



SPONSOR: Rep. B. Short & Sen. Blevins
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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

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:

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

3 § 2301. Definitions.

4 As used in this chapter:

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

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

10 § 2322B. Procedures and requirements for promulgation of health-care payment system.

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

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

15 a. The Workers' Compensation Oversight Panel shall, by October 1, 2014, establish a fee schedule for all
16 Delaware workers' compensation funded procedures, treatments, and services based on the Resource Based
17 Relative Value Scale ("RBRVS"), Medical Severity Diagnosis Related Group (MS-DRG), Ambulatory Payment
18 Classification (APC), or equivalent scale used by the Centers for Medicare and Medicaid Services. The RBRVS,
19 MS-DRG, APC, or other equivalent factor shall be multiplied by a Delaware-specific geographically-adjusted
20 factor to ensure adequate participation by providers. The fee schedule and other savings from the health care
21 payment system shall result in a reduction of 20% in aggregate workers' compensation medical expenses by the
22 year beginning January 31, 2015, an additional reduction of 5% of 2014 expenses by the year beginning January

23 31, 2016, and an additional reduction of 8% of 2014 expenses by the year beginning January 31, 2017. The
24 aggregate workers' compensation medical expenses required by this paragraph shall be attained through
25 reimbursement reductions of equal percentages among hospitals, ambulatory surgical centers, and other health-
26 care providers; therefore, by January 31, 2015, the fee schedule and other savings from the health care payment
27 system shall reflect a reduction of 20% in workers' compensation medical expenses paid to hospitals, a reduction
28 of 20% in workers' compensation medical expenses paid to ambulatory surgical centers, and a reduction of 20% in
29 workers' compensation medical expenses paid to other health-care providers. This formula shall also be used for
30 the 5% reduction required by January 31, 2016, and the 8% reduction required by January 31, 2017.

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

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

41 ~~or~~

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

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

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

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

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

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

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

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

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

64 § 2322D Certification of health-care providers.

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

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

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

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

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

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

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

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

87 § 2322F. Billing and payment for health-care services.

88 (j) *Utilization review.* — The Workers' Compensation Oversight Panel shall approve, propose and maintain a
89 utilization review program for any health care provider providing services to injured workers pursuant to this chapter
90 whether the provider is or is not certified under § 2322D of this chapter. The intent is to provide reference for employers,
91 insurance carriers, and health-care providers for evaluation of health care and charges. The intended purpose of utilization
92 review services shall be the prompt resolution of issues related to treatment and/or compliance with the health-care payment
93 system or practice guidelines for those claims which have been acknowledged to be compensable. An employer or
94 insurance carrier may engage in utilization review to evaluate the quality, reasonableness and/or necessity of proposed or
95 provided health-care services for acknowledged compensable claims. Any person conducting a utilization review program
96 for workers' compensation shall be required to contract with the Office of Workers' Compensation once every 2 years and
97 certify compliance with Workers' Compensation Utilization Management Standards or Health Utilization Management
98 Standards of Utilization Review Accreditation Council ("URAC") sufficient to achieve URAC accreditation or submit
99 evidence of accreditation by URAC. If a party disagrees with the findings following utilization review, a petition may be
100 filed with the Industrial Accident Board for de novo review. Complete rules and regulations relating to utilization review
101 shall be approved, proposed and maintained by the Workers' Compensation Oversight Panel. Rules recommended by the
102 Panel shall be adopted by regulation of the Department of Labor pursuant to Chapter 101 of Title 29.

SYNOPSIS

The purpose of this bill is to allow injured workers who seek medical care from out-of-state, non-certified health care providers, in the payment of their medical expenses. This revision will correct a flaw in the current statute that was exposed by the Delaware Supreme Court in the case of *Wyatt v. Rescare Home Care*, 81 A. 3d 1253 (Del. 2013) and *Vanvliet v. D&B Transportation*, 105 A.3d 390 (Del. 2014.). This bill removes the certification requirement for health care providers who are not licensed in Delaware, but licensed in another state; changes the allowable payment for these non-certified, out-of-state providers to the lesser of the usual and customary, the other state's maximum reimbursement, Delaware's maximum reimbursement, or a negotiated contract; and adds utilization review as a payer recourse for non-certified, out-of-state providers. This bill also allows the Workers' Compensation Oversight Panel to realize the 2016 and 2017 mandated medical cost savings in the Delaware workers' compensation system through any component of the health care payment system and not just the fee schedule. This bill also allows the Workers' Compensation Oversight Panel to create regulations pertaining to the use of electronic billing in the workers' compensation healthcare payment system.