

ORIGINAL: 2542

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BY E-MAIL AND FACSIMILE

July 10, 2006

Ms. Eileen Wunsch, Chief  
Healthcare Services Review Division  
Bureau of Workers' Compensation  
1171 South Cameron Street  
Harrisburg, PA 17104-2501

Re: Comments on the Proposed Rules

Dear Ms. Wunsch,

These comments are submitted pursuant to the Notice of Proposed Rulemaking for Medical Cost Containment (34 PA. Code Chapter 127) issued by the Pennsylvania Department of Labor and Industry on June 10, 2006.

I am submitting these comments in my capacity as counsel for several URO/PRO organizations as recognized as an affected person so indicated on page 9 of the Proposed Rulemaking.

Thank you very much for consideration of these Comments.

Sincerely,

Lazar Palnick

### COMMENTS

Proposed Regulation Section 127.1051 changes the way in which URO/PRO's are authorized.

1. The Bureau intends to utilize the RFP process to qualify participants under the Commonwealth's purchasing code. This appears to be contrary to the established intention of the original Act in that it alters the manner of selection of these organizations in several ways.
2. It appears that the Bureau is intending to seek the lowest price offered by the contractor(s) as the most significant factor in the selection of those URO/PRO's who will be authorization to provide URO/PRO services.
3. During the session that enacted the Cost Containment provisions, there were many compromises. One of the most significant concepts behind this legislation was to balance the need of the workers of Pennsylvania with the management of the spiraling costs of the compensation system. The compromise that became the Act was to make sure that reviews were available to all parties to determine whether or not a provider of the medical care was giving the reasonable and necessary treatment to the patient. This was a protection for not only the insurer from such proclivities as "upcoding," but was also supposed to be a protection for the injured worker from the over-denial of payment claims by insurance companies.
4. If, under this provision, the cost of URO/PRO services becomes the Commonwealth's primary consideration, the quality of service that workers and patients are getting becomes secondary to obtaining the cheapest services, then, this concept is jeopardized. The Legislature was concerned about quality assurance. This Act was intended to make certain that the most qualified and best doctors in Pennsylvania were available for conducting of these reviews. In this manner those patients and payers would be guaranteed proper consideration of their actions by fair and highly qualified professionals. The workers of Pennsylvania deserve no less than having the best and most qualified panels of reviewers available. To make a shift in favor of the lowest cost flies in the face of the Legislative intent.
5. To establish low cost instead of the highest quality of reviews as the primary purpose of the Act is contrary to the spirit and letter of the Act.
6. Furthermore, the proposed regulations fail to ensure geographic diversity, or address other factors which the legislature addressed in the initial Act(s) as important considerations. Making certain that there were URO/PRO organizations spread throughout the Commonwealth was a key point of the Legislature in the negotiations that led to the Act. They wanted to make certain that there was diversity in not only the geography, but those who were conducting the reviews and the organizations that administered the process. In this manner, no one area or organization would have a monopoly and potentially bias the results of the process. This also meant that doctors from throughout the Commonwealth would be a central component of this process

to insure that the best and the most highly qualified professionals would be participating in this system.

7. It is unclear how many organizations will be selected for URO/PRO service. As proposed, it is possible or probable that only one or a few organizations will be chosen under the Procurement Code system. This appears to be an abandonment of the current system where any URO/PRO which meets the requirements of the regulations will be authorized and used in a non-discriminatory, random fashion.
8. Under the proposed regulations, the selection of only a few organizations fails to honor either the legislative purpose or legislative intent of the Worker's Compensation and/or Cost Containment Acts. It appears that the Department has proposed an expansion of its authority, contrary to Legislative authority, by assuming, through the change over of this system, to an inappropriate use of administrative authority. It has proposed for the Bureau staff be the ones who will be choosing who becomes an authorized URO/PRO, instead of the statutory scheme originally contemplated by the legislature whereby any organization that qualified, would become authorized. This shift of authority alters the intended purposes of the objectivity of the system and thereby constitutes an unauthorized usurpation of legislative authority and a violation of the separation of powers doctrine contained in the Constitution of the Commonwealth of the Pennsylvania.
9. Under the proposed regulations, the assignment of cases to newly-chosen URO/PROs will be based upon Bureau determination, and will abandon the current, objective, random process. The discretion to determine which URO/PRO gets what case has once again been shifted to the Bureau. It could be foreseen that bias, political influence or other factors such as favoritism will replace the random assignment of these important reviews. It could be possible that all of the cases with a certain type of medical condition go to the same reviewer, etc. The absence of proper checks and balances must be avoided at all costs in order to protect the integrity of the system.

Proposed Regulation Section 127.1052 indicates that those organizations that are currently authorized at the time that the new regulations are adopted will continue to operate until their period of authorization has expired.

1. The proposed regulations do not address how assignment of cases to these currently authorized organizations be conducted when, at the same time, assignments will change for the newly chosen organizations.
2. There is no indication of what other plans and details are envisioned for the inter-working of the old and the new organizations.
3. There are no details which set for plans for the operation of the new organizations and their interrelationship with the Bureau.

Respectfully submitted,  
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**Gelnett, Wanda B.**

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**From:** LI, BWC-Administrative Division [RA-LI-BWC-Administra@state.pa.us]

**Sent:** Tuesday, July 11, 2006 7:39 AM

**To:** Wunsch, Eileen; Kupchinsky, John; Kuzma, Thomas J. (GC-LI); Howell, Thomas P. (GC-LI)

**Subject:** Comments on Regs. from Karla

-----Original Message-----

From: Lazar Palnick [<mailto:lazarp@earthlink.net>]

Sent: Monday, July 10, 2006 10:14 AM

To: RA-LI-BWC-Administra@state.pa.us

Cc: Eileen Wunsch

Subject: Official Comments

Please find attached, the Official Comments and a cover letter for the Proposed Regulations. Thanks, Lazar

7/12/2006