

CHAPTER 124
FORMERLY
HOUSE BILL NO. 166

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2301, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly as follows:

§ 2301. Definitions.

As used in this chapter:

(13) "Health care provider" shall refer to any health care provider who is licensed by the State of Delaware to provide health care services, irrespective of whether the particular services provided under the Delaware workers' compensation system are rendered within or outside the State of Delaware.

Section 2. Amend § 2322B, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2322B. Procedures and requirements for promulgation of health-care payment system.

The health-care payment system developed pursuant to this section shall be subject to the following procedures and requirements:

(3) The maximum allowable payment for health-care-related payments covered under this chapter shall be the lesser of the health-care provider's actual charges or the fee set by the payment system.

a. The Workers' Compensation Oversight Panel shall, by October 1, 2014, establish a fee schedule for all Delaware workers' compensation funded procedures, treatments, and services based on the Resource Based Relative Value Scale ("RBRVS"), Medical Severity Diagnosis Related Group (MS-DRG), Ambulatory Payment Classification (APC), or equivalent scale used by the Centers for Medicare and Medicaid Services. The RBRVS, MS-DRG, APC, or other equivalent factor shall be multiplied by a Delaware-specific geographically-adjusted factor to ensure adequate participation by providers. The fee schedule and other savings from the health care payment system shall result in a reduction of 20% in aggregate workers' compensation medical expenses by the year beginning January 31, 2015, an additional reduction of 5% of 2014 expenses by the year beginning January 31, 2016, and an additional reduction of 8% of 2014 expenses by the year beginning January 31, 2017. The aggregate workers' compensation medical expenses required by this paragraph shall be attained through reimbursement reductions of equal percentages among hospitals, ambulatory surgical centers, and other health-care providers; therefore, by January 31, 2015, the fee schedule and other savings from the health care payment system shall reflect a reduction of 20% in workers' compensation medical expenses paid to hospitals, a reduction of 20% in workers' compensation medical expenses paid to ambulatory surgical centers, and a reduction of 20% in workers' compensation medical expenses paid to other health-care providers. This formula shall also be used for the 5% reduction required by January 31, 2016, and the 8% reduction required by January 31, 2017.

~~(7) The health care payment system shall include provisions for health care treatment and procedures performed outside of the State of Delaware. If any procedure, treatment or service is rendered by a health care provider, hospital or ambulatory surgery center, who is licensed or permitted to render such procedure, treatment or service within the State of Delaware, but performs such procedure, treatment or service outside of the State of Delaware, the amount of reimbursement shall be the amount as set forth in the health care payment system. In the event that a procedure, treatment or service is rendered outside the State of Delaware by a health care provider, hospital or ambulatory surgery center, not licensed or permitted to render such procedure, treatment or service within the State of Delaware, the amount of reimbursement shall be the greater of:~~

~~a. The amount set forth in the workers' compensation health care payment system or a fee schedule adopted by the state in which the procedure, treatment or service is rendered, if such a schedule has been adopted; or~~

~~b. The amount that would be authorized by the payment system adopted pursuant to this chapter if the service or treatment were performed in the geozip where the injury occurred or where the employee was principally assigned.~~

~~Charges for a procedure, treatment or service outside the State of Delaware shall be subject to the instructions, treatment guidelines, and payment guides and policies in the health care payment system.~~

(7) The health care payment system shall include provisions for health care treatment and procedures performed outside the State of Delaware. Any health care provider who is not licensed by the State of Delaware to provide medical services but is licensed in another state, and who is not certified under § 2322(D) of this chapter, may provide medical services without having to seek and obtain preauthorization for services that are reasonable, necessary and related to the employee's work related injury or condition and have those services reimbursed at the lesser of:

a. The health care provider's usual and customary fee;

b. The maximum allowable fee pursuant to the Delaware workers' compensation health care payment system adopted pursuant to this section;

c. The maximum allowable fee pursuant to any workers' compensation health care payment system in the state in which the services at issue were rendered; or

d. If an employer or insurance carrier contracts with a provider for the purpose of providing services under this chapter, the rate negotiated to any such contract.

(10) The Workers' Compensation Oversight Panel shall have the authority to adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this section.

Section 3. Amend § 2322D, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2322D Certification of health-care providers.

(a) (1) Certification shall be required for a health care provider to provide treatment to an employee, pursuant to this chapter, without the requirement that the health care provider first preauthorize each health care procedure, office visit or health care service to be provided to the employee with the employer or insurance carrier. Any health care provider who is not licensed by the State of Delaware to provide medical services may elect to become certified under this section, and thereby obtain the same rights and obligations under this chapter as a certified health care provider who is licensed by the State of Delaware to provide health care services. The provisions of this subsection shall apply to all treatments to employees provided after the effective date of the rule provided by subsection (c) of this section, regardless of the date of injury. A health care provider shall be certified only upon meeting the following minimum certification requirements:

a. Have a current license to practice, as applicable;

b. Meet other general certification requirements for the specific provider type;

c. Possess a current and valid Drug Enforcement Agency ("DEA") registration, unless not required by the provider's discipline and scope of practice;

d. Have no previous involuntary termination from participation in Medicare, Medicaid or the Delaware workers' compensation system, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) of this section;

e. Have no felony convictions in any jurisdiction, under a federal-controlled substance act or for an act involving dishonesty, fraud or misrepresentation, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) of this section; and

f. Provide proof of adequate, current professional malpractice and liability insurance.

Section 4. Amend § 2322F, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2322F. Billing and payment for health-care services.

(j) *Utilization review.* — The Workers' Compensation Oversight Panel shall approve, propose and maintain a utilization review program for any health care provider providing services to injured workers pursuant to this chapter whether the provider is or is not certified under § 2322D of this chapter. The intent is to provide reference for employers, insurance carriers, and health-care providers for evaluation of health care and charges. The

intended purpose of utilization review services shall be the prompt resolution of issues related to treatment and/or compliance with the health-care payment system or practice guidelines for those claims which have been acknowledged to be compensable. An employer or insurance carrier may engage in utilization review to evaluate the quality, reasonableness and/or necessity of proposed or provided health-care services for acknowledged compensable claims. Any person conducting a utilization review program for workers' compensation shall be required to contract with the Office of Workers' Compensation once every 2 years and certify compliance with Workers' Compensation Utilization Management Standards or Health Utilization Management Standards of Utilization Review Accreditation Council ("URAC") sufficient to achieve URAC accreditation or submit evidence of accreditation by URAC. If a party disagrees with the findings following utilization review, a petition may be filed with the Industrial Accident Board for de novo review. Complete rules and regulations relating to utilization review shall be approved, proposed and maintained by the Workers' Compensation Oversight Panel. Rules recommended by the Panel shall be adopted by regulation of the Department of Labor pursuant to Chapter 101 of Title 29.

Approved July 27, 2015