

By Senator Gutman

34-915A-99

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.13, F.S.; deleting the  
4           provision that medically necessary treatment  
5           does not include chiropractic services;  
6           specifying date for the Division of Workers'  
7           Compensation of the Department of Labor and  
8           Employment Security to adopt rules regarding  
9           criteria for approval of courses; providing  
10          that injured workers must receive reports that  
11          their attorneys and the carrier's attorneys  
12          receive at the time they receive the reports;  
13          deleting employee's responsibility for  
14          copayment for medical services; amending s.  
15          440.15, F.S.; extending time for payment of  
16          benefits for temporary total disability;  
17          increasing the membership on the panel  
18          responsible for establishing a uniform  
19          permanent impairment rating system; increasing  
20          the percentage of an employee's salary for  
21          purposes of impairment income benefits;  
22          prescribing a schedule for payment of benefits;  
23          authorizing a judge of compensation claims to  
24          settle a dispute between two doctors relating  
25          to impairment; increasing the time for payment  
26          of temporary partial disability benefits;  
27          reducing the geographical area in which the  
28          employer must provide the employee with work  
29          appropriate to the employee's limitation;  
30          increasing the monetary fine for failure to  
31          provide such work; amending s. 440.191, F.S.;

1 providing employees with right to an attorney  
2 in a proceeding before the Employee Assistance  
3 and Ombudsman Office to resolve a dispute;  
4 amending s. 440.192, F.S.; providing that an  
5 employer is responsible for an employee's  
6 attorney's fees and costs in proceedings before  
7 a judge of compensation claims; providing  
8 applicability for s. 440.20(11)(c), F.S.;  
9 repealing s. 440.25(4)(j), F.S., relating to  
10 expedited hearings; providing an effective  
11 date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Paragraph (a) of subsection (2), paragraph  
16 (a) of subsection (3), paragraph (c) of subsection (4), and  
17 subsection (14) of section 440.13, Florida Statutes, 1998  
18 Supplement, are amended to read:

19 440.13 Medical services and supplies; penalty for  
20 violations; limitations.--

21 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

22 (a) Subject to the limitations specified elsewhere in  
23 this chapter, the employer shall furnish to the employee such  
24 medically necessary remedial treatment, care, and attendance  
25 for such period as the nature of the injury or the process of  
26 recovery may require, including medicines, medical supplies,  
27 durable medical equipment, orthoses, prostheses, and other  
28 medically necessary apparatus. Remedial treatment, care, and  
29 attendance, including work-hardening programs or  
30 pain-management programs accredited by the Commission on  
31 Accreditation of Rehabilitation Facilities or Joint Commission

1 on the Accreditation of Health Organizations or  
2 pain-management programs affiliated with medical schools,  
3 shall be considered as covered treatment only when such care  
4 is given based on a referral by a physician as defined in this  
5 chapter. Each facility shall maintain outcome data, including  
6 work status at discharges, total program charges, total number  
7 of visits, and length of stay. The department shall utilize  
8 such data and report to the President of the Senate and the  
9 Speaker of the House of Representatives regarding the efficacy  
10 and cost-effectiveness of such program, no later than October  
11 1, 1994. ~~Medically necessary treatment, care, and attendance~~  
12 ~~does not include chiropractic services in excess of 18~~  
13 ~~treatments or rendered 8 weeks beyond the date of the initial~~  
14 ~~chiropractic treatment, whichever comes first, unless the~~  
15 ~~carrier authorizes additional treatment or the employee is~~  
16 ~~catastrophically injured.~~

17 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

18 (a) As a condition to eligibility for payment under  
19 this chapter, a health care provider who renders services must  
20 be a certified health care provider and must receive  
21 authorization from the carrier before providing treatment.  
22 This paragraph does not apply to emergency care. The division  
23 shall adopt rules to implement the certification of health  
24 care providers. As a one-time prerequisite to obtaining  
25 certification, the division shall require each physician to  
26 demonstrate proof of completion of a minimum 5-hour course  
27 that covers the subject areas of cost containment, utilization  
28 control, ergonomics, and the practice parameters adopted by  
29 the division governing the physician's field of practice. The  
30 division shall coordinate with the Agency for Health Care  
31 Administration, the Florida Medical Association, the Florida

1 Osteopathic Medical Association, the Florida Chiropractic  
2 Association, the Florida Podiatric Medical Association, the  
3 Florida Optometric Association, the Florida Dental  
4 Association, and other health professional organizations and  
5 their respective boards as deemed necessary by the Agency for  
6 Health Care Administration in complying with this subsection.  
7 No later than October 1, 1999 ~~1994~~, the division shall adopt  
8 rules regarding the criteria and procedures for approval of  
9 courses and the filing of proof of completion by the  
10 physicians.

11 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
12 DIVISION.--

13 (c) It is the policy for the administration of the  
14 workers' compensation system that there be reasonable access  
15 to medical information by all parties to facilitate the  
16 self-executing features of the law. An injured worker must  
17 receive copies of all medical records, except a psychologist's  
18 or psychiatrist's report, at the same time his or her lawyer  
19 and the carrier's lawyer receive such reports. The doctors may  
20 give such reports to the injured worker's family.

21 Notwithstanding the limitations in s. 455.667 and subject to  
22 the limitations in s. 381.004, upon the request of the  
23 employer, the carrier, or the attorney for either of them, the  
24 medical records of an injured employee must be furnished to  
25 those persons and the medical condition of the injured  
26 employee must be discussed with those persons, if the records  
27 and the discussions are restricted to conditions relating to  
28 the workplace injury. Any such discussions may be held before  
29 or after the filing of a claim without the knowledge, consent,  
30 or presence of any other party or his or her agent or  
31 representative. A health care provider who willfully refuses

1 to provide medical records or to discuss the medical condition  
2 of the injured employee, after a reasonable request is made  
3 for such information pursuant to this subsection, shall be  
4 subject by the division to one or more of the penalties set  
5 forth in paragraph (8)(b).

6 (14) PAYMENT OF MEDICAL FEES.--

7 (a) Except for emergency care treatment, fees for  
8 medical services are payable only to a health care provider  
9 certified and authorized to render remedial treatment, care,  
10 or attendance under this chapter. A health care provider may  
11 not collect or receive a fee from an injured employee within  
12 this state, except as otherwise provided by this chapter. Such  
13 providers have recourse against the employer or carrier for  
14 payment for services rendered in accordance with this chapter.

15 (b) Fees charged for remedial treatment, care, and  
16 attendance may not exceed the applicable fee schedules adopted  
17 under this chapter.

18 ~~(c) Notwithstanding any other provision of this~~  
19 ~~chapter, following overall maximum medical improvement from an~~  
20 ~~injury compensable under this chapter, the employee is~~  
21 ~~obligated to pay a copayment of \$10 per visit for medical~~  
22 ~~services. The copayment shall not apply to emergency care~~  
23 ~~provided to the employee.~~

24 Section 2. Paragraph (a) of subsection (2), paragraph  
25 (a) of subsection (3), paragraph (b) of subsection (4), and  
26 subsection (6) of section 440.15, Florida Statutes, 1998  
27 Supplement, are amended to read:

28 440.15 Compensation for disability.--Compensation for  
29 disability shall be paid to the employee, subject to the  
30 limits provided in s. 440.12(2), as follows:

31 (2) TEMPORARY TOTAL DISABILITY.--

1           (a) In case of disability total in character but  
2 temporary in quality,  $66 \frac{2}{3}$  percent of the average weekly  
3 wages shall be paid to the employee during the continuance  
4 thereof, not to exceed 182 ~~104~~ weeks except as provided in  
5 this subsection, s. 440.12(1), and s. 440.14(3). Once the  
6 employee reaches the maximum number of weeks allowed, or the  
7 employee reaches the date of maximum medical improvement,  
8 whichever occurs earlier, temporary disability benefits shall  
9 cease and the injured worker's permanent impairment shall be  
10 determined.

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

12           (a) Impairment benefits.--

13           1. Once the employee has reached the date of maximum  
14 medical improvement, impairment benefits are due and payable  
15 within 20 days after the carrier has knowledge of the  
16 impairment.

17           2. The five-member ~~three-member~~ panel, in cooperation  
18 with the division, shall establish and use a uniform permanent  
19 impairment rating schedule. This schedule must be based on  
20 medically or scientifically demonstrable findings as well as  
21 the systems and criteria set forth in the American Medical  
22 Association's Guides to the Evaluation of Permanent  
23 Impairment; the Snellen Charts, published by American Medical  
24 Association Committee for Eye Injuries; and the Minnesota  
25 Department of Labor and Industry Disability Schedules. The  
26 schedule should be based upon objective findings. The schedule  
27 shall be more comprehensive than the AMA Guides to the  
28 Evaluation of Permanent Impairment and shall expand the areas  
29 already addressed and address additional areas not currently  
30 contained in the guides. On August 1, 1979, and pending the  
31 adoption, by rule, of a permanent schedule, Guides to the

1 Evaluation of Permanent Impairment, copyright 1977, 1971,  
2 1988, by the American Medical Association, shall be the  
3 temporary schedule and shall be used for the purposes hereof.  
4 For injuries after July 1, 1990, pending the adoption by  
5 division rule of a uniform disability rating schedule, the  
6 Minnesota Department of Labor and Industry Disability Schedule  
7 shall be used unless that schedule does not address an injury.  
8 In such case, the Guides to the Evaluation of Permanent  
9 Impairment by the American Medical Association shall be used.  
10 Determination of permanent impairment under this schedule must  
11 be made by a physician licensed under chapter 458, a doctor of  
12 osteopathic medicine licensed under chapters 458 and 459, a  
13 chiropractic physician licensed under chapter 460, a podiatric  
14 physician licensed under chapter 461, an optometrist licensed  
15 under chapter 463, or a dentist licensed under chapter 466, as  
16 appropriate considering the nature of the injury. No other  
17 persons are authorized to render opinions regarding the  
18 existence of or the extent of permanent impairment.

19         3. All impairment income benefits shall be based on an  
20 impairment rating using the impairment schedule referred to in  
21 subparagraph 2. Impairment income benefits are paid weekly at  
22 the rate of 66 2/3 ~~50~~ percent of the employee's average  
23 weekly salary ~~temporary total disability benefit~~ not to exceed  
24 the maximum weekly benefit under s. 440.12. An employee's  
25 entitlement to impairment income benefits begins the day after  
26 the employee reaches maximum medical improvement or the  
27 expiration of temporary benefits, whichever occurs earlier,  
28 and continues until the earlier of:

29             a. Eighteen weeks of eligibility for permanent  
30 impairment ratings up to and including 3 percent;  
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1           b. Thirty-six weeks of eligibility for permanent  
2 impairment ratings greater than 3 percent and up to and  
3 including 6 percent;

4           c. Fifty-four weeks of eligibility for permanent  
5 impairment ratings greater than 6 percent and up to and  
6 including 9 percent;

7           d. Seventy-two weeks of eligibility for permanent  
8 impairment ratings greater than 9 percent and up to and  
9 including 12 percent;

10           e. Eighty-six weeks of eligibility for permanent  
11 impairment ratings greater than 13 percent and up to and  
12 including 14 percent;

13           f. Ninety-four weeks of eligibility for permanent  
14 impairment ratings greater than 13 percent and up to and  
15 including 14 percent;

16           g. One-hundred and five weeks of eligibility for  
17 permanent impairment ratings greater than 14 percent and up to  
18 and including 15 percent;

19           h. One-hundred and nineteen weeks of eligibility for  
20 permanent impairment ratings greater than 15 and up to and  
21 including 16 percent;

22           i. One-hundred and thirty-three weeks of eligibility  
23 for permanent impairment ratings greater than 16 percent and  
24 up to and including 17 percent;

25           j. One-hundred and forty-seven weeks of eligibility  
26 for permanent impairment ratings greater than 17 and up to and  
27 including 18 percent;

28           k. One-hundred and sixty-one weeks of eligibility for  
29 permanent impairment ratings greater than 18 percent and up to  
30 and including 19 percent;

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1           l. One-hundred and seventy-five weeks of eligibility  
2 for permanent impairment ratings greater than 19 percent and  
3 up to and including 20 percent;

4           m. One-hundred and ninety-two weeks of eligibility for  
5 permanent impairment ratings greater than 20 percent and up to  
6 and including 21 percent;

7           n. Two-hundred and ten weeks of eligibility for  
8 permanent impairment ratings greater than 21 percent and up to  
9 and including 22 percent;

10           o. Two-hundred and twenty-seven weeks of eligibility  
11 for permanent impairment ratings greater than 22 percent and  
12 up to and including 23 percent;

13           p. Two-hundred and forty-five weeks of eligibility for  
14 permanent impairment ratings greater than 23 and up to and  
15 including 24 percent;

16           q. Two-hundred and fifty-four weeks of eligibility for  
17 permanent impairment ratings greater than 24 percent; or

18           ~~a. The expiration of a period computed at the rate of~~  
19 ~~3 weeks for each percentage point of impairment;~~

20           r.b. The death of the employee.

21           4. After the employee has been certified by a doctor  
22 as having reached maximum medical improvement or 6 weeks  
23 before the expiration of temporary benefits, whichever occurs  
24 earlier, the certifying doctor shall evaluate the condition of  
25 the employee and assign an impairment rating, using the  
26 impairment schedule referred to in subparagraph 2.

27 Compensation is ~~not~~ payable for the mental, psychological, or  
28 emotional injury arising out of depression from being out of  
29 work because of the employee's accident. If the certification  
30 and evaluation are performed by a doctor other than the  
31 employee's treating doctor, the certification and evaluation

1 must be submitted to the treating doctor, and the treating  
2 doctor must indicate agreement or disagreement with the  
3 certification and evaluation, but the opinion of the second  
4 doctor counts in the final decision of impairment. If there is  
5 any controversy, the judge of compensation claims resolves the  
6 dispute between the two doctors.The certifying doctor shall  
7 issue a written report to the division, the employee, and the  
8 carrier certifying that maximum medical improvement has been  
9 reached, stating the impairment rating, and providing any  
10 other information required by the division. If the employee  
11 has not been certified as having reached maximum medical  
12 improvement before the expiration of 182 ~~102~~ weeks after the  
13 date temporary total disability benefits begin to accrue, the  
14 carrier shall notify the treating doctor of the requirements  
15 of this section.

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

18 ~~6. The division may by rule specify forms and~~  
19 ~~procedures governing the method of payment of wage loss and~~  
20 ~~impairment benefits for dates of accidents before January 1,~~  
21 ~~1994, and for dates of accidents on or after January 1, 1994.~~

22 (4) TEMPORARY PARTIAL DISABILITY.--

23 (b) Such benefits shall be paid during the continuance  
24 of such disability, not to exceed a period of 182 ~~104~~ weeks,  
25 as provided by this subsection and subsection (2). Once the  
26 injured employee reaches the maximum number of weeks,  
27 temporary disability benefits cease and the injured worker's  
28 permanent impairment must be determined. ~~The division may by~~  
29 ~~rule specify forms and procedures governing the method of~~  
30 ~~payment of temporary disability benefits for dates of~~

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1 ~~accidents before January 1, 1994, and for dates of accidents~~  
2 ~~on or after January 1, 1994.~~

3 (6) OBLIGATION TO REHIRE.--If the employer has not in  
4 good faith made available to the employee, within a 35-mile  
5 ~~100-mile~~ radius of the employee's residence, work appropriate  
6 to the employee's physical limitations within 30 days after  
7 the carrier notifies the employer of maximum medical  
8 improvement and the employee's physical limitations, the  
9 employer shall pay to the division for deposit into the  
10 Workers' Compensation Administration Trust Fund a fine of \$250  
11 for every \$5,000 of the employer's workers' compensation  
12 premium or payroll, not to exceed \$5,000~~\$2,000~~ per violation,  
13 as the division requires by rule. The employer is not subject  
14 to this subsection if the employee is receiving permanent  
15 total disability benefits or if the employer has 25 ~~50~~ or  
16 fewer employees.

17 Section 3. Paragraph (d) of subsection (2) of section  
18 440.191, Florida Statutes, 1998 Supplement, is amended to  
19 read:

20 440.191 Employee Assistance and Ombudsman Office.--

21 (2)

22 (d) The Employee Assistance and Ombudsman Office may  
23 assign an ombudsman to assist the employee in resolving the  
24 dispute. If the dispute is not resolved within 30 days after  
25 the employee contacts the office, the ombudsman shall, at the  
26 employee's request, assist the employee in drafting a petition  
27 for benefits and explain the procedures for filing petitions.  
28 The employee may be represented by an attorney, and the  
29 employer or carrier is liable for attorney's fees and costs.  
30 The division may by rule determine the method used to  
31 calculate the 30-day period. The Employee Assistance and

1 Ombudsman Office may not represent employees before the judges  
2 of compensation claims. An employer or carrier may not pay any  
3 attorneys' fees on behalf of the employee for services  
4 rendered or costs incurred in connection with this section,  
5 unless expressly authorized elsewhere in this chapter.

6 Section 4. Subsection (6) of section 440.192, Florida  
7 Statutes, is amended to read:

8 440.192 Procedure for resolving benefit disputes.--

9 (6) If the claimant is not represented by counsel, the  
10 Office of the Judges of Compensation Claims may request the  
11 Employee Assistance and Ombudsman Office to assist the  
12 claimant in filing a petition that meets the requirements of  
13 this section. The employee may be represented by an attorney,  
14 and the employer or carrier is liable for attorney's fees and  
15 costs.

16 Section 5. Paragraph (c) of subsection (11) of section  
17 440.20, Florida Statutes, applies to all claims that the  
18 parties have not settled under the current law (1994), unless  
19 the claimant was injured before 1994, in which case the  
20 previous law (1990) applies to the claimant.

21 Section 6. Paragraph (j) of subsection (4) of section  
22 440.25, Florida Statutes, is repealed.

23 Section 7. This act shall take effect upon becoming a  
24 law.

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SENATE SUMMARY

Amends various provisions of the workers' compensation law. Deletes the provision that medically necessary treatment does not include chiropractic services. Specifies date for the Division of Workers' Compensation of the Department of Labor and Employment Security to adopt rules regarding criteria for approval of courses. Provides that injured workers must receive reports that their attorneys and the carrier's attorneys receive at the time they receive the reports. Deletes employee's responsibility for copayment for medical services. Extends time for payment of benefits for temporary total disability. Increases the membership on the panel responsible for establishing a uniform permanent impairment rating system. Increases the percentage of an employee's salary for purposes of impairment income benefits. Prescribes a schedule for payment of benefits. Authorizes a judge of compensation claims to settle a dispute between two doctors relating to impairment. Increases the time for payment of temporary partial disability benefits. Reduces the geographical area in which the employer must provide the employee with work appropriate to the employee's limitation. Increases the monetary fine for failure to provide such work. Provides employees with right to an attorney in a proceeding before the Employee Assistance and Ombudsman Office to resolve a dispute. Provides that an employer is responsible for an employee's attorney's fees and costs in proceedings before a judge of compensation claims. Provides applicability for s. 440.20(11)(c), F.S. Repeals s. 440.25(4)(j), F.S., relating to expedited hearings.