

By Senator Grant

13-1206-98

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.13, F.S.; deleting a limitation
4 on kinds of medical testimony admissible in
5 proceedings before the judges of compensation
6 claims; amending s. 440.134, F.S.; providing
7 that the provisions relating to managed care
8 arrangements do not divest the jurisdiction and
9 authority of a Judge of Compensation Claims to
10 enter orders regarding the reasonableness and
11 medical necessity of medical care; amending s.
12 440.15, F.S.; prescribing rate for payment of
13 impairment income benefits; decreasing the
14 impairment rating from the compensable injury
15 for payment of supplemental benefits; amending
16 s. 440.192, F.S.; deleting a provision
17 requiring employees to exhaust all managed care
18 grievance procedures before filing a petition
19 for benefits; amending s. 440.1925, F.S.;
20 deleting a restriction on the kinds of medical
21 opinions that are admissible in proceeding
22 before a judge of compensation claims to
23 resolve maximum medical improvement or
24 impairment disputes; providing an effective
25 date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Subsection (5) of section 440.13, Florida
30 Statutes, is amended to read:

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1 440.13 Medical services and supplies; penalty for
2 violations; limitations.--

3 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

4 (a) In any dispute concerning overutilization, medical
5 benefits, compensability, or disability under this chapter,
6 the carrier or the employee may select an independent medical
7 examiner. The examiner may be a health care provider treating
8 or providing other care to the employee. An independent
9 medical examiner may not render an opinion outside his or her
10 area of expertise, as demonstrated by licensure and applicable
11 practice parameters.

12 (b) Each party is bound by his or her selection of an
13 independent medical examiner and is entitled to an alternate
14 examiner only if:

15 1. The examiner is not qualified to render an opinion
16 upon an aspect of the employee's illness or injury which is
17 material to the claim or petition for benefits;

18 2. The examiner ceases to practice in the specialty
19 relevant to the employee's condition;

20 3. The examiner is unavailable due to injury, death,
21 or relocation outside a reasonably accessible geographic area;
22 or

23 4. The parties agree to an alternate examiner.
24

25 Any party may request, or a judge of compensation claims may
26 require, designation of a division medical advisor as an
27 independent medical examiner. The opinion of the advisors
28 acting as examiners shall not be afforded the presumption set
29 forth in paragraph (9)(c).

30 (c) The carrier may, at its election, contact the
31 claimant directly to schedule a reasonable time for an

1 independent medical examination. The carrier must confirm the
2 scheduling agreement in writing within 5 days and notify
3 claimant's counsel, if any, at least 7 days before the date
4 upon which the independent medical examination is scheduled to
5 occur. An attorney representing a claimant is not authorized
6 to schedule independent medical evaluations under this
7 subsection.

8 (d) If the employee fails to appear for the
9 independent medical examination without good cause and fails
10 to advise the physician at least 24 hours before the scheduled
11 date for the examination that he or she cannot appear, the
12 employee is barred from recovering compensation for any period
13 during which he or she has refused to submit to such
14 examination. Further, the employee shall reimburse the carrier
15 50 percent of the physician's cancellation or no-show fee
16 unless the carrier that schedules the examination fails to
17 timely provide to the employee a written confirmation of the
18 date of the examination pursuant to paragraph (c) which
19 includes an explanation of why he or she failed to appear. The
20 employee may appeal to a judge of compensation claims for
21 reimbursement when the carrier withholds payment in excess of
22 the authority granted by this section.

23 ~~(e) No medical opinion other than the opinion of a~~
24 ~~medical advisor appointed by the judge of compensation claims~~
25 ~~or division, an independent medical examiner, or an authorized~~
26 ~~treating provider is admissible in proceedings before the~~
27 ~~judges of compensation claims.~~

28 (e)(f) Attorney's fees incurred by an injured employee
29 in connection with delay of or opposition to an independent
30 medical examination, including, but not limited to, motions
31 for protective orders, are not recoverable under this chapter.

1 Section 2. Subsection (25) is added to section
2 440.134, Florida Statutes, to read:

3 440.134 Workers' compensation managed care
4 arrangement.--

5 (25) This section shall not operate to divest the
6 jurisdiction and authority of the Judge of Compensation Claims
7 to make determination and enter orders regarding the
8 reasonableness and medical necessity of medical care requested
9 by way of a petition for benefits filed under s. 400.19 if an
10 injured workers' grievance is not resolved to the satisfaction
11 of the employee within 30 days after notice of the grievance.

12 Section 3. Subsection (3) of section 440.15, Florida
13 Statutes, is amended to read:

14 440.15 Compensation for disability.--Compensation for
15 disability shall be paid to the employee, subject to the
16 limits provided in s. 440.12(2), as follows:

17 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

18 (a) Impairment benefits.--

19 1. Once the employee has reached the date of maximum
20 medical improvement, impairment benefits are due and payable
21 within 20 days after the carrier has knowledge of the
22 impairment.

23 2. The three-member panel, in cooperation with the
24 division, shall establish and use a uniform permanent
25 impairment rating schedule. This schedule must be based on
26 medically or scientifically demonstrable findings as well as
27 the systems and criteria set forth in the American Medical
28 Association's Guides to the Evaluation of Permanent
29 Impairment; the Snellen Charts, published by American Medical
30 Association Committee for Eye Injuries; and the Minnesota
31 Department of Labor and Industry Disability Schedules. The

1 schedule should be based upon objective findings. The schedule
2 shall be more comprehensive than the AMA Guides to the
3 Evaluation of Permanent Impairment and shall expand the areas
4 already addressed and address additional areas not currently
5 contained in the guides. On August 1, 1979, and pending the
6 adoption, by rule, of a permanent schedule, Guides to the
7 Evaluation of Permanent Impairment, copyright 1977, 1971,
8 1988, by the American Medical Association, shall be the
9 temporary schedule and shall be used for the purposes hereof.
10 For injuries after July 1, 1990, pending the adoption by
11 division rule of a uniform disability rating schedule, the
12 Minnesota Department of Labor and Industry Disability Schedule
13 shall be used unless that schedule does not address an injury.
14 In such case, the Guides to the Evaluation of Permanent
15 Impairment by the American Medical Association shall be used.
16 Determination of permanent impairment under this schedule must
17 be made by a physician licensed under chapter 458, a doctor of
18 osteopathic medicine licensed under chapters 458 and 459, a
19 chiropractor licensed under chapter 460, a podiatrist licensed
20 under chapter 461, an optometrist licensed under chapter 463,
21 or a dentist licensed under chapter 466, as appropriate
22 considering the nature of the injury. No other persons are
23 authorized to render opinions regarding the existence of or
24 the extent of permanent impairment.

25 3. All impairment income benefits shall be based on an
26 impairment rating using the impairment schedule referred to in
27 subparagraph 2. Impairment income benefits are paid weekly at
28 the rate of 66 2/3 ~~50~~ percent of the employee's average weekly
29 wage ~~temporary total disability benefit~~ not to exceed the
30 maximum weekly benefit under s. 440.12. An employee's
31 entitlement to impairment income benefits begins the day after

1 the employee reaches maximum medical improvement or the
2 expiration of temporary benefits, whichever occurs earlier,
3 and continues until the earlier of:

4 a. The expiration of a period computed at the rate of
5 3 weeks for each percentage point of impairment; ~~or~~

6 b. The death of the employee; or

7 c. Thirty weeks.

8 4. After the employee has been certified by a doctor
9 as having reached maximum medical improvement or 6 weeks
10 before the expiration of temporary benefits, whichever occurs
11 earlier, the certifying doctor shall evaluate the condition of
12 the employee and assign an impairment rating, using the
13 impairment schedule referred to in subparagraph 2.

14 Compensation is not payable for the mental, psychological, or
15 emotional injury arising out of depression from being out of
16 work. If the certification and evaluation are performed by a
17 doctor other than the employee's treating doctor, the
18 certification and evaluation must be submitted to the treating
19 doctor, and the treating doctor must indicate agreement or
20 disagreement with the certification and evaluation. The
21 certifying doctor shall issue a written report to the
22 division, the employee, and the carrier certifying that
23 maximum medical improvement has been reached, stating the
24 impairment rating, and providing any other information
25 required by the division. If the employee has not been
26 certified as having reached maximum medical improvement before
27 the expiration of 102 weeks after the date temporary total
28 disability benefits begin to accrue, the carrier shall notify
29 the treating doctor of the requirements of this section.

30 5. The carrier shall pay the employee impairment
31 income benefits for a period based on the impairment rating.

- 1 (b) Supplemental benefits.--
- 2 1. All supplemental benefits must be paid in
- 3 accordance with this subsection. An employee is entitled to
- 4 supplemental benefits as provided in this paragraph as of the
- 5 expiration of the impairment period, if:
- 6 a. The employee has an impairment rating from the
- 7 compensable injury of 10 ~~20~~ percent or more as determined
- 8 pursuant to this chapter;
- 9 b. The employee has not returned to work or has
- 10 returned to work earning less than 80 percent of the
- 11 employee's average weekly wage as a direct result of the
- 12 employee's impairment; and
- 13 c. The employee has in good faith attempted to obtain
- 14 employment commensurate with the employee's ability to work.
- 15 2. If an employee is not entitled to supplemental
- 16 benefits at the time of payment of the final weekly impairment
- 17 income benefit because the employee is earning at least 80
- 18 percent of the employee's average weekly wage, the employee
- 19 may become entitled to supplemental benefits at any time
- 20 within 1 year after the impairment income benefit period ends
- 21 if:
- 22 a. The employee earns wages that are less than 80
- 23 percent of the employee's average weekly wage for a period of
- 24 at least 90 days;
- 25 b. The employee meets the other requirements of
- 26 subparagraph 1.; and
- 27 c. The employee's decrease in earnings is a direct
- 28 result of the employee's impairment from the compensable
- 29 injury.
- 30 3. If an employee earns wages that are at least 80
- 31 percent of the employee's average weekly wage for a period of

1 at least 90 days during which the employee is receiving
2 supplemental benefits, the employee ceases to be entitled to
3 supplemental benefits for the filing period. Supplemental
4 benefits that have been terminated shall be reinstated when
5 the employee satisfies the conditions enumerated in
6 subparagraph 2. and files the statement required under
7 subparagraph 5. Notwithstanding any other provision, if an
8 employee is not entitled to supplemental benefits for 12
9 consecutive months, the employee ceases to be entitled to any
10 additional income benefits for the compensable injury. If the
11 employee is discharged within 12 months after losing
12 entitlement under this subsection, benefits may be reinstated
13 if the employee was discharged at that time with the intent to
14 deprive the employee of supplemental benefits.

15 4. During the period that impairment income benefits
16 or supplemental income benefits are being paid, the carrier
17 has the affirmative duty to determine at least annually
18 whether any extended unemployment or underemployment is a
19 direct result of the employee's impairment. To accomplish this
20 purpose, the division may require periodic reports from the
21 employee and the carrier, and it may, at the carrier's
22 expense, require any physical or other examinations,
23 vocational assessments, or other tests or diagnoses necessary
24 to verify that the carrier is performing its duty. Not more
25 than once in each 12 calendar months, the employee and the
26 carrier may each request that the division review the status
27 of the employee and determine whether the carrier has
28 performed its duty with respect to whether the employee's
29 unemployment or underemployment is a direct result of
30 impairment from the compensable injury.

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1 5. After the initial determination of supplemental
2 benefits, the employee must file a statement with the carrier
3 stating that the employee has earned less than 80 percent of
4 the employee's average weekly wage as a direct result of the
5 employee's impairment, stating the amount of wages the
6 employee earned in the filing period, and stating that the
7 employee has in good faith sought employment commensurate with
8 the employee's ability to work. The statement must be filed
9 quarterly on a form and in the manner prescribed by the
10 division. The division may modify the filing period as
11 appropriate to an individual case. Failure to file a statement
12 relieves the carrier of liability for supplemental benefits
13 for the period during which a statement is not filed.

14 6. The carrier shall begin payment of supplemental
15 benefits not later than the seventh day after the expiration
16 date of the impairment income benefit period and shall
17 continue to timely pay those benefits. The carrier may request
18 a mediation conference for the purpose of contesting the
19 employee's entitlement to or the amount of supplemental income
20 benefits.

21 7. Supplemental benefits are calculated quarterly and
22 paid monthly. For purposes of calculating supplemental
23 benefits, 80 percent of the employee's average weekly wage and
24 the average wages the employee has earned per week are
25 compared quarterly. For purposes of this paragraph, if the
26 employee is offered a bona fide position of employment that
27 the employee is capable of performing, given the physical
28 condition of the employee and the geographic accessibility of
29 the position, the employee's weekly wages are considered
30 equivalent to the weekly wages for the position offered to the
31 employee.

1 8. Supplemental benefits are payable at the rate of 80
2 percent of the difference between 80 percent of the employee's
3 average weekly wage determined pursuant to s. 440.14 and the
4 weekly wages the employee has earned during the reporting
5 period, not to exceed the maximum weekly income benefit under
6 s. 440.12.

7 Section 4. Subsection (3) of section 440.192, Florida
8 Statutes, is amended to read:

9 440.192 Procedure for resolving benefit disputes.--

10 (3) A petition for benefits may contain a claim for
11 past benefits and continuing benefits in any benefit category,
12 but is limited to those in default and ripe, due, and owing on
13 the date the petition is filed. ~~If the employer has elected to~~
14 ~~satisfy its obligation to provide medical treatment, care, and~~
15 ~~attendance through a managed care arrangement designated under~~
16 ~~this chapter, the employee must exhaust all managed care~~
17 ~~grievance procedures before filing a petition for benefits~~
18 ~~under this section.~~

19 Section 5. Section 440.1925, Florida Statutes, is
20 amended to read:

21 440.1925 Procedure for resolving maximum medical
22 improvement or permanent impairment disputes.--

23 (1) Notwithstanding the limitations on carrier
24 independent medical examinations in s. 440.13, an employee or
25 carrier who wishes to obtain an opinion other than the opinion
26 of the treating physician or a division advisor on the issue
27 of permanent impairment may obtain one independent medical
28 examination, except that the employee or carrier who selects
29 the treating physician is not entitled to obtain an alternate
30 opinion on the issue of permanent impairment, unless the
31 parties otherwise agree. This section and s. 440.13(2) do not

1 permit an employee or a carrier to obtain an additional
2 medical opinion on the issue of permanent impairment by
3 requesting an alternate treating physician pursuant to s.
4 440.13.

5 (2) A dispute as to the date of maximum medical
6 improvement or degree of permanent impairment which is not
7 subject to dispute resolution according to rules promulgated
8 pursuant to s. 440.134 shall be resolved according to the
9 procedure set out in this section.

10 (3) Disputes shall be resolved under this section
11 when:

12 (a) A carrier that is entitled to obtain a
13 determination of an employee's date of maximum medical
14 improvement or permanent impairment has done so;

15 (b) The independent medical examiner's opinion on the
16 date of the employee's maximum medical improvement and degree
17 or permanent impairment differs from the opinion of the
18 employee's treating physician on either of those issues, or
19 from the opinion of the expert medical advisor appointed by
20 the division on the degree of permanent impairment; or

21 (c) The carrier denies any portion of an employee's
22 claim petition for benefits due to disputed maximum medical
23 improvement or permanent impairment issues.

24 ~~(4) Only opinions of the employee's treating~~
25 ~~physician, a division medical advisor, or an independent~~
26 ~~medical examiner are admissible in proceedings before a judge~~
27 ~~of compensation claims to resolve maximum medical improvement~~
28 ~~or impairment disputes.~~

29 (4)(5) The judge of compensation claims shall first
30 resolve any dispute concerning the date on which the employee
31 reached maximum medical improvement. The judge shall then

1 determine the degree of the employee's permanent impairment,
2 which shall be either the highest or lowest estimate of
3 permanent impairment which is in evidence before the judge of
4 compensation claims.

5 Section 6. This act shall take effect July 1, 1998.

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SENATE SUMMARY

9 Amends various sections of ch. 440, F.S., relating to
10 workers' compensation benefits. Deletes a limitation of
11 the kinds of medical testimony admissible before a judge
12 of compensation claims. Provides that a judge of
13 compensation claims is not divested of jurisdiction or
14 authority to make determinations and enter orders in
15 managed care arrangements. Provides that impairment
16 income benefits are paid weekly at the rate of 66 2/3
17 percent of the employee's average weekly wage. Provides
18 that an employee is entitled to supplemental benefits if
19 the employee has an impairment rating from the
20 compensable injury of 10 percent or more. Deletes a
21 provision requiring employees to exhaust all managed care
22 grievance procedures before filing a petition for
23 benefits. Deletes a restriction on the kinds of medical
24 opinions that are admissible in a proceeding before a
25 judge of compensation claims to resolve maximum medical
26 improvement or impairment disputes.

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