

By Senator Grant

13-876-00

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 proceedings
22 before a judge of compensation claims to
23 resolve maximum medical improvement or
24 impairment disputes; amending s. 440.45, F.S.;
25 authorizing the Governor to appoint temporary
26 judges of compensation claims; providing an
27 effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (5) of section 440.13, Florida
2 Statutes, is amended to read:

3 440.13 Medical services and supplies; penalty for
4 violations; limitations.--

5 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

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

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

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

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

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

25 4. The parties agree to an alternate examiner.

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

1 (c) The carrier may, at its election, contact the
2 claimant directly to schedule a reasonable time for an
3 independent medical examination. The carrier must confirm the
4 scheduling agreement in writing within 5 days and notify
5 claimant's counsel, if any, at least 7 days before the date
6 upon which the independent medical examination is scheduled to
7 occur. An attorney representing a claimant is not authorized
8 to schedule independent medical evaluations under this
9 subsection.

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

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

30 (e)(f) Attorney's fees incurred by an injured employee
31 in connection with delay of or opposition to an independent

1 medical examination, including, but not limited to, motions
2 for protective orders, are not recoverable under this chapter.

3 Section 2. Subsection (26) is added to section
4 440.134, Florida Statutes, to read:

5 440.134 Workers' compensation managed care
6 arrangement.--

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

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

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

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

20 (a) Impairment benefits.--

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

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

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

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

1 maximum weekly benefit under s. 440.12. An employee's
2 entitlement to impairment income benefits begins the day after
3 the employee reaches maximum medical improvement or the
4 expiration of temporary benefits, whichever occurs earlier,
5 and continues until the earlier of:

6 a. The expiration of a period computed at the rate of
7 3 weeks for each percentage point of impairment; ~~or~~
8 b. The death of the employee; or—
9 c. Thirty weeks.

10 4. After the employee has been certified by a doctor
11 as having reached maximum medical improvement or 6 weeks
12 before the expiration of temporary benefits, whichever occurs
13 earlier, the certifying doctor shall evaluate the condition of
14 the employee and assign an impairment rating, using the
15 impairment schedule referred to in subparagraph 2.
16 Compensation is not payable for the mental, psychological, or
17 emotional injury arising out of depression from being out of
18 work. If the certification and evaluation are performed by a
19 doctor other than the employee's treating doctor, the
20 certification and evaluation must be submitted to the treating
21 doctor, and the treating doctor must indicate agreement or
22 disagreement with the certification and evaluation. The
23 certifying doctor shall issue a written report to the
24 division, the employee, and the carrier certifying that
25 maximum medical improvement has been reached, stating the
26 impairment rating, and providing any other information
27 required by the division. If the employee has not been
28 certified as having reached maximum medical improvement before
29 the expiration of 102 weeks after the date temporary total
30 disability benefits begin to accrue, the carrier shall notify
31 the treating doctor of the requirements of this section.

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

3 6. The division may by rule specify forms and
4 procedures governing the method of payment of wage loss and
5 impairment benefits for dates of accidents before January 1,
6 1994, and for dates of accidents on or after January 1, 1994.

7 (b) Supplemental benefits.--

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

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

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

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

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

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

31

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

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

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

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

1 than once in each 12 calendar months, the employee and the
2 carrier may each request that the division review the status
3 of the employee and determine whether the carrier has
4 performed its duty with respect to whether the employee's
5 unemployment or underemployment is a direct result of
6 impairment from the compensable injury.

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

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

27 7. Supplemental benefits are calculated quarterly and
28 paid monthly. For purposes of calculating supplemental
29 benefits, 80 percent of the employee's average weekly wage and
30 the average wages the employee has earned per week are
31 compared quarterly. For purposes of this paragraph, if the

1 employee is offered a bona fide position of employment that
2 the employee is capable of performing, given the physical
3 condition of the employee and the geographic accessibility of
4 the position, the employee's weekly wages are considered
5 equivalent to the weekly wages for the position offered to the
6 employee.

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

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

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

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

25 440.192 Procedure for resolving benefit disputes.--

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

1 ~~this chapter, the employee must exhaust all managed care~~
2 ~~grievance procedures before filing a petition for benefits~~
3 ~~under this section.~~

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

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

8 (1) Notwithstanding the limitations on carrier
9 independent medical examinations in s. 440.13, an employee or
10 carrier who wishes to obtain an opinion other than the opinion
11 of the treating physician or a division advisor on the issue
12 of permanent impairment may obtain one independent medical
13 examination, except that the employee or carrier who selects
14 the treating physician is not entitled to obtain an alternate
15 opinion on the issue of permanent impairment, unless the
16 parties otherwise agree. This section and s. 440.13(2) do not
17 permit an employee or a carrier to obtain an additional
18 medical opinion on the issue of permanent impairment by
19 requesting an alternate treating physician pursuant to s.
20 440.13.

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

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

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

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1 (b) The independent medical examiner's opinion on the
2 date of the employee's maximum medical improvement and degree
3 or permanent impairment differs from the opinion of the
4 employee's treating physician on either of those issues, or
5 from the opinion of the expert medical advisor appointed by
6 the division on the degree of permanent impairment; or

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

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

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

22 Section 6. Paragraph (d) is added to subsection (2) of
23 section 440.45, Florida Statutes, to read:

24 440.45 Office of the Judges of Compensation Claims.--

25 (2)

26 (d) The Governor may appoint any attorney who has 3
27 years' experience in the practice of law in this state to
28 serve as a judge of compensation claims pro hac vice in the
29 absence or disqualification of any full-time judge of
30 compensation claims or to serve temporarily as an additional
31 judge of compensation claims in any area of the state in which

1 it is determined by the Governor that a need exists; however,
2 such an attorney appointed by the Governor may not serve for a
3 period of more than 60 successive days.

4 Section 7. This act shall take effect July 1, 2000.

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7 SENATE SUMMARY

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