CHAPTER 391
FORMERLY
SENATE BILL NO. 238

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION AND THE HEALTH CARE PAYMENT SYSTEM.

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

Section 1. Amend §2322B(8) and (9), Chapter 23, Title 19 of the Delaware Code by making deletions as shown by strike-through and insertions as shown by underlining as follows:

~~(8) Hospital fees developed in the health care payment system shall be determined in accordance with the following provisions:~~

~~a. Hospital fees billed for inpatient and outpatient services provided to injured workers pursuant to this chapter shall be reimbursed at a rate equal to 85.0% of each hospital's actual charges for such services as of October 31, 2006, subject to adjustment as provided in this subsection. Verification that such billing is performed in compliance with this subsection shall be provided by each hospital to the Office of Workers' Compensation within 60 days of the completion and issuance of audited financial statements to the hospital by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the hospital whose billing is audited.~~

~~b. On the effective date of the regulation provided for in paragraph (14) of this section, and each January thereafter, the Department of Labor shall make an automatic adjustment to each hospital's reimbursement rates, as derived pursuant to paragraph (8)a. of this section, for procedures, treatments or services in effect in January of that year. The amount payable to each hospital pursuant to paragraph (8)a. of this section shall be adjusted annually by the Department of Labor in accordance with the Consumer Price Index Urban, U.S. City Average for Medical Care, as published by the United States Bureau of Labor Statistics. The adjustment factor adopted by this paragraph shall be reviewed by the Health Care Advisory Panel after January 17, 2010, and the Panel shall make a recommendation concerning the continued use the Consumer Price Index for medical care, or the adoption of a different index for cost adjustments in fees for hospital services.~~

~~c. Services provided an emergency department of a hospital, or any other facility subject to the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, and any emergency medical services provided in a pre hospital setting by ambulance attendants and/or paramedics, shall be exempt from the health care payment system and shall not be subject to the requirement that a health care provider be certified pursuant to § 2322D of this title, requirements for preauthorization of services, or the health care practice guidelines adopted pursuant to § 2322C of this title. Upon admission to a hospital and discharge from an emergency department, hospital charges shall be subject to paragraph (8)a. of this section.~~

(8) Hospital reimbursement developed in the healthcare payment system shall be determined in accordance with the following provisions:

a. Hospital fees billed for inpatient services, outpatient surgical services, and emergency services provided to injured workers pursuant to this chapter shall be reimbursed at a rate equal to eighty percent (80.0%) of each hospital's current actual charges as of date of service, subject to adjustment provided by this subsection. Hospital fees billed for outpatient non-surgical services shall be billed subject to the provisions of §2322B(3), (4), and (6); whenever the healthcare payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be at eighty percent (80.0%) of each hospital's current actual charges as of date of service, subject to adjustment provided by this subsection. On October 31, 2012, and every year thereafter by the same date, each hospital, with the exception of pediatric hospitals, shall provide to the Delaware Healthcare Association (DHA) a written report submitted by each hospital's independent financial auditor or certified public accountant setting forth its blended rate increase or decrease for the prior year. Within 30 days of receipt of the aforementioned reports, the DHA shall submit to the Department of Labor a written report prepared by an independent financial auditor or certified public accountant setting forth the following: (1) the arithmetic average of the blended rate increases or decreases for the hospitals submitting reports to the DHA pursuant to this

subsection; and (2) a statement as to whether the hospitals have changed their mark-up methodologies for implants, supplies and devices. The aforementioned report submitted by the DHA to the Department of Labor shall include copies of the individual hospitals reports to the DHA, as referenced above, but shall not identify the individual hospitals by name. Inpatient and outpatient pharmaceutical charges shall be excluded from the blended rate calculation referenced above. Implants, supplies and other cost-based services shall also be excluded from the blended rate calculation referenced above as long as the mark-up factor does not change from one year to the next. However, if the mark-up factor changes, the percentage increase or decrease, confirmed by each hospital through its annual financial statement, as referenced herein, shall be included in the blended rate calculation for that year. The Department of Labor shall, through a request for proposal (RFP) process, retain an independent financial auditor(s) or certified public accountant(s) to verify the validity of the rate change as it is set forth in the report submitted by the DHA. The DHA shall cooperate fully with any request for information made by the Department of Labor's retained financial advisor. Any proprietary information obtained, received or reviewed by the Department of Labor and/or their financial advisor(s) shall remain privileged and confidential, not subject to disclosure pursuant to the provisions of chapter 100, title 29 of the Delaware Code. Based upon the information received, the Department of Labor's financial advisor shall calculate the overall rate change applicable to all hospitals for the following year. If the arithmetic average of the blended rate for the hospitals submitting reports to the DHA pursuant to this subsection is greater than the Consumer Price Index-Urban, U.S. City Average for Medical Care, as published by the United States Bureau of Labor Statistics (CPI-U, Medical), each hospital's reimbursement rate shall be reduced by the difference between such blended rate and the CPI-U, Medical. If the arithmetic average of the blended rate for the hospitals submitting reports to the DHA pursuant to this subsection is less than the CPI-U, Medical, each hospital's reimbursement rate shall be increased by the difference between such blended rate and the CPI-U, Medical. Such calculation shall be completed no later than January 31 of each year. The overall rate change shall be instituted on January 31, 2013, and every year thereafter on the same date. Reasonable costs associated with the overall rate change verification and calculation, as referenced above, shall be reimbursed to the Department of Labor by the DHA. Such verification may be subject to further review and/or audit by the Department of Insurance. Reasonable costs of any review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the DHA. The failure on the part of any hospital and/or the DHA to comply with the requirements set forth above shall result in the non-payment of charges during the period of non-compliance.

b. Healthcare provider services provided in an emergency department of a hospital, or any other facility subject to the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, and any emergency medical services provided in a pre-hospital setting by ambulance attendants and/or paramedics, shall be exempt from the healthcare payment system and shall not be subject to the requirement that a healthcare provider be certified pursuant to §2322D of this title, requirements for pre-authorization of services, or the healthcare practice guidelines adopted pursuant to §2322C of this title.

c. The hospital reimbursement rate will be adjusted yearly as set forth in paragraph a. of this subsection. Notwithstanding this yearly overall rate adjustment, the Health Care Advisory Panel, beginning February 1, 2015, and every three years thereafter, shall review the overall rate changes and make a determination whether the overall rate change reimbursement method adequately addresses the intent of the General Assembly as set forth in § 2322B(1). The Health Care Advisory Panel shall provide the Secretary of Labor with its determination and any proposal to address concerns that may be identified during its review.

~~(9) Ambulatory Surgical Treatment Center ("ASTC") fees developed in the health care payment system shall be determined in accordance with the following provisions:~~

~~a. Fees billed for services provided to injured workers pursuant to this chapter by an ASTC shall be reimbursed at a rate equal to 85.0% of each ASTC's actual charges for such services as of October 31, 2006, subject to annual adjustment as provided in this subsection. Verification that such billing is performed in compliance with this subsection shall be provided by each ASTC to the Office of Workers' Compensation within 60 days of the completion and issuance of audited financial statements to the ASTC by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such~~

~~review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the ASTC whose billing is audited. The ASTC fee determination mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the regulation provided for in paragraph (8) of this section, regardless of the date of injury.~~

~~b. On the effective date of the regulation provided for in paragraph (14) of this section, and each January thereafter, the Department of Labor shall make an automatic adjustment to each ASTC's reimbursement rates, as derived pursuant to paragraph (9)a. of this section, for procedures, treatments or services in effect in January of that year. The amount payable to each ASTC pursuant to paragraph (9)a. of this section shall be adjusted annually by the Department of Labor in accordance with the Consumer Price Index Urban, U.S. City Average for Medical Care, as published by the United States Bureau of Labor Statistics. The adjustment factor adopted by this paragraph shall be reviewed by the Health Care Advisory Panel after January 17, 2010, and the Panel shall make a recommendation concerning the continued use the Consumer Price Index for medical care, or the adoption of a different index for cost adjustments in fees for ASTC services.~~

(9) Ambulatory Surgery Center ("ASC") reimbursement developed in the healthcare payment system shall be determined in accordance with the following provisions:

a. Ambulatory Surgery Center fees billed for services provided to injured workers pursuant to this chapter by an ASC shall be reimbursed at a rate equal to eighty-five percent (85%) of each ASC's current actual charges for such services as of date of service, subject to adjustment provided by this subsection as follows: On October 31, 2012, and every year thereafter by the same date, each ASC shall provide to the Department of Labor its rate change for the prior fiscal year. Verification of such rate change shall be provided by each ASC to the Office of Workers' Compensation in accordance with the above through a written report submitted by each ASC's independent financial auditor or certified public accountant. The Department of Labor shall, through a request for proposal (RFP) process, retain an independent financial auditor(s) or certified public accountant(s) to verify the validity of the rate change submitted by each ASC. Each ASC shall cooperate fully with any request for information made by the Department of Labor's retained financial advisor. Any proprietary information obtained, received or reviewed by the Department of Labor and/or their financial advisor(s) shall remain privileged and confidential, and not subject to disclosure pursuant to the provisions of chapter 100, title 29 of the Delaware Code. Based upon the information received, the Department of Labor's financial advisor shall calculate the rate change applicable to each ASC for the following year. If any ASC's rate change is greater than the CPI-U, Medical, then that ASC's reimbursement rate shall be reduced by the difference between that ASC's rate change and the CPI-U, Medical. If any ASC's rate change is less than the CPI-U, Medical, then that ASC's reimbursement rate shall be increased by the difference between that ASC's rate change and the CPI-U, Medical. Such calculation shall be completed no later than January 31 of each year. The rate changes for the ASCs, as referenced above, shall be instituted on January 31, 2013, and every year thereafter on the same date. Reasonable costs associated with each rate change verification and calculation, as referenced above, shall be reimbursed to the Department of Labor by the ASC for which the rate change verification and calculation has been performed. Such verification may be subject to further review and/or audit by the Department of Insurance. Reasonable costs of any review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the ASC and/or ASCs whose billing is audited. The failure on the part of any ASC to comply with the requirements set forth above shall result in the non-payment of charges during the period of non-compliance

b. Ambulatory Surgery Center reimbursement rates will be adjusted yearly as set forth in paragraph a. of this subsection. Notwithstanding this yearly overall rate adjustment, the Health Care Advisory Panel, beginning February 1, 2015, and every three years thereafter, shall review the overall rate changes and make a determination whether the overall rate change reimbursement method adequately addresses the intent of the General Assembly as set forth in § 2322B(1). The Health Care Advisory Panel shall provide the Secretary of Labor with its determination and any proposal to address concerns that may be identified during its review.