
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

Proposed law provides that the evidentiary standard for the burden of proof be by a preponderance of the evidence and placed upon the party who is asserting entitlement to compensation or medical benefits, or asserting entitlement to payment or additional payment for services rendered to an employee.

Present law requires that penalties and attorney fees be assessed against either the employer or the insurer, depending upon fault. Present law further requires that workers' compensation insurance policy provide that these sums be paid by the insurer if the workers' compensation judge determines that the penalty and attorney fees are to be paid by the employer rather than the insurer.

Proposed law repeals present law and provides that in the event that the health care provider prevails on a claim for payment of his fee, penalties, and reasonable attorney fees based upon actual hours worked be awarded and paid directly to the health care provider.

Proposed law regarding recovery of attorney fees only applies if the failure to make payment is arbitrary and capricious.

Present law provides that in every case of death, the employer shall pay reasonable expenses of the burial of the employee, not to exceed \$7500.

Proposed law retains present law but increases the amount to \$8500.

Proposed law provides for the governance, creation, administration, evaluation, and enforcement of the delivery of medical services to injured employees by workers' compensation medical provider networks.

Proposed law provides that after January 1, 2013, employers may participate in workers' compensation providers networks.

Proposed law provides that the employer is responsible for certain out-of-network care.

Proposed law requires the injured worker to utilize medical service through the network, if accessible.

Proposed law requires that networks be certified and further provides for application procedures.

Proposed law allows for "specialty contracting entities" that can contract with the network to

provide access to ancillary or complimentary medical services.

Proposed law requires the director of the office of workers' compensation to act on applications of applicants within 60 days of submission.

Proposed law provides that contracts between the network and health care providers do not constitute a restraint of trade.

Proposed law provides that the injured worker may select a treating doctor from the list of doctors participating in the network. Proposed law further provides that if the treating doctor shall make a referral, he shall make every effort to refer the injured worker to another doctor within the network.

Proposed law authorizes the injured worker to select a second doctor who participates in the network, if he is dissatisfied with his initial choice.

Proposed law requires the network to enter into a written contract with each medical services provider or group of medical services providers, or a special contracting entity, that participates in the network. Proposed law further provides that such medical services provider contracts are confidential, not subject to disclosure as public record information and not subject to subpoena.

Proposed law provides that the amount of payment for services provided by a network medical services provider is determined by the contract between the network and the medical services provider or group of medical services providers or between the special contracting entity and the medical services provider or group of medical services providers.

Proposed law generally prohibits a network from making available medical services to employees except pursuant to a written contract with a payor. A network-payor contract is confidential and not subject to disclosure as public record information under any other applicable law.

Proposed law prohibits a party to a payor-network contract from selling, leasing, or otherwise transferring information regarding the payment terms of the contract without the express authority of and prior adequate notification to the other contracting parties.

Proposed law requires that the network's medical services provider panel includes an adequate number of treating doctors and specialists, and be available and accessible to injured employees 24 hours a day, seven days a week. Proposed law further requires that the network include sufficient numbers and types of health care providers to ensure choice, access, and quality of care to injured employees.

Proposed law further requires that hospital services and emergency care be available and accessible to injured employees 24 hours a day, seven days a week.

Proposed law authorizes the network to adopt a medical case management program to work with

treating doctors, referral medical services providers, injured employees and employers to facilitate cost-effective care and employee prompt return-to-work.

Proposed law provides for utilization review in relation to claims in a workers' compensation medical provider services network.

Proposed law authorizes the office of workers' compensation to access information from an executive agency that is otherwise confidential, in order to implement proposed law.

Proposed law provides that information that is in the possession of the office and that relates to an individual injured employee, and any compilation, report, or analysis produced from the information that identifies an individual injured employee, is not subject to discovery, subpoena, or other means of legal compulsion for release to any person, or admissible in any civil, administrative, or criminal proceeding, except in connection with any claim for compensation under proposed law.

Proposed law provides that if the director determines that a network, payer, or any other person or third party is in violation of proposed law, or applicable provisions of the La. Workers' Compensation Law or rules adopted pursuant thereto, the director or a designated representative shall notify the network, payor, person, or third party of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred.

Proposed law provides for "economic profiling" under certain circumstances. Economic profiling is defined as any evaluation of a particular physician, medical services provider, medical group or individual practice association based in whole or in part on the economic costs or utilization of services associated with medical care provided or authorized by the physician, medical services provider, medical group or individual practice association.

Proposed law requires the employer that arranges for care for injured workers through a workers' compensation medical provider network to develop and maintain a written continuity of care policy and information regarding the process for an injured employee to request a review under the policy, and further requires that the employer provide, upon request, a copy of the written policy to an employee.

Proposed law requires the employer to provide completion of treatment under the following conditions:

1. An acute condition. "An acute condition" means a medical condition that involves a sudden onset of symptoms due to compensable injury or disease that requires prompt medical attention and that has a limited duration. Completion of treatment shall be provided for the duration of the acute condition.
2. A serious chronic condition. "A serious chronic condition" means a medical condition due to a compensable injury or disease, that is serious in nature and that persists without

full cure, or worsens over an extended period of time, or requires ongoing treatment to maintain remission or prevent deterioration. Completion of treatment shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another medical services provider, as determined by the payer or employer in consultation with the injured employee and the terminated medical services provider, and consistent with good professional practice. Completion of treatment shall not exceed 12 months from the medical services provider contract termination date.

3. A terminal illness. "A terminal illness" means an incurable or irreversible condition as a result of a compensable injury or disease that has a high probability of causing death within one year or less. Completion of treatment shall be provided for the duration of a terminal illness.
4. Surgery. The performance of a surgery or other procedure that is authorized by the payor or employer and which is part of a documented course of treatment and which has been recommended and documented by the medical services provider to occur within 180 days of the medical services provider contract's termination date.

Proposed law requires that supplemental earnings benefits paid to injured workers be paid monthly.

Proposed law provides that when the employee is no longer temporarily and totally disabled, but is not earning any income and the employer has not established earning capacity, payments of benefits shall continue in accordance with present law.

Proposed law increases certain permanent partial disability payments from \$30,000 to \$50,000.

Proposed law provides that payments to injured workers begin two weeks after the injury occurred, if the disability continues.

Effective August 1, 2012.

(Amends R.S. 23:1123, 1124.1, 1201(F)(1), (2) and (4), 1210(A), 1221(3)(a) and (4)(s)(i), and 1224; adds R.S. 23:1020.1, 1213 through 1213.27, and 1314(D) and (E))