

2016 Regular Session

HOUSE BILL NO. 725

BY REPRESENTATIVES BROADWATER, LANCE HARRIS, AND DAVIS

WORKERS COMPENSATION: Provides for the creation of a workers' compensation closed pharmacy formulary

1 AN ACT

2 To amend and reenact R.S. 23:1203.1(B), (D)(introductory paragraph), (E), (H), (I), (J)(1),  
3 (L), and (M), relative to workers' compensation; to provide for the creation of a  
4 closed pharmacy formulary; to provide for the criteria for the creation and content  
5 of the formulary; to provide for variances; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1203.1(B), (D)(introductory paragraph), (E), (H), (I), (J)(1), (L),  
8 and (M) hereby amended and reenacted to read as follows:

9 §1203.1. Definitions; medical treatment schedule; medical advisory council; closed  
10 pharmacy formulary

11 \* \* \*

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

16 (1) ~~Such~~ The medical treatment rules shall be promulgated.

17 (2) The medical treatment schedule shall meet the criteria established in this  
18 Section and shall be organized in an interdisciplinary manner by particular regions  
19 of the body and organ systems.

1           (3) The closed pharmacy formulary shall be the most recent version of the  
 2           Workers' Compensation Formulary of the Official Disability Guidelines Appendix  
 3           A; Treatment in Workers' Comp, published by Work Loss Data Institute. The closed  
 4           pharmacy formulary shall only include the applicable portions of the particular  
 5           Official Disability Guidelines; Treatment in Workers' Comp guideline provisions  
 6           that are specific to the drugs in the formulary in Appendix A.

7           (4) The director shall promulgate the rules and regulations as are necessary  
 8           to implement the procedures relative to the closed pharmacy formulary. The rules  
 9           shall be promulgated and the formulary shall be adopted by July 1, 2017.

10   \*           \*           \*

11           D. The medical treatment schedule and the closed pharmacy formulary shall  
 12           be based on guidelines which shall meet all of the following criteria:

13   \*           \*           \*

14           E.(1) The medical advisory council shall develop guidelines in accordance  
 15           with Subsections C and D of this Section and may amend the schedule in accordance  
 16           with Subsection C and Paragraph (D)(2) of this Section before submission to the  
 17           director of the office of workers' compensation administration for initial and  
 18           subsequent formal adoption and promulgation in accordance with the Administrative  
 19           Procedure Act, R.S. 49:950, et seq.

20           (2) Prior to the adoption of the closed pharmacy formulary, the director shall  
 21           engage with employers, insurers, private sector employee representatives, public  
 22           sector employee representatives, treating physicians actively practicing medicine,  
 23           pharmacists, pharmacy benefit managers, attorneys who represent applicants, injured  
 24           workers, and any other stakeholder the director deems appropriate to facilitate the  
 25           development of the formulary.

26   \*           \*           \*

27           H.(1) The director, with the assistance of the medical advisory council, is  
 28           authorized to review and update the medical treatment schedule no less often than  
 29           once every two years. Such updates shall be made by rules promulgated in

1 accordance with the Administrative Procedure Act, R.S. 49:950 et seq. In no event  
2 shall the schedule contain multiple guidelines covering the same aspects of the same  
3 medical condition which are simultaneously in force.

4 (2) The closed pharmacy formulary shall be automatically updated with the  
5 most recent version of the Workers' Compensation Formulary of the Official  
6 Disability Guidelines Appendix A; Treatment in Workers' Comp, published by Work  
7 Loss Data Institute, and the applicable portions of the particular Official Disability  
8 Guidelines; Treatment in Workers' Comp guideline provisions that are specific to the  
9 drugs in the formulary Appendix A. The Work Loss Data Institute shall provide the  
10 director and the medical advisory council a list identifying any updates to the  
11 formulary. The medical advisory council may recommend to the director that a  
12 specific portion of the formulary or any subsequent updates be amended or not be  
13 accepted upon a showing by the medical advisory council of higher ranking scientific  
14 medical evidence. The director may, upon recommendation by the medical advisory  
15 council, promulgate a rule in accordance with the Administrative Procedure Act not  
16 to accept a specific portion of an update.

17 I. After the promulgation of the medical treatment schedule and the closed  
18 pharmacy formulary, throughout this Chapter, and notwithstanding any provision of  
19 law to the contrary, medical care, services, and treatment due, pursuant to R.S.  
20 23:1203 et seq., by the employer to the employee shall mean care, services, and  
21 treatment in accordance with the medical treatment schedule and the closed  
22 pharmacy formulary. Medical care, services, and treatment that varies from the  
23 promulgated medical treatment schedule or the closed pharmacy formulary shall also  
24 be due by the employer when it is demonstrated to the medical director of the office  
25 by a preponderance of the scientific medical evidence, that a variance from the  
26 medical treatment schedule or the closed pharmacy formulary is reasonably required  
27 to cure or relieve the injured worker from the effects of the injury or occupational  
28 disease given the circumstances.

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

\* \* \*

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

20           (2) The legislature further intends that injured workers shall receive the  
21 necessary drugs, pharmaceutical products, and services, which aids employers and  
22 insurers to offer more direct care as it relates to prescription drugs, pharmaceutical  
23 products and services.

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

28           (2) Notwithstanding any other provision of this Chapter, all treatment not  
29 specified in the medical treatment schedule and not found in Subsection D of this

1 Section shall be due by the employer when it is demonstrated to the medical director,  
 2 in accordance with the principles of Subsection C of this Section, that a  
 3 preponderance of the scientific medical evidence supports approval of the treatment  
 4 that is not covered.

5 \* \* \*

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)]

HB 725 Original                                      2016 Regular Session                                      Broadwater

**Abstract:** Provides for the creation of a closed pharmacy formulary for the treatment of injured workers in workers' compensation claims.

Proposed law requires that rules shall be promulgated and the closed pharmacy formulary be adopted by July 1, 2017.

Present law created the medical treatment guidelines.

Proposed law retains present law and provides a procedure for the creation of a closed pharmacy formulary subject.

Proposed law requires that in the development of a pharmacy formulary, the director consult with workers' compensation stakeholders for specialized input.

Present law requires that the director update the medical treatment guidelines every two years.

Proposed law retains present law and provides that the pharmacy formulary will automatically update with the most recent versions of the specific medical treatment literature as provided in proposed law.

Present law provides that if the treatment needed by the injured worker is not sufficiently addressed by the medical treatment guidelines, that the employer may demonstrate by preponderance of the scientific medical evidence that a variance is necessary. Proposed law retains present law and adds to this exception, along with the medical treatment guidelines, that the pharmacy formulary will also be subject to a variance pursuant to the procedures in present law.

Proposed law provides legislative intent that all injured workers are entitled to receive the necessary drugs and services, with employers and insurers having the right to direct care.

(Amends R.S. 23:1203.1(B), (D)(intro. para.), (E), (H), (I), (J)(1), (L), and (M))