

Regular Session, 2014

HOUSE BILL NO. 1190

BY REPRESENTATIVE GAINES

WORKERS COMPENSATION: Provides with respect to the medical treatment schedule

1 AN ACT

2 To amend and reenact R.S. 23:1203.1(I), (J)(1), (K), and (M), relative to the workers'
3 compensation medical treatment schedule; to provide with respect to the application
4 and procedure for determining disputes; provides for the procedure and required time
5 periods for the appeal of decisions by the medical director; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1203.1(I), (J)(1), (K), and (M) are hereby amended and reenacted
9 to read as follows:

10 §1203.1. Definitions; medical treatment schedule; medical advisory council

11 * * *

12 I. After the promulgation of the medical treatment schedule, throughout this
13 Chapter, and notwithstanding any provision of law to the contrary, medical care,
14 services, and treatment due, pursuant to R.S. 23:1203, et seq., by the employer to the
15 employee shall mean care, services, and treatment in accordance with the medical
16 treatment schedule. The provisions of this Section shall not apply to any case in
17 which the employee sustained an accident, injury, or occupational disease before
18 July 13, 2011. Medical An employer is required to pay for medical care, services,
19 and treatment that varies from the promulgated medical treatment schedule ~~shall also~~
20 ~~be due by the employer~~ when it is demonstrated to the medical director of the office

1 by a preponderance of the scientific medical evidence, that a variance from the
2 medical treatment schedule is reasonably required to cure or relieve the injured
3 worker from the effects of the injury or occupational disease given the
4 circumstances.

5 J.(1) After a medical provider has submitted to the payor the request for
6 authorization ~~and~~ along with the information required by the Louisiana
7 Administrative Code, Title 40, Chapter 27, the payor shall notify the medical
8 provider of ~~their~~ his action ~~on the request~~ within five business days of receipt of the
9 request. ~~If any dispute arises after January 1, 2011, as to~~ Any request for
10 authorization is considered authorized and approved by the payor if it has not been
11 specifically denied within five business days. If the payor disputes whether the
12 recommended care, services, or treatment is in accordance with the medical
13 treatment schedule, or whether a variance from the medical treatment schedule is
14 reasonably required as contemplated in Subsection I of this Section, ~~any aggrieved~~
15 ~~party~~ the payor shall file, ~~within fifteen calendar days,~~ an appeal within fifteen
16 calendar days with the office of workers' compensation administration medical
17 director or associate medical director on a form promulgated by the director. The
18 medical director or associate medical director shall render a decision as soon as is
19 practicable, but in no event; not more than thirty calendar days from the date of
20 filing.

21 * * *

22 K. After the issuance of the decision by the medical director or associate
23 medical director of the office, any party who disagrees with the decision; may ~~then~~
24 appeal by filing a "Disputed Claim for Compensation", ~~which is~~ LWC Form 1008,
25 within thirty days of the issuance of the decision. The decision may be overturned
26 when it is shown, ~~by clear and convincing evidence~~ by a preponderance of the
27 evidence that the decision of the medical director or associate medical director was
28 not in accordance with the provisions of this Section. Any competent, relevant
29 evidence shall be admissible at the hearing of the appeal. The party who files the

1 appeal shall notify the director that he has done so within ten days. The director
2 shall compile and forward the entire record used by the medical director in issuing
3 the decision to the district hearing office within fifteen days of receiving notice. The
4 record shall be made available to the parties to the appeal upon request.

5 * * *

6 M.(1) With regard to all treatment not covered by the medical treatment
7 schedule promulgated in accordance with this Section, all medical care, services, and
8 treatment shall be in accordance with ~~Subsection D of this Section~~ R.S. 23:1203.

9 ~~(2) Notwithstanding any other provision of this Chapter, all treatment not~~
10 ~~specified in the medical treatment schedule and not found in Subsection D of this~~
11 ~~Section shall be due by the employer when it is demonstrated to the medical director,~~
12 ~~in accordance with the principles of Subsection C of this Section, that a~~
13 ~~preponderance of the scientific medical evidence supports approval of the treatment~~
14 ~~that is not covered.~~

15 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Gaines

HB No. 1190

Abstract: Provides for the procedure for determining disputes and appeals of the medical director's decision.

Present law provides that the director of the office of workers' compensation (OWCA) may hire a medical director and associate medical director to render decisions on disputed cases.

Present law provides for the development of a medical treatment schedule based on conscientious, explicit, and judicious use of current best evidence about the care of patients.

Present law authorizes a review and update of the medical treatment schedule no less than every 2 years.

Present law provides that all medical care and treatment due after the promulgation of the medical treatment schedule shall be in accordance with the medical treatment schedule.

Proposed law clarifies that the date before which an accident or injury would have to have occurred to not be required to be treated in accordance with the medical treatment schedule is July 13, 2011.

Present law provides that after a medical provider has submitted a request for authorization as required to the payor, that the payor shall notify the provider of his action on the request within 5 business days of receipt of the request.

Proposed law retains present law and further provides that any request for authorization that is not specifically denied within the five business days as required in present law shall be authorized and paid by the payor.

Present law specifies that if any dispute arises after Jan. 1, 2011 as to whether the recommended treatment is in accordance with the medical treatment schedule or whether a variance in treatment is appropriate, any aggrieved party shall file an appeal with the medical director.

Proposed law revises present law by deleting the Jan. 1, 2011 date and specifically providing that the payor shall file the appeal instead of "any aggrieved party".

Present law allows for the filing of an appeal by LWC Form 1008, "Disputed Claim for Compensation".

Proposed law retains present law and further requires that the Form 1008 be filed within 30 days of the issuance of the decision of the medical director.

Present law allows the decision to be overturned by clear and convincing evidence that the decision was not in accordance with present law.

Proposed law changes the evidential standard from clear and convincing to a preponderance of the evidence.

Proposed law allows any competent, relevant evidence at the hearing of appeal.

Proposed law requires that the OWCA director be notified that an appeal has been filed within 10 days.

Proposed law requires the director to compile and forward the entire record reviewed by the medical director to the district hearing office within fifteen days of receiving notice. Proposed law further requires the record to be made available to the parties to the appeal upon request.

Present law provides that all treatment not specified in the medical treatment schedule shall be due by the employer when a preponderance of scientific medical evidence supports approval of the treatment.

Proposed law repeals present law.

(Amends R.S. 23:1203.1(I), (J)(1), (K), and (M))