

Chiropractic Fellowship of PA
Summary of Legislation
September 2016

House Labor and Industry Committee Holds Hearing on Worker's Comp

The House Labor and Industry Committee held a public hearing September 13 on House Bill 1141, which amends the Workers' Compensation Act requiring insurers to accept electronic billing by January 1, 2017; imposing certain penalties for failure to implement an updated Workers' Compensation fee schedule by January 10 annually; requiring the establishment of a bona fide provider network agreement between physicians/insurers/employers and third parties and requiring that physicians receive notice of such agreements; prohibiting the use of threats or coercion in soliciting discounted reimbursements; and authorizing providers to access certain claim information.

Rep. Stanley Saylor (R-York), prime sponsor of House Bill 1141, provided an overview of the legislation, which he described as a "reasonable and common sense approach" to reforming the state's Workers' Compensation (WC) Act. Following his opening remarks, Committee Chair **Mauree Gingrich (R-Lebanon)** called up the first of three panels to present testimony on the bill.

The first panel was a group of health care providers and their representatives. **Dr. James McGlynn**, of Premier Orthopaedics and speaking on behalf of the Pennsylvania Orthopaedics Society (POS), spoke in support of the legislation. "**House Bill 1141 brings commonsense reforms to the Workers' Compensation (WC) system.** For many years, the Pennsylvania Orthopaedic Society (POS) has worked with committee staff to craft legislation designed to clarify and enforce existing law. We are not seeking grand modifications to the WC statute. We are merely attempting to make the system work for injured workers and the health care providers who treat them," he stated. "The POS is deeply involved in WC issues. From a medical professional viewpoint, orthopaedic surgeons treat more injured workers than any other type of physician. In addition, the patients we treat are often severely injured. We care deeply for our patients and we hope this legislation will enhance the patient/physician relationship. HB 1141 is designed to correct important longstanding information access and reimbursement issues that have plagued medical professionals. The legislation represents commonsense changes that will streamline the processing of bills, prohibit reimbursement discounting without a bona fide contract and ensure timely payments to providers. I am sure you will agree that HB 1141 is reasonable in its approach to resolving these issues."

Charles Artz, Esq., of Artz McCarrie Health Law, speaking on behalf of POS, discussed the issue of "Silent PPO discounts" and explained that the legislation addresses the matter in the following ways:

- Allows legitimate networks and companies developing workers' comp networks that provide legitimate PPO services to exist and take negotiated discounts;

- Requires legitimate networks to perform "case management" services;

- Would subject any organization that knowingly receives compensation or anything of value to refer, recommend, steer or direct an injured employee to a health care provider without performing bona fide case management and coordination of care services to felony criminal sanctions;

- Makes it unlawful for a person to solicit a provider to accept discounts or reimbursement below the workers' compensation fee schedule by the use of any threat or coercion in any verbal or written communications. Artz said the legislation also remedies the issue of Workers' Compensation fee petition procedures in the following manner:

- If a provider wins its application for fee review, the provider would be awarded the full amount of the unpaid claims, interest, costs and attorneys' fees;

- Costs and attorneys' fees would be imposed if the insurer's position is determined to be unreasonable.

The judge can also impose a penalty of up to 50 percent of the amount that should have been paid;

- These remedies are consistent with the rights that claimants have in cases that are challenged before a workers' compensation judge.

"Insurance companies have no incentive under current law to quickly resolve undisputed claims without the threat of any sanctions," Artz stated. "HB 1141 would provide a remedy to these types of cases."

James Foreman, Owner, ProCare Physical Therapy, also spoke in support of the legislation. "Please carefully consider your support of House Bill 1141 as it rebalances the overreaching which networks have done with the

apparent approval of certain insurance carriers. If pushed on the arguments that networks save employers and the Commonwealth significant money by being hard lined negotiators of medical care services, I would ask you to seek transparency on net payments to providers versus the corresponding amounts charged to employers," he stated. "You will likely see significant imbalance in fees paid to the health care providers- who are actually providing medical care- versus the fees paid to, or retained by, the networks. The PA Workers' Compensation Act has set limits on reimbursements to health care providers. That system is well established and easily researched. If interested in pursuing the financial aspects of the various relationships, we would welcome the opportunity to open and transparent discussions and explorations of who is getting what percentage and distribution of the employers' monies and insurance premiums designated as physical therapy costs."

Steven Morganstein, representing the **Pennsylvania Medical Society**, expressed support for the bill and emphasized that it would end the practice of "silent discounting" and would prohibit an insurer from soliciting a physician to accept discounted fees and using tactics to coerce them such as threatening patient access. "Injured workers present challenges that ordinary patients do not. Their cases typically involve complex injuries that require a great deal of intensive treatment. Often I ask myself why our practice continues to see workers' comp patients. The answer is simple: there are a limited number of physicians who can treat these patients. If I don't treat them, who will? That's why we continue to do what we do despite the unfair treatment we receive from insurers," he stated. "The legislation would ensure that standard processes exist within the workers' compensation system and that those processes are fair and adhered to. In doing so, it would make the system more efficient and cost-effective, and allow us to put more focus where it belongs - on our patients and on helping injured workers receive proper and timely treatment for their work-related injuries."

Acting Minority Chair Rep. Leanne Krueger-Braneky (D-Delaware) wanted to know how the proposed changes in the legislation would help injured workers. Foreman explained how the current system works and how the legislation will help injured workers by making it "crystal clear" the designation of who is a health care provider. Rep. Krueger-Braneky asked when a discount is negotiated between a network and a provider who benefits from the discount. According to Foreman, "savings are largely being held by the networks."

Rep. Cris Dush (R-Jefferson) expressed concerns with the provisions in the legislation requiring electronic billings and forms and the impact that would have on some of the employers in his district who do not have access to the internet. **Kathy DeWittie**, of the Pennsylvania Orthopaedics Society, responded, "We understand small insurance carriers and small insurers that would not be able to do that. However, there are clearing houses like you have in the mandated electronic submission of bills for Medicare." She explained how these clearing houses serve as intermediaries who receive the paper bill and they communicate electronically with the insurer. Rep. Dush countered that some of these employers don't have the ability to pay a clearing house or afford electronic forms. Artz said that the intent of the legislation is to make the electronic transaction to take place between the health care provider and the insurance company.

Rep. Judith Ward (R-Blair) asked Foreman how the current situation has affected his practice and the individual patients in his practice. Foreman explained the problems faced by his practice under the current law and its impact on some of his patients.

Rep. Seth Grove (R-York), wanted to know if providers can handle the administrative burden that comes from all the requirements under workers' compensation and if providers should be reimbursed for the administrative costs. DeWittie explained that if there is to be a discount, providers want a contract to be in place between the employer and the insurer and between the network and the employer and the network and the physician or provider.

The second panel represented the insurance industry.

Sam Marshall, President, Pennsylvania Insurance Federation, provided the committee an overview of the history of Workers' Compensation reform and argued that

Robert Holden, Statewide Associates, American Association of Preferred Provider Organizations, spoke in opposition to the legislation and expressed concern about the network contracting as well as the fee review and reporting requirements. "We are concerned that HB 1141 proposes changes to the workers' compensation system in Pennsylvania that will unnecessarily disrupt employee access to a broader selection of health care providers and that

will needlessly increase costs to employers by adding additional steps to contracting for the formation and maintenance of a bona fide provider network," he stated. "While we appreciate Rep. Saylor's efforts, we strongly believe the application of these proposed policies will fundamentally upend a system that has historically allowed the state to keep workers' compensation costs low. In addition, the proposed legislation would create numerous and unnecessary administrative costs and burdens on insurers and providers within the state. The impact of this will ultimately create undue burdens for injured workers."

Chairman Gingrich pointed out the current law requires the payment be made in 30 days. She wanted to know why providers have a problem with that timeline. Marshall commented, "Frankly, I am surprised that they are." He argued that there is no incentive for an insurance company to delay in making payments in a timely fashion. Marshall then discussed the problems caused by the "antiquated fee schedule" under the Workers' Compensation Act.

Rep. Donatucci wanted to know how this proposed bill is not a plus for the workers' compensation system. Marshall responded, "It is not a plus because it is going to increase the costs that we pay but not improve the care." He also argued that the bill "further locks us into an antiquated fee system." Holden added that his organization would be forced to renegotiate all of the contracts they have and incur a cost without any apparent benefit.

Rep. Krueger-Braneky wanted to know how the bill would help or hurt injured workers. Marshall explained that he doesn't think the bill necessarily hurts any workers but it does not make access to care better or make the quality of care better. He added, "It just makes it more expensive." Holden said agreed with Marshall and said that the networks provide more access to workers.

Rep. Ward wanted to know who benefits from the discounts the networks provide. Marshall said, "The employer that pays the premium."

Chairman Gingrich asked about the opioid epidemic and its impact on the workplace. Marshall pointed out that opioid use in workers' compensation cases is higher than it is elsewhere in the health insurance arena. He commented, "In the Pennsylvania workers' comp system opioid abuse is higher than anywhere across the country." Marshall said that this bill does not deal with it but House Bill 1800 includes treatment guidelines for opioid use. He encouraged "putting the brakes on opioid use in workers' comp."

Michael Vovakes, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry, spoke in opposition to the bill and argued that the bill places additional burdens on both the Bureau of Workers' Compensation and on the Workers' Compensation Office of Adjudication and could potentially negatively impact the Uninsured Employer Guaranty Fund. "House Bill 1141 seeks to make significant changes to the way in which health care providers in Pennsylvania obtain payment for treatment provided to injured workers. The impact of this legislation on all participants in the workers' compensation system would be extensive. Notably, the costs to the Department related to the implementation of this proposal would be substantial," he stated. "Because of the substantial cost associated with this legislation, the incentives for additional litigation that it creates, the ambiguity of certain provisions and the possibility that it could impact the care provided to injured workers, the Department of Labor and Industry opposes the passage of House Bill 1141 in its current form." **Rep. Gingrich** asked how the Commonwealth currently uses the networks. Vovakes explained how the State Workers Insurance Fund (SWIF) utilizes some networks to help manage costs.

Rep. Dunn asked Vovakes about his testimony that the legislation will incentivize litigation and cause substantial increase in costs. Scott Weiant, Director of the Bureau of Workers' Compensation, responded that there would be an immediate increase in litigation. He also spoke about the need for considerable investment in information technology infrastructure to meet the requirements of the bill and the increase in personnel costs for his bureau to hire additional employees. Rep. Dush asked if changing the fee schedule as proposed by Marshall would help with savings within the system. Weiant responded that the bureau is always willing to talk to stakeholders regarding possible changes to decrease costs within the system.

Rep. Krueger-Braneky asked if there are any other issues within the system that the General Assembly needs to take up. Weiant responded that no one is happy with the opioid problem within the workers' compensation system.

Chairman Gingrich asked about the payment issues raised by the providers. Weiant explained that his bureau annually does about 32,000 medical fee reviews. He assured the committee, "We do our due diligence to process those medical fee reviews." Weiant added he would provide the committee with some statistics on that issue.

Written testimony was also submitted by the following:

- Premier Comp Solutions
- Workers' Compensation Advisory Council
- Pennsylvania Chamber of Business and Industry

Medical Assistance Advisory Committee September 22 Meeting Highlights

Leesa Allen, Deputy Secretary for the Office of Medical Assistance Programs (OMAP), discussed the HealthChoices reprocurement and explained that the process is currently in the “blackout phase” but said the department has received 11 proposals from individual plans looking to participate. She gave a breakdown in plans by region:

- Southeast Region: Aetna Better Health, Gateway Health Plan, Geisinger Health Plan, Health Partners Plan, Keystone First, Pennsylvania Health and Wellness, Trusted Health Plan Pennsylvania, United Health Care Pennsylvania, UPMC For You.
- Southwest Region: Aetna Better Health, AmeriHealth Caritas Pennsylvania, Gateway Health Plan, Meridian Health Plan Pennsylvania, Pennsylvania Health and Wellness, United Healthcare Pennsylvania, UPMC For You;
- Lehigh Capitol Region: Seneca Health Company, AmeriHealth Caritas Pennsylvania, Aetna Better Health, Gateway Health Plan, Geisinger Health Plan, Health Partners Plan, Meridian Health Plan Pennsylvania, Pennsylvania Health and Wellness, United Healthcare Pennsylvania, UPMC For You;
- West Region: Aetna Better Health, AmeriHealth Caritas Pennsylvania, Gateway Health Plan, Pennsylvania Health and Wellness, United Healthcare Pennsylvania, UPMC For You;
- East Region: Aetna Better Health, AmeriHealth Caritas Pennsylvania, Gateway Health Plan, Geisinger Health Plan, Pennsylvania Health and Wellness, United Healthcare Pennsylvania, UPMC For You;

“Our schedule has us concluding our selections by October 30,” Allen concluded.

Jamie Buchenauer, Director of the DHS Bureau of Fee for Service Programs, provided an update on **provider revalidation** and explained that 166,000 service locations -70 percent – have revalidated but 70,700 still need to be revalidated. She said providers with revalidation dates on or before September 25, 2016 needed to submit a revalidation application by July 30, 2016, and emphasized that a notice of closures went out to 37,503 service locations on September 6, 2016. Buchenauer added that OMAP is experiencing very heavy call volumes with providers calling regarding their closure notice and recipients are questioning their notice. “We continue to process applications daily and we continue to receive applications daily,” she stated. “We got way more calls than we are staffed to accept so we’ve been working on strategies to get assistance on the call lines. I apologize if it was a recipient that could not get through or provider that could not get through. Please continue and try to call us now. We now have a backup to our recipient call line so those calls are now coming through and we will soon have a backup in place for provider calls.”

Buchenauer emphasized that the bureau is focused on the following:

- Outreach to targeted providers to get them revalidated;
- Solutions for overflow calls;
- Expedited appeals;
- Processing revalidation applications;
- Recipient outreach.

Allen added that OMAP has ramped up staff over the last month to process the revalidation applications but emphasized that the department is seeing a large volume of applications being returned to providers because of inaccurate or incomplete information. “When information is not complete, we cannot make headway,” she stated.

MAAC member **Joe Glinka, Legislative Director, Gateway Health Plan, Pittsburgh** questioned if there is a common theme among the missing information. Buchenauer said the primary reason provider application is returned to the provider is because the name they entered as their legal name does not match the name on their Social Security card. “It’s not going to match if I put on my application Bob Smith but the name on the Social Security card is Robert L. Smith,” she stated. “Until it matches we can’t approve it.”

Rory McGuire, Director of Data and Claims Management Bureau, explained the contract with the current provider for the Medicaid Management Information System (MMIS) - PROMISE System – is expiring in 2017 and indicated that CMS has given approval for the plan for the new system. She said CMS requires an Independent Verification Validation Vendor when implementing a new MMIS and will assist the department in assisting and building a sound system. She added that a vendor will also be procured to write requirements for the system as well as a vendor for a system integrator. “We are following a business model structure, so our modules will follow a

business structure... we are looking to procure about six different modules," she stated. "Our high level plan will be included in our Independent Verification Validation RFQ which I am hoping to release in the next week or so."

The next MAAC meeting will be held on October 27 at 10:00 a.m. in Strawberry Square, Harrisburg. September 23, 2016

State Board of Chiropractic September 22 Meeting Highlights

The State Board of Chiropractic met on **September 22, in Harrisburg**. Here are the highlights.

- **Board Chair George Khoury, DC, welcomed the members and guests.**
- **Lead Board Prosecutor Anita Shekletski** presented two cases for Board consideration in Executive Session.
- **BPOA Commissioner Ian Harlow** reported on new licensing software coming online by February. He also mentioned there is a multiboard roundtable on dry needling. Minutes are being developed.
- **Board Counsel Jacqueline Wolfgang** discussed the status of cases before the Board.
- **Regulatory Counsel Tom Blackburn** reported on the status of regs before the Board. Blackburn noted that the Independent Regulatory Review Commission (IRRC) has disapproved the Distance Learning proposed regulation in August. IRRC wants standards for inappropriate video CE. Blackburn presented suggested language for addressing IRRC's issues. The Board approved the new language and directed him to send the Final regulation forward up the chain again. Blackburn then presented a draft regulation on Sexual Misconduct, similar to what other health Boards have done. Board members raised some concerns, particularly with regard to pre-existing relationships, excluding spouses, and others. He will consult some of the other Board counsels on how they handled the issues, and will report back at the December meeting.

Next meeting is December 1. 2017 meeting dates: January 19, March 23, May 18, July 20, September 21, November 9

Legislative Activity

The following bills of interest to CFoP were acted on by the General Assembly this past month.

Scope of Practice/Licensure Bills

[HB 1619](#) RE: Interstate Medical Licensure Compact Act (by Rep. Jesse Topper, et al)

Authorizes the Commonwealth to join the Interstate Medical Licensure Compact. Provides for the form of the compact. Further provides for the Interstate Medical Licensure Compact Commission and for its powers and duties. Also provides for the power and duties of the Governor and the Secretary of the Commonwealth under the act.

Reported as committed from Senate Appropriations Committee, 9/26/2016

Read second time, 9/27/2016

[HB 2352](#) RE: Pain Management Clinic Regulation Act (by Rep. Matt Baker, et al)

Provides for the regulation of pain management clinics; imposes powers and duties on the Department of Health; and prescribes a penalty. Each pain management clinic shall register and maintain a valid registration with the Department of Health. The bill provides for term and form of registration as well as reasons for denial. Pain management clinics shall maintain records and be located and operated at a publicly accessible, fixed location that meets certain standards. The department shall promulgate regulations and conduct inspections.

Introduced and referred to House Health Committee, 9/20/2016

Budget-Related Bills

NONE

Child Abuse Reporting

NONE

Health Care Bills

[HR 1039](#) RE: Chiropractic Conservative Care First Month (by Rep. Jim Marshall, et al)
A Resolution recognizing the month of October 2016 as "Chiropractic Conservative Care First Month" in Pennsylvania.

Introduced as noncontroversial resolution and adopted, 9/28/2016 (193-0)

Health Care Work Force Development

NONE

Health Insurance Bills

[HB 2241](#) RE: Retroactive Denials (by Rep. Karen Boback et al)
Amends Title 40 (Insurance) to allow insurers to retroactively deny reimbursements to health care providers under certain conditions including fraud, waste, abuse, duplicate claims, required denial by a federal or state government plan, and coordination of benefits with another insurer.

Reported as amended from House Insurance Committee, read first time, and laid on the table, 9/19/2016

Removed from the table, 9/21/2016

Read second time and rereferred to House Appropriations Committee, 9/26/2016

Reported as committed from House Appropriations Committee, 9/27/2016

Read third time and passed House, 9/29/2016 (188-0)

Medical Assistance/DHS

NONE

Sales Tax Expansion

NONE

WORKER'S COMP

[HB 1141](#) RE: Worker's Comp (by Rep. Stan Saylor, et al)
Amends Workers' Compensation Act requiring insurers to accept electronic billing by January 1, 2017; imposing certain penalties for failure to implement an updated Workers' Compensation fee schedule by January 10 annually; requiring the establishment of a bona fide provider network agreement between physicians/insurers/employers and third parties and requiring that physicians receive notice of such agreements; prohibiting the use of threats or coercion in soliciting discounted reimbursements; and authorizing providers to access certain claim information.

Public hearing held in House Labor and Industry Committee, 9/13/2016

Upcoming meetings of Interest

Some House Committee meetings and session can be viewed online at: <http://www.pahousegop.com/>

Senate Committee meetings and session can be streamed at: <http://www.pasenategop.com/>

THURSDAY - 10/20/16

Independent Regulatory Review Commission

10:00 a.m., 14th Floor Conference Room, 333 Market Street, Harrisburg

To consider the following regulations:

Reg. No. 3147 Department of Health #10:197: School Immunizations

And others

THURSDAY - 10/20/16

House Republican Policy Committee

11:00 a.m., UPMC Lemieux Sports Complex, 8000 Cranberry Springs Drive, Cranberry Township

Roundtable discussion on prevention & treatment of concussions

2016 SENATE SESSION SCHEDULE

October 17, 18, 19, 24, 25, 26

November 16

2016 House Fall Legislative Schedule

October 17, 18, 19, 24, 25, 26

November 14, 15

The 2015-16 Legislative Session Ends Officially on November 30.

Copies of bills described above can be obtained through the CFOP office, or on-line at:

<http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>