

SENATE AMENDED

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1846 Session of 2013

INTRODUCED BY QUINN, MACKENZIE, TURZAI, DiGIROLAMO, BARBIN, COHEN, EVANKOVICH, EVERETT, GERGELY, GINGRICH, GODSHALL, HARHART, MILLARD, R. MILLER, MILNE, NEILSON, OBERLANDER, ROZZI, SAYLOR, SWANGER, WATSON AND KAMPF, NOVEMBER 18, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 14, 2014

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further providing for schedule of
8 compensation AND FOR USE OF SAVINGS. <-

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 306(f.1)(3)(vi) of the act of June 2,
12 1915 (P.L.736, No.338), known as the Workers' Compensation Act,
13 reenacted and amended June 21, 1939 (P.L.520, No.281) and
14 amended June 24, 1996 (P.L.350, No.57), is amended to read:

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

17 * * *

18 (f.1) * * *

19 (3) * * *

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-1-

1 (vi) (A) The reimbursement for [prescription] drugs and
2 professional pharmaceutical services shall be limited to one
3 hundred ~~ten~~ per centum of the average wholesale price (AWP) of <-
4 the product, calculated on a per unit basis, as of the date of
5 dispensing.

6 (B) A physician seeking reimbursement for drugs dispensed by
7 a physician shall include the original manufacturer's National
8 Drug Code (NDC) number, as assigned by the Food and Drug
9 Administration, on the bills and reports required under this
10 section.

11 (C) In no event may a physician seek reimbursement in excess
12 of one hundred TEN per centum of the AWP of the drugs dispensed <-
13 by a physician as determined by reference to the original
14 manufacturer's NDC number.

15 (D) A repackaged NDC number may not be used and will not be
16 considered the original manufacturer's NDC number. If a
17 physician seeking reimbursement for drugs dispensed by a
18 physician does not include the original manufacturer's NDC
19 number on the bills and reports required by this section,
20 reimbursement shall be limited to one hundred TEN per centum of <-
21 the AWP of the least expensive clinically equivalent drug,
22 calculated on a per unit basis.

23 ~~(E) No outpatient provider, other than a pharmacy licensed~~ <-
24 ~~in this Commonwealth or another state, may seek reimbursement~~
25 ~~for drugs dispensed in excess of an initial fifteen-day supply,~~
26 ~~commencing upon the employe's initial treatment following~~
27 ~~injury. Reimbursement shall be made for such fifteen-day supply~~
28 ~~at the rates set forth in this section.~~

29 (E) NO OUTPATIENT PROVIDER, OTHER THAN A PHARMACY LICENSED <-
30 IN THIS COMMONWEALTH OR ANOTHER STATE, MAY DO ANY OF THE

1 FOLLOWING:

2 (I) SEEK REIMBURSEMENT FOR A DRUG LISTED ON SCHEDULE II IN
 3 SECTION 4(2) OF THE ACT OF APRIL 14, 1972 (P.L.233, NO.64),
 4 KNOWN AS THE "CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC
 5 ACT," DISPENSED IN EXCESS OF AN ONE INITIAL SEVEN-DAY SUPPLY, <-
 6 COMMENCING UPON THE EMPLOYE'S INITIAL TREATMENT BY A HEALTH CARE
 7 PROVIDER UNDER THE PARTICULAR FOR AN INJURY RELATED TO A <-
 8 SPECIFIC WORKERS' COMPENSATION CLAIM NUMBER. SHOULD THE EMPLOYE <-
 9 REQUIRE A MEDICAL PROCEDURE, INCLUDING SURGERY, AN ONE <-
 10 ADDITIONAL FIFTEEN-DAY SUPPLY CAN BE DISPENSED COMMENCING ON THE
 11 DATE OF SURGERY THE MEDICAL PROCEDURE. <-

12 (II) SEEK REIMBURSEMENT FOR A DRUG LISTED ON SCHEDULE III IN
 13 SECTION 4(2) 4(3) OF THE "CONTROLLED SUBSTANCE, DRUG, DEVICE AND <-
 14 COSMETIC ACT," WHICH CONTAINS HYDROCODONE DISPENSED IN EXCESS OF
 15 AN ONE INITIAL SEVEN-DAY SUPPLY, COMMENCING UPON THE EMPLOYE'S <-
 16 INITIAL TREATMENT BY A HEALTH CARE PROVIDER UNDER THE PARTICULAR <-
 17 FOR AN INJURY RELATED TO A SPECIFIC WORKERS' COMPENSATION CLAIM <-
 18 NUMBER. SHOULD THE EMPLOYE REQUIRE A MEDICAL PROCEDURE, <-
 19 INCLUDING SURGERY, ONE ADDITIONAL FIFTEEN-DAY SUPPLY CAN BE
 20 DISPENSED COMMENCING ON THE DATE OF THE MEDICAL PROCEDURE.

21 (III) SEEK REIMBURSEMENT FOR ANY OTHER DRUG DISPENSED IN
 22 EXCESS OF AN INITIAL TWENTY-DAY ONE INITIAL THIRTY-DAY SUPPLY, <-
 23 COMMENCING UPON THE EMPLOYE'S INITIAL TREATMENT BY A HEALTH CARE
 24 PROVIDER UNDER THE PARTICULAR WORKERS' COMPENSATION CLAIM
 25 NUMBER. <-

26 (IV) SEEK REIMBURSEMENT FOR ANY DRUGS DISPENSED WITHIN ANY <-
 27 PERIOD OF TIME IN EXCESS OF THE LIMITATIONS UNDER SUBPROVISION
 28 (I), (II) AND (III). IF ONE HEALTH CARE PROVIDER HAS DISPENSED
 29 DRUGS UNDER SUBPROVISION (I), (II) OR (III), NO OTHER HEALTH
 30 CARE PROVIDER MAY SUBMIT FOR REIMBURSEMENT FOR DRUGS DISPENSED

1 TO THAT EMPLOYE UNDER THE SAME WORKERS' COMPENSATION CLAIM.

2 ~~(IV)~~ (F) REIMBURSEMENT FOR ALL DRUGS DISPENSED IN ACCORDANCE <-

3 WITH THIS SUBSECTION SHALL BE MADE AT THE RATES SET FORTH IN

4 THIS SECTION.

5 ~~(F)~~ (G) No outpatient provider, other than a pharmacy <-

6 licensed in this Commonwealth or another state, may seek

7 reimbursement for an over-the-counter drug.

8 ~~(G)~~ (H) THE WORKERS' COMPENSATION ADVISORY COUNCIL SHALL <-

9 ANNUALLY CONDUCT A STUDY OF THE IMPACT OF THIS SUBCLAUSE,

10 INCLUDING CALCULATION OF THE SAVINGS ACHIEVED IN THE DISPENSING

11 OF PHARMACEUTICALS.

12 ~~(G)~~ ~~(H)~~ (I) For purposes of this subclause, clinical <-

13 equivalence, in reference to a drug, means the drug has chemical

14 equivalents which, when administered in the same amounts, will

15 provide essentially the same therapeutic effect as measured by

16 the control of a symptom or a disease.

17 * * *

18 SECTION 1.1. WITHIN 18 MONTHS FOLLOWING THE EFFECTIVE DATE <-

19 OF THIS SECTION, THE PENNSYLVANIA COMPENSATION RATING BUREAU

20 SHALL CALCULATE THE SAVINGS ACHIEVED THROUGH THE IMPLEMENTATION

21 OF THE AMENDMENT OF SECTION 306(F.1)(3)(VI) OF THE ACT. FOR

22 CALENDAR YEAR 2016, THE AMOUNT OF THE SAVINGS SHALL BE USED TO

23 PROVIDE AN IMMEDIATE REDUCTION IN RATES, EQUAL TO THE SAVINGS,

24 APPLICABLE TO EMPLOYERS' WORKERS COMPENSATION POLICIES.

25 Section 2. This act shall take effect in 60 days.



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1846

PRINTERS NO. 4314

PRIME SPONSOR: Quinn

COST / (SAVINGS)

FUND	FY 2014/15	FY 2015/16
Commonwealth Funds	See "Fiscal Impact"	See "Fiscal Impact"
Political Subdivision Funds	See "Fiscal Impact"	See "Fiscal Impact"

SUMMARY: Regulates workers' compensation reimbursement rates for pharmaceuticals and limits the practice of physician dispensing. This legislation would take effect in 60 days.

ANALYSIS: This legislation amends Section 306(f.1)(3)(vi) of the Workers' Compensation Act (Act 338 of 1915) as follows:

Maximum Reimbursement Rate - Drugs and Professional Pharmaceutical Services: The maximum reimbursement rate for drugs and professional pharmaceutical services will be limited to 110% of the drug's average wholesale price (AWP), calculated on a per unit basis on the date of dispensing.

Original National Drug Code (NDC) Number: A physician seeking reimbursement for drugs the physician dispenses must include the original manufacturer's National Drug Code (NDC) number, as assigned by the Food and Drug Administration (FDA), on all bills and reports.

Maximum Reimbursement Rate for Physicians: Physicians will be entitled to a maximum reimbursement rate equal to 110% of the AWP of the drugs they dispense. The AWP will be tied to the original manufacturer's NDC number.

Repackaged NDC Numbers Prohibited: A repackaged NDC number may not be used and will not be considered the original manufacturer's NDC number.

Reimbursement Rate in the Absence of Original NDC Number: If a physician seeks reimbursement for pharmaceuticals he dispenses and does not include the original manufacturer's NDC number on all bills and reports, reimbursement is limited to 110% of the AWP of the least expensive clinically equivalent drug. Clinical equivalence, in reference to a drug, means the drug has chemical equivalents which, when administered in the same amounts, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease.

Limit on Reimbursement for Physician Dispensed Drugs: The legislation provides that no outpatient provider (other than a licensed pharmacy in PA or another state) may seek reimbursement for drugs in excess of specific limitations as delineated within the legislation.

“Doctor Shopping” Prohibition: If one healthcare provider has dispensed drugs to a workers’ compensation patient, no other healthcare provider may submit for reimbursement for drugs dispensed to the same employee under the same workers’ compensation claim.

Over-the-Counter Drugs: No outpatient provider (other than a licensed pharmacy in PA or another state) may seek reimbursement for an over-the-counter (OTC) drug.

PCRB Savings Calculation: Within 18 months, the Pennsylvania Compensation Rating Bureau (PCRB) must calculate the savings achieved through the implementation of this act. For CY 2016, the amount of the savings must be used to provide an immediate and directly proportional reduction in employers’ workers’ compensation rates.

FISCAL IMPACT: According to the Department of Labor and Industry, the cost of the workers’ compensation system is about \$3.3 billion per year. By further limiting reimbursements on physicians dispensing drugs for injured workers during treatment, the department estimates that the savings to all employers (both public and private) from this legislation would be about \$7.5 to \$13 million per year. Included within those estimated savings would be the Commonwealth and its political subdivisions, which, as employers are obligated under law to provide worker’s compensation coverage. Those savings to these political subdivisions are indeterminable at this moment. The legislation would have no adverse fiscal impact on the State Workers’ Insurance Fund and the Workmen’s Compensation Administration Fund.

According to the Office of Administration (OA), this legislation would save the Commonwealth, as an employer, about \$2,000 annually. The Absence and Safety Office within the OA was able to verify the number of people who used a doctor’s office to fill a prescription and the corresponding costs. OA indicates that the Commonwealth spends about \$120 million on workers compensation-related expenses annually. About \$9.1 million is spent annually on prescriptions for Commonwealth employees injured on the job. OA indicates that most employees obtain prescriptions at a pharmacy.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: October 15, 2014

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.