

By Senator Casas

34-131A-00

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.

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

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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, are
18 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, 2000 ~~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, are
27 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 12 percent and up to and
12 including 13 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, is amended to read:

19 440.191 Employee Assistance and Ombudsman Office.--

20 (2)

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

29 The division may by rule determine the method used to
30 calculate the 30-day period. The Employee Assistance and
31 Ombudsman Office may not represent employees before the judges

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

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

7 440.192 Procedure for resolving benefit disputes.--

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

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

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

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