
DIGEST

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HB 703 Reengrossed

2024 Regular Session

Melerine

Abstract: Provides relative to controversion of benefits, preliminary determination hearings, disputed claims, and penalties and attorney fees.

Present law provides that failure to provide payment or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required shall result in the assessment of a penalty in an amount up to the greater of 12% of any unpaid compensation or medical benefits, or \$50 per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, in addition to attorney fees for each disputed claim.

Proposed law removes provisions of present law that require payment for any and all compensation or medical benefits that remain unpaid or when consent is withheld.

Proposed law otherwise retains present law.

Present law allows a maximum penalty amount of \$8,000 to be imposed at a hearing on the merits.

Proposed law retains present law.

Proposed law provides that attorney fees awarded shall be based on time records detailing the work performed, the date on which it was performed, and the time spent on each activity to the 10th of an hour, and shall be credited against any fees due pursuant to present law (R.S. 23:1141).

Present law requires any additional compensation paid by the employee or insurer to be paid directly to the employee.

Proposed law repeals present law.

Present law provides that in the event that the healthcare provider prevails on a claim for payment of his fee, penalties and reasonable attorney fees based upon actual hours worked may be awarded and paid directly to the healthcare provider. Present law further provides that the provisions of present law shall not be construed to provide for recovery of more than one penalty or attorney fee.

Proposed law repeals present law.

Present law prohibits a penalty or attorney fee from being included in any formula utilized to

establish premium rates for workers' compensation insurance.

Proposed law repeals present law.

Proposed law provides that if the employee has failed to submit amicable demand for the benefit in dispute to the employer or insurer, in writing with sufficient particularity and proof, or if following receipt of the employee's amicable demand, the employer or insurer pays the disputed benefit within 10 business days, in the absence of clear and convincing evidence that the employer or insurer acted arbitrarily.

Proposed law defines reasonably controverted and provides that the burden of proof shall be on the party seeking attorney fees to prove by clear and convincing evidence that the claim is not reasonably controverted.

Proposed law provides that proposed law (R.S. 23:1201(F)) does not apply if the employer corrects any failure to provide payment and issues proper payment, together with any interest owed thereon, prior to being notified of the failure by the employee, a healthcare provider, or his representative.

Present law provides upon the first payment of compensation or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issue of medical causation, compensability of the claim, or issues arising out of provisions of present law, shall do all of the following:

- (1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits.
- (2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment is made after the payor has received notice of the claim from the employer.
- (3) Send a copy of the notice of the initial payment of indemnity to the office from when the original notice was sent to the injured employee or to his representative.
- (4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the injured employee, to the employee's address where he receives payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.
- (5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the office on the same business day as sent to the employee or his representative.

Proposed law changes provisions of present law from requiring the first payment of compensation to the first payment of indemnity benefits. Proposed law also adds certain delivery requirements that must be made within 10 business days and otherwise retains present law.

Present law provides that if the employer or payor provides the benefit that the employee claim is due, including any arrearage, on the returned form or letter of amicable demand within seven business days of receipt of the employee's demand, the employer or payor shall not be subject to any claim for any penalties or attorney fees arising from the disputed payment, modification, suspension, termination, or controversion.

Proposed law changes the requirement of submission from seven business days to 10 business days. Proposed law otherwise retains present law.

Present law allows the employer or payor to file a disputed claim against an employee, his dependent, or beneficiary only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary.

Proposed law removes provisions of present law that allow the employer or payor to file a disputed claim only when the employer or payor has alleged the employee, his dependent, or beneficiary has committed fraud that caused payment of a benefit that was not due. Proposed law otherwise retains present law.

(Amends R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Revise provisions of present law (R.S. 23:1201(F)(1)) and proposed law (R.S. 23:1201(F)(1)) and add a provision regarding requirements of attorney fees awarded under present law (R.S. 23:1201(F)(1)).
2. Provide an exception for when an employer corrects a failure to provide payment or a failure to consent to an employee's request to select a treating physician.
3. Remove language in proposed law that allows sending the notice required in present law (R.S. 23:1201.1) by regular mail.
4. Define "reasonably controverted".
5. Provide a burden of proof for the party seeking attorney fees.
6. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Remove the requirement of submitting a sworn affidavit by an attorney for attorney fees

that are awarded pursuant to present law (R.S. 23:1201(F)(1)) and proposed law (R.S. 23:1201(F)(1)).

2. Revise the definition of "reasonably controverted".
3. Revise the provision of proposed law (R.S. 23:1201(F)(4)) that exempts an employer who corrects a failure to provide payment and subsequently issues a proper payment.
4. Make a technical change.