



SPONSOR: Sen. Venables Sens. Copeland, Still, Sorenson

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 2

TO

SENATE BILL NO. 362

1

2 AMEND Senate Bill No. 362 by inserting the following between the words “shall” and “consult” as they appear on line
3 279 of said bill : “appoint and” .

4 FURTHER AMEND Senate Bill No. 362 by adding the following sentence at the end of line 82 of said bill: “A change in
5 the physical condition of the worker, not resulting from the passage of time alone, may require a finding that a worker who
6 previously achieved maximum medical improvement is not now at a point of maximum medical improvement.”.

7 FURTHER AMEND Senate Bill No. 362 by striking the words “at least three representatives of the medical community
8 participate in the development of medical cost containment rules” as they appear on lines 282 through 283 of said bill and inserting
9 in lieu thereof the following: “for any rule pertaining to medical fees, hospital fees, medical practice guidelines or medical cost
10 containment, members of the affected medical community shall constitute one less than the majority of all advisory committee
11 members, and shall represent an appropriate cross section of affected medical specialties. In all cases, a written report of the
12 process of consultation with the advisory committee of stakeholders shall be part of the public record of the adoption of the rule.”.

13 FURTHER AMEND Senate Bill No. 362 by adding at the conclusion of line 295 of said bill a new subsection §2301G(d)
14 to provide as follows:

15 “(d) The Office of Workers’ Compensation shall annually prepare a report to the General Assembly of the
16 progress in development and implementation of rules pursuant to the authority granted in this section. The report shall set
17 forth: 1) the stakeholder involvement in the development of the rules; 2) the rules that have been adopted; 3) rules in the
18 process of development; 4) the deviations from stakeholder recommendations, if any, during the promulgation process and

19 their justification; 5) responses to public comments during the promulgation process, and; 6) the steps taken to implement
20 the rules. As soon as data is available, the report shall detail the effects of the rules with regard to measurable changes in
21 the behaviors regulated by them. The report shall be presented to the General Assembly by the Secretary of Labor or his
22 designee in writing and at hearings as may be requested by the General Assembly.”.

23 FURTHER AMEND Senate Bill No. 362, by striking lines 671 through 673 of said bill and inserting in lieu thereof the
24 following:

25 “(4) A conversion factor, or factors, yielding a schedule of maximum allowable fees for services shall be
26 developed by examining billing and payment data for the State of Delaware derived from a range of non-governmental
27 payers. The conversion factor or factors shall be controlled by the statement of intent set forth in this section and shall
28 specifically be subject to the requirements for public review and hearing set forth in §2301G.”.

29 FURTHER AMEND Senate Bill No. 362, by inserting the following after the word “use” and before the word “to” as they
30 appear on line 706 of said bill: “by one or more states”.

31 FURTHER AMEND Senate Bill No. 362, by inserting the following at the conclusion of line 718 of said bill:

32 “The advisory panel may vary in membership, depending on the specific area of medical treatment to be
33 considered. Each advisory panel shall include a majority of members who practice or research in the subject matter of the
34 guidelines under consideration, and shall be appointed from a list, consisting of not less than twice the number health care
35 providers as the number of appointments to be made, provided by the Delaware Medical Society and other Delaware
36 medical professional groups governing the specialty under consideration. The panel considering the initial adoption of
37 guidelines shall consist of three members appointed from nominees of the Delaware Medical Society, one member
38 appointed from the nominees of the Delaware Healthcare Association, one member appointed from the nominees of the
39 Delaware Chiropractic Association, and one member appointed from the nominees of the Delaware Physical Therapy
40 Association. Each advisory panel shall be chaired by a suitably trained health care professional contracted to the
41 Department of Labor, Office of Workers’ Compensation, for the purpose of overseeing the adoption and revision of
42 medical practice guidelines, and may be assisted by one or medical researchers who will review advances in medical
43 science and report appropriately evidence based findings. No medical practice guideline shall be adopted pursuant to this
44 subsection without either the endorsement of the advisory panel considering that guideline, or a clear written statement of
45 the reasons for adoption of the medical practice guideline without the support of the medical advisory panel.”.

46 FURTHER AMEND Senate Bill No. 362, by adding the following after the word “hospitals” as it appears on line 727 of
47 said bill:

48 “including the technical and facility portions of surgical procedures,”.

49 FURTHER AMEND Senate Bill No. 362, by adding the following at the conclusion of line 775 of said bill: “Certification
50 at Level I shall be designed to ensure that the certified health care provider understands and agrees to be bound by the medical
51 practice guidelines, fee schedules and report of employee condition and physical limitations provided by law and rule, but shall
52 otherwise be designed to be inclusive and easily accessible.”.

53 FURTHER AMEND Senate Bill No. 362, by adding the following at the conclusion of line 782 of said bill: “Certification
54 at Level II shall be designed to ensure that the certified health care provider has demonstrated sufficient training, education,
55 judgment and experience in the specific task of rating physical impairments pursuant to the most recent edition of the American
56 Medical Association Guides to the Evaluation of Physical Impairment, that inter-rater variability of ratings is minimized to the
57 extent possible.”.

58 FURTHER AMEND Senate Bill No. 362, by striking the words “physician, surgeon, dentist, optometrist or chiropractor”
59 as they appear on lines 830, 834, and lines 845 through 846 of said bill and inserting in lieu thereof the following: “health care
60 provider”.

61 FURTHER AMEND Senate Bill No. 362, by striking the words on line 900 after the period, and further striking lines 901
62 through 906, and inserting in lieu thereof the following:

63 “Notwithstanding any provision to the contrary, emergency services for compensable injuries, as defined, shall
64 not be subject to the requirement that a health care provider be certified pursuant to §2322C, the medical fee schedule
65 provided for by §2323A, requirements for pre-authorization of services, or the medical practice guidelines adopted
66 pursuant to §2322A, and shall be paid within 30 days of the submission of a bill at the usual and customary fee of the
67 health care provider.”.

68 FURTHER AMEND Senate Bill No. 362, by striking the numbers “75%” and “450” as they appear on line 1095 of page
69 39 of said bill and inserting in lieu thereof the numbers “50%” and “500” respectively.

70 FURTHER AMEND Senate Bill No. 362, by inserting the following at the conclusion of line 1137 of page 41 of said bill:

71 “(d) In the event that an employee suffers the complete loss of, or loss of use of a hand or foot, or any upper
72 or lower extremity including the complete loss of the hand or foot, and does not otherwise qualify for permanent total
73 disability benefits as provided in § 2326E, the future earnings multiplier utilized in calculation of the employee’s
74 permanent partial disability benefits shall be 1.4.”.

75 FURTHER AMEND Senate Bill No. 362, by striking the number “5” as it appears on line 1141 of page 41 of said bill and
76 inserting in lieu thereof the number “10”.

77 FURTHER AMEND Senate Bill No. 362, by inserting the following at the conclusion of line 1155 of page 41 of said bill:
78 “The permanent total disability benefits for an employee shall increase from year to year at a rate equal to the increase in the
79 Consumer Price Index, with a maximum increase in any year of 5%. Such increases shall be effective on July 1st of each year, and
80 shall be based on the most recent calculation of the Consumer Price Index for the United States.”.

81 FURTHER AMEND Senate Bill No. 362, by striking the words “charge a client” as they appear on line 1362 of page 48 of
82 said bill and replacing them with the words “obtain or be awarded”.

83 FURTHER AMEND Senate Bill No. 362, by striking the word “may” as it appears on line 1367 of page 49 of said bill and
84 replacing it with “shall”.

SYNOPSIS

This amendment reflects improvements Senate Bill No. 362 based on feedback and comments from stakeholders in the workers’ compensation system. Specifically, the amendment increases the role of the medical community in the development of medical cost containment and practice rules and clarifies provider certification requirements. The amendment improves Senate Bill No. 362 by increasing compensation for certain amputations not resulting in permanent total disability. The amendment clarifies that an employee who has achieved maximum medical improvement will be protected for subsequent conditions resulting from a workplace injury. Additionally, the amendment provides a cost of living increase for permanent total disability benefits, increases certain benefits related to permanent partial disability. Finally, this amendment requires the Department of Labor to report annually to the General Assembly and to appear as requested by the General Assembly to provide detail on the rulemaking process, to include details of rules promulgated by the Department, stakeholder involvement, input, and overall procedures implemented during the process, as well as discussion of anticipated rules to be implemented.

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