

By Senator Grant

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A bill to be entitled
 An act relating to workers' compensation;
 amending s. 440.13, F.S.; deleting a limitation
 on kinds of medical testimony admissible in
 proceedings before the judges of compensation
 claims; amending s. 440.134, F.S.; providing
 that the provisions relating to managed care
 arrangements do not divest the jurisdiction and
 authority of a Judge of Compensation Claims to
 enter orders regarding the reasonableness and
 medical necessity of medical care; amending s.
 440.15, F.S.; prescribing rate for payment of
 impairment income benefits; decreasing the
 impairment rating from the compensable injury
 for payment of supplemental benefits; amending
 s. 440.192, F.S.; deleting a provision
 requiring employees to exhaust all managed care
 grievance procedures before filing a petition
 for benefits; amending s. 440.1925, F.S.;
 deleting a restriction on the kinds of medical
 opinions that are admissible in proceeding
 before a judge of compensation claims to
 resolve maximum medical improvement or
 impairment disputes; providing an effective
 date.

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

Section 1. Subsection (5) of section 440.13, Florida
 Statutes, 1998 Supplement, is amended to read:

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.
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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 (26) is added to section
2 440.134, Florida Statutes, 1998 Supplement, to read:

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

5 (26) 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, 1998 Supplement, 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 chiropractic physician licensed under chapter 460, a podiatric
20 physician licensed under chapter 461, an optometrist licensed
21 under chapter 463, or a dentist licensed under chapter 466, as
22 appropriate considering the nature of the injury. No other
23 persons are authorized to render opinions regarding the
24 existence of or 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 6. The division may by rule specify forms and
2 procedures governing the method of payment of wage loss and
3 impairment benefits for dates of accidents before January 1,
4 1994, and for dates of accidents on or after January 1, 1994.

5 (b) Supplemental benefits.--

6 1. All supplemental benefits must be paid in
7 accordance with this subsection. An employee is entitled to
8 supplemental benefits as provided in this paragraph as of the
9 expiration of the impairment period, if:

10 a. The employee has an impairment rating from the
11 compensable injury of 10 ~~20~~ percent or more as determined
12 pursuant to this chapter;

13 b. The employee has not returned to work or has
14 returned to work earning less than 80 percent of the
15 employee's average weekly wage as a direct result of the
16 employee's impairment; and

17 c. The employee has in good faith attempted to obtain
18 employment commensurate with the employee's ability to work.

19 2. If an employee is not entitled to supplemental
20 benefits at the time of payment of the final weekly impairment
21 income benefit because the employee is earning at least 80
22 percent of the employee's average weekly wage, the employee
23 may become entitled to supplemental benefits at any time
24 within 1 year after the impairment income benefit period ends
25 if:

26 a. The employee earns wages that are less than 80
27 percent of the employee's average weekly wage for a period of
28 at least 90 days;

29 b. The employee meets the other requirements of
30 subparagraph 1.; and

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1 c. The employee's decrease in earnings is a direct
2 result of the employee's impairment from the compensable
3 injury.

4 3. If an employee earns wages that are at least 80
5 percent of the employee's average weekly wage for a period of
6 at least 90 days during which the employee is receiving
7 supplemental benefits, the employee ceases to be entitled to
8 supplemental benefits for the filing period. Supplemental
9 benefits that have been terminated shall be reinstated when
10 the employee satisfies the conditions enumerated in
11 subparagraph 2. and files the statement required under
12 subparagraph 5. Notwithstanding any other provision, if an
13 employee is not entitled to supplemental benefits for 12
14 consecutive months, the employee ceases to be entitled to any
15 additional income benefits for the compensable injury. If the
16 employee is discharged within 12 months after losing
17 entitlement under this subsection, benefits may be reinstated
18 if the employee was discharged at that time with the intent to
19 deprive the employee of supplemental benefits.

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

1 of the employee and determine whether the carrier has
2 performed its duty with respect to whether the employee's
3 unemployment or underemployment is a direct result of
4 impairment from the compensable injury.

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

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

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

1 condition of the employee and the geographic accessibility of
2 the position, the employee's weekly wages are considered
3 equivalent to the weekly wages for the position offered to the
4 employee.

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

11 9. The division may by rule define terms that are
12 necessary for the administration of this section and forms and
13 procedures governing the method of payment of supplemental
14 benefits for dates of accidents before January 1, 1994, and
15 for dates of accidents on or after January 1, 1994.

16 (c) Duration of temporary impairment and supplemental
17 income benefits.--The employee's eligibility for temporary
18 benefits, impairment income benefits, and supplemental
19 benefits terminates on the expiration of 401 weeks after the
20 date of injury.

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

23 440.192 Procedure for resolving benefit disputes.--

24 (3) A petition for benefits may contain a claim for
25 past benefits and continuing benefits in any benefit category,
26 but is limited to those in default and ripe, due, and owing on
27 the date the petition is filed. ~~If the employer has elected to~~
28 ~~satisfy its obligation to provide medical treatment, care, and~~
29 ~~attendance through a managed care arrangement designated under~~
30 ~~this chapter, the employee must exhaust all managed care~~

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1 ~~grievance procedures before filing a petition for benefits~~
2 ~~under this section.~~

3 Section 5. Section 440.1925, Florida Statutes, is
4 amended to read:

5 440.1925 Procedure for resolving maximum medical
6 improvement or permanent impairment disputes.--

7 (1) Notwithstanding the limitations on carrier
8 independent medical examinations in s. 440.13, an employee or
9 carrier who wishes to obtain an opinion other than the opinion
10 of the treating physician or a division advisor on the issue
11 of permanent impairment may obtain one independent medical
12 examination, except that the employee or carrier who selects
13 the treating physician is not entitled to obtain an alternate
14 opinion on the issue of permanent impairment, unless the
15 parties otherwise agree. This section and s. 440.13(2) do not
16 permit an employee or a carrier to obtain an additional
17 medical opinion on the issue of permanent impairment by
18 requesting an alternate treating physician pursuant to s.
19 440.13.

20 (2) A dispute as to the date of maximum medical
21 improvement or degree of permanent impairment which is not
22 subject to dispute resolution according to rules promulgated
23 pursuant to s. 440.134 shall be resolved according to the
24 procedure set out in this section.

25 (3) Disputes shall be resolved under this section
26 when:

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

30 (b) The independent medical examiner's opinion on the
31 date of the employee's maximum medical improvement and degree

1 or permanent impairment differs from the opinion of the
2 employee's treating physician on either of those issues, or
3 from the opinion of the expert medical advisor appointed by
4 the division on the degree of permanent impairment; or

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

8 ~~(4) Only opinions of the employee's treating~~
9 ~~physician, a division medical advisor, or an independent~~
10 ~~medical examiner are admissible in proceedings before a judge~~
11 ~~of compensation claims to resolve maximum medical improvement~~
12 ~~or impairment disputes.~~

13 (4)(5) The judge of compensation claims shall first
14 resolve any dispute concerning the date on which the employee
15 reached maximum medical improvement. The judge shall then
16 determine the degree of the employee's permanent impairment,
17 which shall be either the highest or lowest estimate of
18 permanent impairment which is in evidence before the judge of
19 compensation claims.

20 Section 6. This act shall take effect July 1, 1999.
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SENATE SUMMARY

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