

Regular Session, 2012

SENATE BILL NO. 367

BY SENATOR RISER

WORKERS' COMPENSATION. Provides for medical examinations in workers' compensation cases. (8/1/12)

1 AN ACT  
2 To amend and reenact R.S. 23:1123, 1142(A)(1), 1203(E), 1307, and 1317.1(A), relative to  
3 workers' compensation; to provide relative to independent medical examinations; to  
4 provide that certain information be given to certain injured workers; to provide  
5 relative to utilization review companies; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1123, 1142(A)(1), 1203(E), 1307, and 1317.1(A) are hereby  
8 amended and reenacted to read as follows:

9 §1123. Disputes as to condition or capacity to work, ~~or current medical treatment~~  
10 ~~of employee~~; examination under supervision of the director

11 If any dispute arises as to the condition of the employee, **or the employee's**  
12 capacity to work, or the current medical treatment for the employee, the director,  
13 upon application of any party, shall order an examination of the employee to be  
14 made by a medical practitioner selected and appointed by the director. The medical  
15 examiner shall report his conclusions from the examination to the director and to the  
16 parties and such report shall be prima facie evidence of the facts therein stated in any  
17 subsequent proceedings under this Chapter.

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§1142. Approval of health care providers; fees

A. Definitions. For the purposes of this Section, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Payor" shall mean the entity responsible, whether by law or contract, for the payment of the medical expenses incurred by a claimant as a result of a work related injury or the utilization review company retained by that entity.

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§1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic devices; other expenses

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E. Upon the first payment for a claimant's medical care, service, or treatment, the payor, as defined in R.S. 23:1142(A)(1), shall communicate to the claimant information, in plain language, regarding the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee or the employee's capacity to work, and the procedure for appealing the denial of medical treatment to the medical director as provided in R.S. 23:1203.1. A payor shall not deny medical care, service, or treatment to a claimant unless the payor can document a reasonable and diligent effort in communicating such information. A payor who denies medical care, service, or treatment without making such an effort may be fined an amount not to exceed five hundred dollars or the cost of the medical care, service, or treatment, whichever is more.

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§1307. Information to injured employee

Upon receipt of notice of injury from the employer or other indication of an injury reportable under R.S. 23:1306, the office shall mail immediately to the injured employee and employer a brochure which sets forth in clear understandable language a summary statement of the rights, benefits, and obligations of employers and

1 employees under this Chapter, together with an explanation of the operations of the  
 2 office, and shall invite the employer and employee to seek the advice of the office  
 3 with reference to any question or dispute which the employee has concerning the  
 4 injury. Such brochure shall specifically state the procedure for requesting an  
 5 independent medical examination in the event a dispute arises as to the condition of  
 6 the employee **or the employee's capacity to work**. If such brochure has previously  
 7 been mailed to an employer within the calendar year, the office shall not mail such  
 8 employer an additional brochure unless the employer specifically requests such.

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10 §1317.1. Independent medical examinations

11 A. Any party wishing to request an independent medical examination of the  
 12 claimant pursuant to R.S. 23:1123; **and** 1124.1, ~~and 1291(B)(10) and (11)~~ shall be  
 13 required to make its request at or prior to the pretrial conference. Requests for  
 14 independent medical examinations made after that time shall be denied except for  
 15 good cause or if it is found to be in the best interest of justice to order such  
 16 examination.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Carla S. Roberts.

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DIGEST

Present law provides that, relative to workers' compensation, if any dispute arises as to the condition of the employee, capacity to work, or the current medical treatment, the director of the office of workers' compensation, upon application of any party, shall order an examination of the employee by a medical practitioner appointed by the director. Requires the medical examiner to report his conclusions from the examination to the director and to the parties and provides such report shall be prima facie evidence of the facts in any subsequent proceedings regarding the claimant's workers' compensation case.

Proposed law retains present law but provides technical changes to language regarding the employee's capacity to work.

Present law defines "payor" for purposes of workers' compensation as the entity responsible, whether by law or contract, for the payment of the medical expenses incurred by a claimant as a result of a work related injury.

Proposed law retains present law and adds utilization review companies as a "payor."

Present law requires, in workers' compensation cases, the employer to furnish all necessary

drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal.

Present law requires that, upon the first payment for a claimant's medical care, service, or treatment, the payor, to communicate to the claimant information regarding the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee. Prohibits a payor from denying medical care, service, or treatment unless the payor can document a reasonable and diligent effort in communicating such information. Provides that a payor who denies medical care, service, or treatment without making such an effort may be fined up to \$500 or the cost of the medical care, service, or treatment, whichever is more.

Proposed law retains present law but provides that present law also applies to disputes about the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director at the office of workers' compensation.

Present law requires that, upon receipt of notice of injury from the employer or other indication of an injury, the office of workers' compensation administration shall mail immediately to the injured employee and employer a brochure which sets forth in clear understandable language a summary statement of the rights, benefits, and obligations of employers and employees. Requires the brochure to specifically state the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee.

Proposed law retains present law but provides that present law also applies to disputes about the employee's capacity to work.

Present law provides that the director of the office of workers' compensation shall have certain powers, including the use of a utilization review process and to engage qualified experts in the appropriate health-care fields to assist him in the discharge of his responsibilities in utilization review.

Present law requires any party wishing to request an independent medical examination of the claimant, including the examinations at the direction of the director of the office of workers' compensation, to make its request at or prior to the pretrial conference.

Proposed law retains present law but removes the requirement that the request for an independent medical examination made at the behest of the director shall be made prior to the pretrial conference.

Effective August 1, 2012.

(Amends R.S. 23:1123, 1142(A)(1), 1203(E), 1307, and 1317.1(A))