

2020 Regular Session

SENATE BILL NO. 160

BY SENATOR TALBOT

WORKERS' COMPENSATION. Provides for the creation of a workers' compensation pharmacy formulary. (8/1/20)

1 AN ACT  
2 To amend and reenact R.S. 23:1203.1(A)(4), (5), and (6), (B), the introductory paragraph of  
3 (D), (H), (I), (J)(1), (L), and (M)(1) and to enact R.S. 23:1203.1(A)(7) and (M)(3)  
4 and (4), relative to workers' compensation; to provide for the promulgation of a  
5 prescription medication formulary; to provide criteria for promulgation of the  
6 formulary; to provide for certain updates; to provide a variance for certain medical  
7 conditions or treatment not specifically addressed in the formulary; to authorize the  
8 assistant secretary to adopt an existing formulary; to provide for the management of  
9 opioid medications as a criteria for adoption of the formulary; and to provide for  
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 23:1203.1(A)(4), (5), and (6), (B), the introductory paragraph of (D),  
13 (H), (I), (J)(1), (L), and (M)(1) are hereby amended and reenacted and R.S. 23:1203.1 (A)(7)  
14 and (M)(3) and (4) are hereby enacted to read as follows:

15 §1203.1. Definitions; medical treatment schedule; medical advisory council;  
16 **prescription medication formulary**

17 A. For use in this Section, the following terms have the following meanings,

1 unless clearly indicated otherwise by the context:

2 \* \* \*

3 (4) "Formulary" means the prescription medication formulary  
4 promulgated by the office of the assistant secretary.

5 (5) "Medical director" means a physician who is licensed to practice  
6 medicine in the state of Louisiana and has been chosen by the assistant secretary  
7 pursuant to R.S. 23:1203.1.1.

8 ~~(5)(6)~~ "Office" means the office of workers' compensation administration of  
9 the Louisiana Workforce Commission.

10 ~~(6)(7)~~ "Schedule" means the medical treatment schedule to be developed by  
11 the council and promulgated by the office and the assistant secretary.

12 B.(1) The assistant secretary shall, through the office of workers'  
13 compensation administration, promulgate rules in accordance with the  
14 Administrative Procedure Act, R.S. 49:950 et seq., to establish a medical treatment  
15 schedule and a prescription medication formulary.

16 ~~(1) Such rules shall be promulgated no later than January 1, 2011.~~

17 (2) ~~The~~ Both the medical treatment schedule and the formulary shall meet  
18 the criteria established in this Section, ~~and~~

19 (3) The medical treatment schedule shall be organized in an  
20 interdisciplinary manner by particular regions of the body and organ systems.

21 (4)(a) No later than January 1, 2021, the assistant secretary shall  
22 promulgate the formulary.

23 (b) The assistant secretary may adopt an existing formulary from the  
24 existing formularies which are available. Should the assistant secretary choose  
25 to adopt an existing formulary, the following factors shall be considered:

26 (i) Whether the formulary is written specifically for workers'  
27 compensation.

28 (ii) Whether the formulary includes measures to aid in the management  
29 of opioid medications.



1 authorization and the information required by Chapter 27 of Title 40 of the  
 2 Louisiana Administrative Code, ~~Title 40, Chapter 27~~; the payor shall notify the  
 3 medical provider of ~~their~~ any action on the request within five business days of  
 4 receipt of the request. If any dispute arises ~~after January 1, 2011~~, as to whether the  
 5 recommended care, services, or treatment is in accordance with the medical  
 6 treatment schedule or the formulary, or whether a variance from the medical  
 7 treatment schedule or the formulary is reasonably required as contemplated in  
 8 Subsection I of this Section, any aggrieved party shall file, within fifteen calendar  
 9 days, an appeal with the office of workers' compensation administration medical  
 10 director or associate medical director on a form promulgated by the assistant  
 11 secretary. The medical director or associate medical director shall render a decision  
 12 as soon as is practicable, but ~~in no event~~, not more than thirty calendar days from the  
 13 date of filing.

14 \* \* \*

15 L.(1) It is the intent of the legislature that, with the establishment and  
 16 enforcement of the medical treatment schedule, medical and surgical treatment,  
 17 hospital care, and other health care provider services shall be delivered in an efficient  
 18 and timely manner to injured employees.

19 (2) Notwithstanding any other provision of law or any formulary rules  
 20 or regulations to the contrary, any prior authorization of a pharmacy or any  
 21 other healthcare provider dispensing prescription medications, regardless of the  
 22 classification or the lack of classification of any individual medication, shall be  
 23 in accordance with the provisions of R.S. 23:1142.

24 M.(1) With regard to all treatment not covered by the medical treatment  
 25 schedule or the formulary promulgated in accordance with this Section, all medical  
 26 care, services, and treatment shall be in accordance with Subsection D of this  
 27 Section.

28 \* \* \*

29 (3) In all workers' compensation claims in which the injury takes place

1           on or after January 1, 2021, the formulary shall be utilized for all prescription  
2           medications prescribed or dispensed for outpatient use.

3                   (4) In all workers' compensation claims in which the injury takes place  
4           prior to January 1, 2021, the formulary shall be utilized for all refills and new  
5           prescriptions prescribed or dispensed for outpatient use on and after July 1,  
6           2021.

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

DIGEST

SB 160 Original

2020 Regular Session

Talbot

Present law requires that the office of workers' compensation (OWC) develop a medical treatment schedule, or guidelines, as to when and in what manner injured workers are to receive medical treatment for injuries which are subject to coverage under workers' compensation policies. Present law further provides that the OWC review and promulgate rules and regulations to ensure proper medical care for the injured worker.

Proposed law retains present law and expands it by requiring the establishment of a prescription drug formulary to be promulgated by January 1, 2021.

Proposed law requires the following:

- (1) For claims in which the date of injury takes place on or after January 1, 2021, the formulary will be utilized.
- (2) For claims in which the date of injury takes place prior to January 1, 2021, the formulary will be utilized for all refills and new prescriptions prescribed or dispensed for outpatient use on and after July 1, 2021.

Proposed law requires that the promulgation of the formulary use the same criteria as used for the development of the medical treatment guidelines. As it relates to the formulary, however, proposed law provides that the OWC assistant secretary may adopt an existing formulary. Proposed law further provides that, in determining which formulary to adopt, the assistant secretary shall consider the following factors:

- (1) Whether the formulary is written for specifically for workers' compensation.
- (2) Whether the formulary includes measures to aid in the management of opioid medications.
- (3) Whether the formulary appropriately limits both the duration and the dosage of prescriptions.
- (4) The cost of implementation of the formulary.
- (5) Whether the formulary is self-updating.

Proposed law provides that the formulary shall be updated when deemed necessary by the OWC assistant secretary.

Proposed law provides that any prior authorization of a pharmacy or healthcare provider dispensing prescription medications, regardless of classification or lack of classification, shall be in accordance with certain provisions of present law (R.S. 23:1142).

Present law provides that, if the treatment required by the injured worker is not sufficiently addressed by the medical treatment schedule, the employer may demonstrate by preponderance of the scientific medical evidence that a variance is necessary.

Proposed law retains present law and further requires that the formulary will also be subject to a variance pursuant to the procedures in present law.

Effective August 1, 2020.

(Amends R.S. 23:1203.1(A)(4)(5) and (6), (B), (D)(intro para), (H), (I), (J)(1), (L), and (M)(1); adds R.S. 23:1203.1(A)(7) and (M)(3) and (4))