The following shall apply:

(A) The secretary shall appoint a panel of medical providers for the purpose of proposing modifications to the guidelines referenced in subparagraph (i), including one medical provider from each of the following licenses and specialties:

(I) Occupational medicine.

(II) Orthopedic medicine.

(III) Neurosurgical medicine.

(IV) Pain management.

(V) Physical therapy.

(VI) Chiropractic medicine.

(B) An item listed under clause (A) may include an osteopathic equivalent.

(C) The providers under this subparagraph shall serve without remuneration and shall be appointed for a six-year term. The panel shall meet to review the guidelines, consider public comments and recommend modifications no less than once each calendar year.

(iii) An injured worker may challenge an employer's determination of reasonableness or necessity by filing a request for utilization review with a utilization review organization approved by the department. The purpose of a utilization review conducted pursuant to this section shall be to determine if the treatment is consistent with or recommended by the treatment guidelines referenced in subparagraph (i).

(iv) The department shall approve only those utilization review organizations that it determines have satisfied the criteria of a nationally recognized accrediting organization referenced by the department by publication in the Pennsylvania Bulletin, at a rate established by the department.

~~[(ii)]~~ (v) The utilization review organization shall issue a written report of its findings and conclusions within thirty (30) days of a request.

~~[(iii)]~~ (vi) The employer or the insurer shall pay the cost of the utilization review.

~~[(iv)]~~ (vii) If the provider, employer, employe or insurer disagrees with the finding of the utilization review organization, a petition for review by the department must be

filed within thirty (30) days after receipt of the report. The department shall assign the petition to a workers' compensation judge for a hearing or for an informal conference under section 402.1. The utilization review report shall be part of the record before the workers' compensation judge. The workers' compensation judge shall consider the utilization review report as evidence but shall not be bound by the report.

* * *

Section 3. Section 420(a) of the act, amended June 24, 1996 (P.L.350, No.57), is amended and the section is amended by adding a subsection 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 necessity or [frequency] appropriateness 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.

(a.1) 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).

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