

2015 Regular Session

SENATE BILL NO. 256

BY SENATOR MARTINY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS' COMPENSATION. Provides relative to a closed pharmacy formulary. (8/1/15)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 23:1142(E) and to enact Subpart E of Part II of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:1261 through 1266, relative to workers' compensation; to provide for prescription medication; to provide for a prescription drug formulary; to provide for definitions; to provide for duties; to provide for oversight; to provide for criteria; to provide for applicability; to provide for mutual consent; to provide for exceptions; to provide for approval of health medication formulary care providers; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1142(E) is hereby amended and reenacted and Subpart E of Part II of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:1261 through 1266, is hereby enacted to read as follows:

§1142. Approval of health care providers; fees; **limitations; exceptions**

* * *

E. ~~Exception.~~ **Exceptions. (1)** In the event that the payor has denied that the employee's injury is compensable under this Chapter, then no approval from the

1 payor is required prior to the provision of any diagnostic testing or treatment for that
2 injury.

3 (2) All "Y" drugs provided for in R.S. 23:1142(E) may be dispensed
4 without prior approval of the payor.

5 * * *

6 SUBPART E. CLOSED PHARMACY FORMULARY

7 §1261. Definitions

8 As used in this Subpart, the following terms shall have the definitions
9 ascribed in this Section unless the context indicates otherwise:

10 (1) "Closed pharmacy formulary" means a listing of all drugs or
11 medications which meet all of the following criteria:

12 (a) Are authorized by the United States Food and Drug Administration
13 for prescription and nonprescription use.

14 (b) Are approved as nonnarcotic "Y" drugs as part of the closed
15 pharmacy formulary pursuant to this Subpart for use by injured workers.

16 (2) "Compound drugs" or "compound medication" means drugs or
17 medications which require a prescription from a doctor and are prepared by a
18 pharmacist who mixes or adjusts drug ingredients to customize a medication to
19 meet a patient's individual needs and are not mass produced in a pharmacy in
20 bulk, standardized dosages.

21 (3) "Director" means the director of the office of workers' compensation
22 administration.

23 (4) "Drug" or "medication" means a medication which meets all of the
24 following criteria:

25 (a) Is subject to federal or state law which requires a prescription before
26 the substance may be legally dispensed to the public.

27 (b) Is required by federal law to be labeled with the statement: "Caution:
28 federal law prohibits dispensing without prescription", "RX only", or another
29 legend that complies with federal law is required, before being dispensed or

1 delivered to the public.

2 (c) Is required by federal or state law to be dispensed only by
3 prescription or that is restricted to use by a prescribing doctor only.

4 (5) "Injured worker" means an employee who is injured in the course
5 and scope of his employment and is subject to the provisions of this Chapter.

6 (6) "'N' drugs" means those drugs or medications which are designated
7 or labeled as narcotics by the United States Food and Drug Administration.

8 (7) "'Y' Drugs" means those drugs which are designated or labeled
9 nonnarcotic by the United States Food and Drug Administration.

10 §1262. Duties of director

11 A. No later than September 1, 2015, the director shall appoint the
12 members of the Closed Pharmacy Formulary Oversight Panel as provided for
13 in R.S. 23:1263 who shall develop and update the formulation of a closed
14 pharmacy formulary.

15 B. No later than January 1, 2016, with the assistance of the Closed
16 Pharmacy Formulary Oversight Panel, the director shall promulgate rules and
17 regulations in accordance with the Administrative Procedure Act, R.S. 49:950
18 et seq., to establish and maintain a closed pharmacy formulary.

19 §1263. Closed Pharmacy Formulary Oversight Panel; selection; terms; quorum

20 A. There is hereby created the Closed Pharmacy Formulary Oversight
21 Panel.

22 B. The membership of the panel shall be chosen by the director, as
23 provided for in R.S. 23:1262(A), and shall be chosen on the basis of their
24 demonstrated experience in pharmacy or medicine, or both, and their ability to
25 act effectively.

26 C. The membership of the panel shall be chosen as follows:

27 (1) One pharmacist who is a member of the Louisiana Board of
28 Pharmacy.

29 (2) One medical doctor who is a member of the Louisiana State Medical

1 **Society.**

2 **(3) One pharmacist who is employed by a pharmacy which is a member**
3 **of the National Association of Chain Drug Stores.**

4 **(4) One pharmacist who is employed by or owns a pharmacy which is a**
5 **member of the Louisiana Independent Pharmacy Association.**

6 **(5) The medical director of the office of workers' compensation.**

7 **D. (1) With the exception of the medical director, all members of the**
8 **panel shall serve for staggered terms. Initial service shall be as provided in this**
9 **Subsection. Thereafter, all terms shall be for four years.**

10 **(2) Initial terms shall be as follows:**

11 **(a) One member shall be appointed by the director for a one-year term.**

12 **(b) One member shall be appointed by the director for a two-year term.**

13 **(c) One member shall be appointed by the director for a three-year term.**

14 **(d) One member shall be appointed by the director for a four-year term.**

15 **(3) A panel member shall serve until his successor is appointed. A panel**
16 **member may be reappointed, but no panel member shall serve more than two**
17 **consecutive terms.**

18 **(4) All vacancies shall be filled in the same manner as the original**
19 **appointment and all appointees shall have all the same qualifications as the**
20 **original appointment.**

21 **E. The members of the panel shall serve without compensation but shall**
22 **be reimbursed for travel expenses incurred in attending meetings or performing**
23 **duties authorized by this Subpart at rates and standards as promulgated by the**
24 **division of administration.**

25 **F. All matters to be acted upon by the panel shall require the affirmative**
26 **vote of a majority of the panel.**

27 **§1264. Duties of the Closed Pharmacy Formulary Oversight Panel**

28 **A. At the direction of the director or on the motion of any member of the**
29 **Closed Pharmacy Formulary Oversight Panel, the panel may discuss, debate,**

1 and approve the use of nonnarcotic "Y" drugs for use by injured workers in
2 compliance with the provisions of this Subpart.

3 B. The panel shall review and approve updates to the closed pharmacy
4 formulary no less than once every year. All updates to the closed pharmacy
5 formulary shall be in accordance with the Administrative Procedure Act, R.S.
6 49:950 et seq.

7 §1265. Closed pharmacy formulary criteria; requirements; exceptions

8 A. The director, in compliance with R.S. 23:1262(B), shall promulgate
9 a closed pharmacy formulary which shall include medications which are
10 approved for injured workers pursuant to this Subpart.

11 B. In order for a medication to be included in the formulary, the director
12 shall determine that the drug has met one of the following criteria:

13 (1) The medication has met all of the following criteria:

14 (a) Has been made part of, approved, and included in any medication
15 formulary or drug formulary developed for injured workers in any state of the
16 United States, regardless of whether the formulary was developed through that
17 state's statute, rule, or regulation.

18 (b) Is designated or labeled nonnarcotic by the United States Food and
19 Drug Administration.

20 (2) The medication has been approved by the Closed Pharmacy
21 Formulary Oversight Panel pursuant to this Subpart.

22 §1266. Applicability of closed pharmacy formulary; exceptions

23 A. The closed pharmacy formulary shall be applicable to all drugs that
24 are prescribed and dispensed for outpatient use for claims with a date of injury
25 on or after January 1, 2016.

26 B.(1) If the drug is identified with the status "Y" by the closed pharmacy
27 formulary at the time prescribed, mutual consent of the payor and the employee
28 for payment is not required.

29 (2) The Louisiana Workers' Compensation (LWC) Form 1010 shall not

1 be required for approval of any "Y" medication.

2 C. All of the following shall be excluded from the closed pharmacy
3 formulary:

4 (1) Drugs or medications which are designated or labeled as narcotics by
5 the United States Food and Drug Administration.

6 (2) Any compounded drugs or compound medication.

7 (3) Any investigational or experimental drug for which there is early
8 developing scientific or clinical evidence demonstrating the potential efficacy of
9 the treatment but which is not listed in the closed pharmacy formulary.

10 (4) Drugs that are not listed on the closed pharmacy formulary at the
11 time of prescription.

12 D. The closed pharmacy formulary shall not apply to any claims whose
13 date of injury is prior to January 1, 2016. All drugs prescribed for injuries prior
14 to January 1, 2016, shall be in accordance with R.S. 23:1142.

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

DIGEST

SB 256 Original

2015 Regular Session

Martiny

Present law provides that each health care provider may not incur more than a total of \$750 in nonemergency diagnostic testing or treatment without the mutual consent of the payor and the injured employee. Present law further provides that the portion of the fees for nonemergency services of each health care provider in excess of \$750 shall not be an enforceable obligation against the employee or the employer or the employer's workers' compensation insurer unless the employee and the payor have agreed upon the diagnostic testing or treatment prescribed and ordered by the health care provider.

Proposed law retains present law but also exempts all nonnarcotic "Y" drugs which are prescribed a health care provider and which are contained on the closed pharmacy formulary.

Proposed law provides for the following definitions:

- (1) "Closed pharmacy formulary" means a listing of all approved "Y" drugs authorized by the United States Food and Drug Administration for prescription and nonprescription use and are approved as nonnarcotic "Y" drugs by the closed pharmacy formulary and dispensed for out patients who are injured workers.
- (2) "Compound drugs" or "compound medication" means drugs or medications which require a prescription from a doctor and are prepared by a pharmacist who mixes or adjusts drug ingredients to customize a medication to meet a patient's individual needs and are not mass produced in a pharmacy in bulk, standardized dosages.

- (3) "Director" means the director of the office of workers' compensation administration.
- (4) "Drug" means a medication which meets all of the following criteria:
 - (a) Is subject to federal or state law which requires a prescription before the substance may be legally dispensed to the public.
 - (b) Is required by federal law to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription", "RX only", or another legend that complies with federal law is required, before being dispensed or delivered to the public.
 - (c) Is required by federal or state statute or regulation to be dispensed only by prescription or that is restricted to use by a prescribing doctor only.
- (5) "Injured worker" means an employee who is injured in the course and scope of his employment and is subject to the provisions of this Chapter.
- (6) "'N' drugs" means those medications or drugs which are designated or labeled narcotics by the United States Food and Drug Administration.
- (7) "'Y' Drugs" means those drugs which are labeled nonnarcotic by the U.S. Food and Drug Administration.

Proposed law provides that director shall do all of the following:

- (1) No later than Sept. 1, 2015, the director shall appoint the members of the Closed Pharmacy Formulary Oversight Panel which shall develop and update the formulation of a closed pharmacy formulary.
- (2) No later than January 1, 2016, with the assistance of the Closed Pharmacy Formulary Oversight Panel, the director shall promulgate rules and regulations in accordance with the Administrative Procedure Act, to establish, maintain, and update a closed pharmacy formulary.

Proposed law creates the closed pharmacy formulary oversight panel.

Proposed law provides that the membership of the panel shall be chosen by the director and the members shall be chosen on the basis of their demonstrated experience in pharmacy and medicine, or both, and their stature and ability to act effectively.

Proposed law provides that the membership of the panel shall be chosen as follows:

- (1) One pharmacist who is a member of the La. Board of Pharmacy.
- (2) One medical doctor who is a member of The La. State Medical Society.
- (3) One pharmacist who is employed by a pharmacy which is a member of the National Association of Chain Drug Stores.
- (4) One pharmacist who is employed by or owns a pharmacy which is a member of the La. Independent Pharmacy Association.
- (5) The medical director of the office of workers' compensation.

Proposed law provides that, with the exception of the medical director, all members of the panel shall serve for staggered terms. Proposed law provides that the initial service of the panel members shall be as follows:

- (a) One member shall be appointed by the director for a one-year term.
- (b) One member shall be appointed by the director for a two-year term.
- (c) One member shall be appointed by the director for a three-year term.
- (d) One member shall be appointed by the director for a four-year term.

Proposed law provides that, after the initial term, all terms shall be for four years.

Proposed law provides that a panel member shall serve until his successor is appointed. A panel member may be reappointed, but no panel member shall serve more than two consecutive terms.

Proposed law provides that all vacancies shall be filled in the same manner and the appointee shall have the proper qualifications.

Proposed law provides that the members of the panel shall serve without compensation but shall be reimbursed for travel expenses incurred in attending meetings or performing duties authorized by proposed law at rates and standards as promulgated by the division of administration.

Proposed law provides that all matters to be acted upon by the panel shall require the affirmative vote of a majority of the panel.

Proposed law provides that, at the direction of the director or on the motion of any member of the closed pharmacy formulary oversight panel, the panel may discuss, debate, and approve the use of any nonnarcotic "Y" drug for use by injured workers in compliance with the provisions of proposed law.

Proposed law provides that the panel shall review and approve updates to the closed pharmacy formulary no less than once every year. Proposed law provides that such updates shall be in accordance with the Administrative Procedure Act.

Proposed law provides that the director shall promulgate a closed pharmacy formulary which shall include medications which are approved for injured workers.

Proposed law provides that, in order for a medication to be included in the formulary, the director shall determine that the drug has met one of the following criteria:

- (1) The medication has been made part of approved, or included in, any medication formulary or drug formulary developed for injured workers in any state of the United States, regardless of whether the formulary was developed through that state's statute, rule, or regulation.
- (2) The medication is approved by a closed pharmacy formulary oversight panel.

Proposed law provides that the closed pharmacy formulary shall be applicable to all drugs that are prescribed and dispensed for outpatient use for claims with a date of injury on or after Jan. 1, 2016.

Proposed law provides that, if the drug is identified with the status "Y" at the time prescribed, mutual consent of the payor and the employee is not required for payment of the medication by the payor.

Proposed law provides that La. Workers' Compensation Form 1010 shall not be required for approval of any "Y" medications.

Proposed law provides that exclusions to the closed pharmacy formulary are as follows:

- (1) Narcotic medications or "N" drugs.
- (2) Compounded medications.
- (3) Any investigational or experimental drug for which there is early developing scientific or clinical evidence demonstrating the potential efficacy of the treatment but is not listed in the closed pharmacy formulary.
- (4) Drugs that are not addressed by the closed pharmacy formulary at the time of prescription.

Proposed law provides that the closed pharmacy formulary shall not apply to any claims whose date of injury is prior to Jan. 1, 2016. Present law provides that all drugs prescribed for injuries prior to Jan. 1, 2016, shall be in accordance with present law which requires that all nonemergency services of each health care provider in excess of \$750 must be approved by the employee and the payor.

Effective August 1, 2015.

(Amends R.S. 23:1142(E); adds R.S. 23:1261-1266)