

SENATE BILL NO. 303

BY SENATORS RISER, THOMPSON AND WALSWORTH AND REPRESENTATIVE
PONTI

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

1 AN ACT

2 To enact R.S. 23:1203.1, relative to medical treatment in workers' compensation matters; to
3 provide for definitions; to provide a process for adoption of a medical treatment
4 schedule for use in making medical treatment decisions in workers' compensation
5 matters; to provide for the promulgation of rules; to provide that the schedule shall
6 be based on certain guidelines; to provide for appointment of a medical advisory
7 council to be chosen by the director of the office of workers' compensation
8 administration; to provide regarding the membership of such a council; to provide
9 with respect to time frame for authorization of medical services; to provide relative
10 to disputes as to recommended care that varies from the medical treatment schedule;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 23:1203.1 is hereby enacted to read as follows:

14 **§1203.1. Medical treatment schedule**

15 **A. For use in this Section, the following terms shall have the following**
16 **meanings, unless clearly indicated otherwise by the context:**

17 **(1) "Council" means the medical advisory council appointed by the**
18 **director of the office of workers' compensation administration.**

19 **(2) "Director" means the director of the office of workers' compensation**

1 administration.

2 (3) "Office" means the office of workers' compensation administration
3 of the Louisiana Workforce Commission.

4 (4) "Schedule" means the medical treatment schedule to be developed
5 by the council and promulgated by the office and the director.

6 B. The director shall, through the office of workers' compensation
7 administration, promulgate rules in accordance with the Administrative
8 Procedure Act, R.S. 49:950, et seq., to establish a medical treatment schedule.

9 (1) Such rules shall be promulgated no later than September 30, 2010.

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

13 C. The schedule shall be developed by the conscientious, explicit, and
14 judicious use of current best evidence in making decisions about the care of
15 individual patients, integrating clinical expertise, which is the proficiency and
16 judgment that clinicians acquire through clinical experience and clinical
17 practice, with the best available external clinical evidence from systematic
18 research.

19 D. The medical treatment schedule shall be based on guidelines which
20 shall meet all of the following criteria:

21 (1) Rely on specified, comprehensive, and ongoing systematic medical
22 literature review.

23 (2) Contain published criteria for rating studies and for determining the
24 overall strength of the medical evidence, including the size of the sample,
25 whether the authors and researchers had any financial interest in the product
26 or service being studied, the design of the study and identification of any bias,
27 and the statistical significance of the study.

28 (3) Are current and the most recent version produced, which shall mean
29 that documented evidence can be produced or verified that the guideline was
30 developed, reviewed, or revised within the previous five years.

1 **(4) Are interdisciplinary and address the frequency, duration, intensity,**
2 **and appropriateness of treatment procedures and modalities for all disciplines**
3 **commonly performing treatment of employment-related injuries and diseases.**

4 **(5) Are, by statute or rule, adopted by any other state regarding medical**
5 **treatment for workers' compensation injuries, diseases, or conditions.**

6 **E. The medical advisory council shall develop guidelines in accordance**
7 **with Subsections C and D of this Section and may amend the schedule in**
8 **accordance with Subsection C and Paragraph (D)(2) of this Section before**
9 **submission to the director of the office of workers' compensation administration**
10 **for initial and subsequent formal adoption and promulgation in accordance**
11 **with the Administrative Procedure Act, R.S. 49:950, et seq.**

12 **F. The director of the office of workers' compensation administration**
13 **shall appoint a medical advisory committee, which shall be selected in**
14 **accordance with the following:**

15 **(1) The professional association in Louisiana that represents each**
16 **discipline enumerated in this Subsection shall provide the director of the office**
17 **of workers' compensation, on or before August 15, 2009, the names of three**
18 **nominees, from which at least one representative shall be chosen to represent**
19 **their respective discipline on the council.**

20 **(2) The director shall select at least one representative from each of the**
21 **following disciplines or associations:**

22 **(a) Orthopedic surgeons.**

23 **(b) Neurosurgeons.**

24 **(c) Neurologists.**

25 **(d) Interventional pain management physicians.**

26 **(e) Family practice physicians.**

27 **(f) Physical and occupational therapists.**

28 **(g) Chiropractic Association of Louisiana.**

29 **(h) Psychologists and psychiatrists.**

30 **(3) The director may consider and appoint additional representatives in**

1 order to fulfill his duties as defined in this Section.

2 (4) The initial members of the medical advisory council shall serve until
3 August 14, 2011, and all subsequent members shall serve two-year terms
4 beginning on August 15 of each odd-numbered year.

5 (5) The director shall have the authority to contract with a medical
6 director and with consultants to assist the director and the medical advisory
7 council in the establishment and promulgation of the schedule.

8 G. The medical advisory council shall:

9 (1) Review current guidelines and accepted medical treatments which
10 meet the criteria set forth in Subsections C, D, and E of this Section.

11 (2) Provide recommendations to the director for the designation of
12 guidelines to be established and promulgated as the medical treatment schedule
13 by the office.

14 (3) Provide any additional advice and counsel to the director as may be
15 reasonable and necessary, or as may be requested, relative to the effective and
16 efficient delivery of quality medical services to injured workers.

17 H. The director, with the assistance of the medical advisory council, is
18 authorized to review and update the medical treatment schedule no less often
19 than once every two years. Such updates shall be made by rules promulgated
20 in accordance with the Administrative Procedure Act, R.S. 49:950, et seq. In
21 no event shall the schedule contain multiple guidelines covering the same
22 aspects of the same medical condition which are simultaneously in force.

23 I. After the promulgation of the medical treatment schedule, throughout
24 this Chapter, and notwithstanding any provision of law to the contrary, medical
25 care, services, and treatment due, pursuant to R.S. 23:1203, et seq., by the
26 employer to the employee shall mean care, services, and treatment in
27 accordance with the medical treatment schedule. Medical care, services, and
28 treatment that varies from the promulgated medical treatment schedule shall
29 also be due by the employer when it is demonstrated to the medical director of
30 the office by a preponderance of the scientific medical evidence, that a variance

1 from the medical treatment schedule is reasonably required to cure or relieve
2 the injured worker from the effects of the injury or occupational disease given
3 the circumstances.

4 J. After a medical provider has submitted to the payor the request for
5 authorization and the information required by the Louisiana Administrative
6 Code, Title 40, Chapter 27, the payor shall notify the medical provider of their
7 action on the request within five business days of receipt of the request. If any
8 dispute arises after September 30, 2010, as to whether the recommended care,
9 services, or treatment is in accordance with the medical treatment schedule, or
10 whether a variance from the medical treatment schedule is reasonably required
11 as contemplated in Subsection I of this Section, any aggrieved party shall file,
12 within fifteen calendar days, an appeal with the office of workers' compensation
13 administration medical director on a form promulgated by the director. The
14 medical director shall render a decision as soon as is practicable, but in no
15 event, not more than thirty calendar days from the date of filing.

16 K. After the issuance of the decision by the medical director of the office,
17 any party who disagrees with the medical director's decision, may then appeal
18 by filing a "Disputed Claim for Compensation," which is LWC Form 1008. The
19 decision of the medical director may be overturned when it is shown, by clear
20 and convincing evidence, the decision of the medical director was not in
21 accordance with the provisions of this Section.

22 L. It is the intent of the legislature that, with the establishment and
23 enforcement of the medical treatment schedule, medical and surgical treatment,
24 hospital care, and other health care provider services shall be delivered in an
25 efficient and timely manner to injured employees.

26 M. With regard to all treatment not covered by the medical treatment
27 schedule promulgated in accordance with this Section, all medical care, services,
28 and treatment shall be in accordance with Subsection D of this Section.

29 N. The medical treatment schedule is not relevant nor shall it be
30 considered as evidence of a medical provider's legal standard of professional

1 care as contemplated by the Louisiana medical malpractice provisions, R.S.
2 40:1299.41, et seq.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____