

Regular Session, 2012

SENATE BILL NO. 367

BY SENATOR RISER

WORKERS' COMPENSATION. Provides for medical examinations in workers' compensation cases. (8/1/12)

1 AN ACT
2 To amend and reenact R.S. 23:1123, 1142(A) and (B)(1), 1203(E), 1307, and 1317.1(A),
3 relative to workers' compensation; to provide relative to independent medical
4 examinations; to provide that certain information be given to certain injured workers;
5 to provide relative to utilization review companies; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1123, 1142(A) and (B)(1), 1203(E), 1307, and 1317.1(A) are
9 hereby amended and reenacted to read as follows:

10 §1123. Disputes as to condition or capacity to work, ~~or current medical treatment~~
11 ~~of employee~~; examination under supervision of the director

12 If any dispute arises as to the condition of the employee, or the employee's
13 capacity to work, ~~or the current medical treatment for the employee~~, the director,
14 upon application of any party, shall order an examination of the employee to be
15 made by a medical practitioner selected and appointed by the director. The medical
16 examiner shall report his conclusions from the examination to the director and to the
17 parties and such report shall be prima facie evidence of the facts therein stated in any

1 subsequent proceedings under this Chapter.

2 * * *

3 §1142. Approval of health care providers; fees

4 A. Definitions. For the purposes of this Section, the following terms shall
5 have the following meanings unless the context clearly indicates otherwise:

6 (1) "Payor" shall mean the entity responsible, whether by law or contract, for
7 the payment of the medical expenses incurred by a claimant as a result of a work
8 related injury.

9 **(2) "Utilization review company" shall mean the company or entity**
10 **which contracts with the payor, and which entity reviews the claimant's medical**
11 **records and information and makes the determination of medical necessity in**
12 **accordance with this Chapter, for the purposes of assisting the payor with the**
13 **authorization of the claimant's medical care, services and treatment requested**
14 **pursuant to this Chapter.**

15 B. Nonemergency care. (1)**(a)** Except as provided herein, each health care
16 provider may not incur more than a total of seven hundred fifty dollars in
17 nonemergency diagnostic testing or treatment without the mutual consent of the
18 payor and the employee as provided by regulation. Except as provided herein, that
19 portion of the fees for nonemergency services of each health care provider in excess
20 of seven hundred fifty dollars shall not be an enforceable obligation against the
21 employee or the employer or the employer's workers' compensation insurer unless
22 the employee and the payor have agreed upon the diagnostic testing or treatment by
23 the health care provider.

24 **(b)(i) The payor may contract with a utilization review company to assist**
25 **the payor in determining if the request for nonemergency diagnostic testing or**
26 **treatment, in an amount which exceeds seven hundred fifty dollars, is a medical**
27 **necessity as provided pursuant to this Chapter.**

28 **(ii) A medical necessity determination by a utilization review company**
29 **and the payor's consent to authorize the requested nonemergency diagnostic**

1 **testing and treatment shall only require a review of the claimant's medical**
2 **records and shall not require an examination of the employee.**

3 * * *

4 §1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic
5 devices; other expenses

6 * * *

7 E. Upon the first payment for a claimant's medical care, service, or
8 treatment, the payor, as defined in R.S. 23:1142(A)(1), shall communicate to the
9 claimant information, in plain language, regarding the procedure for requesting an
10 independent medical examination in the event a dispute arises as to the condition of
11 the employee **or the employee's capacity to work, and the procedure for**
12 **appealing the denial of medical treatment to the medical director as provided**

13 **in R.S. 23:1203.1.** A payor shall not deny medical care, service, or treatment to a
14 claimant unless the payor can document a reasonable and diligent effort in
15 communicating such information. A payor who denies medical care, service, or
16 treatment without making such an effort may be fined an amount not to exceed five
17 hundred dollars or the cost of the medical care, service, or treatment, whichever is
18 more.

19 * * *

20 §1307. Information to injured employee

21 Upon receipt of notice of injury from the employer or other indication of an
22 injury reportable under R.S. 23:1306, the office shall mail immediately to the injured
23 employee and employer a brochure which sets forth in clear understandable language
24 a summary statement of the rights, benefits, and obligations of employers and
25 employees under this Chapter, together with an explanation of the operations of the
26 office, and shall invite the employer and employee to seek the advice of the office
27 with reference to any question or dispute which the employee has concerning the
28 injury. Such brochure shall specifically state the procedure for requesting an
29 independent medical examination in the event a dispute arises as to the condition of

1 the employee **or the employee's capacity to work**. If such brochure has previously
 2 been mailed to an employer within the calendar year, the office shall not mail such
 3 employer an additional brochure unless the employer specifically requests such.

4 * * *

5 §1317.1. Independent medical examinations

6 A. Any party wishing to request an independent medical examination of the
 7 claimant pursuant to R.S. 23:1123; **and** 1124.1; ~~and 1291(B)(10) and (11)~~ shall be
 8 required to make its request at or prior to the pretrial conference. Requests for
 9 independent medical examinations made after that time shall be denied except for
 10 good cause or if it is found to be in the best interest of justice to order such
 11 examination.

12 * * *

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

DIGEST

Riser (SB 367)

Present law provides that, relative to workers' compensation, if any dispute arises as to the condition of the employee, capacity to work, or the current medical treatment, the director of the office of workers' compensation, upon application of any party, will order an examination of the employee by a medical practitioner appointed by the director. Present law further requires the medical examiner to report his conclusions from the examination to the director and to the parties and provides such report shall be prima facie evidence of the facts in any subsequent proceedings regarding the claimant's workers' compensation case.

Proposed law retains present law but eliminates current medical treatment as a basis for dispute in this provision of present law.

Present law defines "payor" for purposes of workers' compensation as the entity responsible, whether by law or contract, for the payment of the medical expenses incurred by a claimant as a result of a work related injury.

Proposed law retains present law and adds the definition of "utilization review company" to mean the company or entity which contracts with the payor and reviews the injured worker's medical records and information and makes the determination of medical necessity, for the purposes of assisting the payor with the authorization of the injured worker's medical care, services and treatment.

Proposed law provides that the payor may contract with a utilization review company to assist the payor in determining if the request for nonemergency diagnostic testing or treatment, in an amount which exceeds \$750, is a medical necessity.

Proposed law provides that a medical necessity determination by a utilization review company and the payor's consent to authorize the requested nonemergency diagnostic testing

and treatment shall only require a review of the injured worker's medical records and shall not require an examination of the injured employee.

Present law requires, in workers' compensation cases, the employer to furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal.

Present law requires that, upon the first payment for an injured worker's medical care, service, or treatment, the payor, to communicate to the injured worker information regarding the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee. Present law further prohibits a payor from denying medical care, service, or treatment unless the payor can document a reasonable and diligent effort in communicating such information. Present law further provides that a payor who denies medical care, service, or treatment without making such an effort may be fined up to \$500 or the cost of the medical care, service, or treatment, whichever is more.

Proposed law retains present law but provides that present law also applies to disputes about the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director at the office of workers' compensation.

Present law requires that, upon receipt of notice of injury from the employer or other indication of an injury, the office of workers' compensation administration shall mail immediately to the injured employee and employer a brochure which sets forth in clear understandable language a summary statement of the rights, benefits, and obligations of employers and employees. Requires the brochure to specifically state the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee.

Proposed law retains present law but provides that present law also applies to disputes about the employee's capacity to work.

Present law provides that the director of the office of workers' compensation shall have certain powers, including the use of a utilization review process and to engage qualified experts in the appropriate health-care fields to assist him in the discharge of his responsibilities in utilization review.

Present law requires any party wishing to request an independent medical examination of the claimant, including the examinations at the direction of the director of the office of workers' compensation, to make its request at or prior to the pretrial conference.

Proposed law retains present law but removes the requirement that the request for an independent medical examination made at the behest of the director shall be made prior to the pretrial conference.

Effective August 1, 2012.

(Amends R.S. 23:1123, 1142(A) and (B)(1), 1203(E), 1307, and 1317.1(A))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill.

1. Add the definition of "utilization review company".
2. Authorizes payor to contract with a utilization review company to help determine if nonemergency diagnostic testing or treatment in an amount over

\$750 is a medical necessity.

3. Allows a medical necessity determination to be made by a utilization review company where the company only reviews the injured worker's medical records and does not administer a physical examination of the injured worker.