

By Senator Villalobos

37-1316-01

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 providing that compensation is payable for
24 psychological or emotional injury arising out
25 of depression from being out of work;
26 authorizing a judge of compensation claims to
27 settle a dispute between two doctors relating
28 to impairment; increasing the time for payment
29 of temporary partial disability benefits;
30 reducing the geographical area in which the
31 employer must provide the employee with work

1 appropriate to the employee's limitation;
2 increasing the monetary fine for failure to
3 provide such work; amending s. 440.191, F.S.;
4 providing employees with the right to an
5 attorney in a proceeding before the Employee
6 Assistance and Ombudsman Office to resolve a
7 dispute; amending s. 440.192, F.S.; providing
8 that an employer is responsible for an
9 employee's attorney's fees and costs in
10 proceedings before a judge of compensation
11 claims; providing applicability for s.
12 440.20(11)(c), F.S.; repealing s. 440.25(4)(j),
13 F.S., relating to expedited hearings; providing
14 an effective date.

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

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18 Section 1. Paragraph (a) of subsection (2), paragraph
19 (a) of subsection (3), paragraph (c) of subsection (4), and
20 subsection (14) of section 440.13, Florida Statutes, are
21 amended to read:

22 440.13 Medical services and supplies; penalty for
23 violations; limitations.--

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

25 (a) Subject to the limitations specified elsewhere in
26 this chapter, the employer shall furnish to the employee such
27 medically necessary remedial treatment, care, and attendance
28 for such period as the nature of the injury or the process of
29 recovery may require, including medicines, medical supplies,
30 durable medical equipment, orthoses, prostheses, and other
31 medically necessary apparatus. Remedial treatment, care, and

1 attendance, including work-hardening programs or
2 pain-management programs accredited by the Commission on
3 Accreditation of Rehabilitation Facilities or Joint Commission
4 on the Accreditation of Health Organizations or
5 pain-management programs affiliated with medical schools,
6 shall be considered as covered treatment only when such care
7 is given based on a referral by a physician as defined in this
8 chapter. Each facility shall maintain outcome data, including
9 work status at discharges, total program charges, total number
10 of visits, and length of stay. The department shall utilize
11 such data and report to the President of the Senate and the
12 Speaker of the House of Representatives regarding the efficacy
13 and cost-effectiveness of such program, no later than October
14 1, 2001 ~~October 1, 1994. Medically necessary treatment, care,~~
15 ~~and attendance does not include chiropractic services in~~
16 ~~excess of 18 treatments or rendered 8 weeks beyond the date of~~
17 ~~the initial chiropractic treatment, whichever comes first,~~
18 ~~unless the carrier authorizes additional treatment or the~~
19 ~~employee is catastrophically injured.~~

20 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

1 the division governing the physician's field of practice. The
2 division shall coordinate with the Agency for Health Care
3 Administration, the Florida Medical Association, the Florida
4 Osteopathic Medical Association, the Florida Chiropractic
5 Association, the Florida Podiatric Medical Association, the
6 Florida Optometric Association, the Florida Dental
7 Association, and other health professional organizations and
8 their respective boards as deemed necessary by the Agency for
9 Health Care Administration in complying with this subsection.
10 No later than October 1, 2001 ~~October 1, 1994~~, the division
11 shall adopt rules regarding the criteria and procedures for
12 approval of courses and the filing of proof of completion by
13 the physicians.

14 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
15 DIVISION.--

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

24 Notwithstanding the limitations in s. 456.057 and subject to
25 the limitations in s. 381.004, upon the request of the
26 employer, the carrier, or the attorney for either of them, the
27 medical records of an injured employee must be furnished to
28 those persons and the medical condition of the injured
29 employee must be discussed with those persons, if the records
30 and the discussions are restricted to conditions relating to
31 the workplace injury. Any such discussions may be held before

1 or after the filing of a claim without the knowledge, consent,
2 or presence of any other party or his or her agent or
3 representative. A health care provider who willfully refuses
4 to provide medical records or to discuss the medical condition
5 of the injured employee, after a reasonable request is made
6 for such information pursuant to this subsection, shall be
7 subject by the division to one or more of the penalties set
8 forth in paragraph (8)(b).

9 (14) PAYMENT OF MEDICAL FEES.--

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

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

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

27 Section 2. Paragraph (a) of subsection (2), paragraph
28 (a) of subsection (3), paragraph (b) of subsection (4), and
29 subsection (6) of section 440.15, Florida Statutes, are
30 amended to read:

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1 440.15 Compensation for disability.--Compensation for
2 disability shall be paid to the employee, subject to the
3 limits provided in s. 440.12(2), as follows:

4 (2) TEMPORARY TOTAL DISABILITY.--

5 (a) In case of disability total in character but
6 temporary in quality, 66 2/3 percent of the average weekly
7 wages shall be paid to the employee during the continuance
8 thereof, not to exceed 182 ~~104~~ weeks except as provided in
9 this subsection, s. 440.12(1), and s. 440.14(3). Once the
10 employee reaches the maximum number of weeks allowed, or the
11 employee reaches the date of maximum medical improvement,
12 whichever occurs earlier, temporary disability benefits shall
13 cease and the injured worker's permanent impairment shall be
14 determined. This paragraph applies if the injured worker is
15 fully recovered from his injury. If the injured worker is not
16 fully recovered, medical benefits shall be continued.

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 five-member ~~three-member~~ panel, in cooperation
24 with the 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 salary ~~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. Eighteen weeks of eligibility for permanent
5 impairment ratings up to and including 3 percent;
- 6 b. Thirty-six weeks of eligibility for permanent
7 impairment ratings greater than 3 percent and up to and
8 including 6 percent;
- 9 c. Fifty-four weeks of eligibility for permanent
10 impairment ratings greater than 6 percent and up to and
11 including 9 percent;
- 12 d. Seventy-two weeks of eligibility for permanent
13 impairment ratings greater than 9 percent and up to and
14 including 12 percent;
- 15 e. Eighty-six weeks of eligibility for permanent
16 impairment ratings greater than 12 percent and up to and
17 including 13 percent;
- 18 f. Ninety-four weeks of eligibility for permanent
19 impairment ratings greater than 13 percent and up to and
20 including 14 percent;
- 21 g. One-hundred and five weeks of eligibility for
22 permanent impairment ratings greater than 14 percent and up to
23 and including 15 percent;
- 24 h. One-hundred and nineteen weeks of eligibility for
25 permanent impairment ratings greater than 15 and up to and
26 including 16 percent;
- 27 i. One-hundred and thirty-three weeks of eligibility
28 for permanent impairment ratings greater than 16 percent and
29 up to and including 17 percent;

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

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

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

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

13 n. Two-hundred and ten weeks of eligibility for
14 permanent impairment ratings greater than 21 percent and up to
15 and including 22 percent;

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

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

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

24 ~~a. The expiration of a period computed at the rate of~~
25 ~~3 weeks for each percentage point of impairment; or~~

26 r.b. The death of the employee.

27 4. After the employee has been certified by a doctor
28 as having reached maximum medical improvement or 6 weeks
29 before the expiration of temporary benefits, whichever occurs
30 earlier, the certifying doctor shall evaluate the condition of
31 the employee and assign an impairment rating, using the

1 impairment schedule referred to in subparagraph 2.
2 Compensation is ~~not~~ payable for the mental, psychological, or
3 emotional injury arising out of depression from being out of
4 work because of the employee's accident. If the certification
5 and evaluation are performed by a doctor other than the
6 employee's treating doctor, the certification and evaluation
7 must be submitted to the treating doctor, and the treating
8 doctor must indicate agreement or disagreement with the
9 certification and evaluation, but the opinion of the second
10 doctor counts in the final decision of impairment. If there is
11 any controversy, the judge of compensation claims resolves the
12 dispute between the two doctors. The certifying doctor shall
13 issue a written report to the division, the employee, and the
14 carrier certifying that maximum medical improvement has been
15 reached, stating the impairment rating, and providing any
16 other information required by the division. If the employee
17 has not been certified as having reached maximum medical
18 improvement before the expiration of 182 ~~102~~ weeks after the
19 date temporary total disability benefits begin to accrue, the
20 carrier shall notify the treating doctor of the requirements
21 of this section.

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

24 ~~6. The division may by rule specify forms and~~
25 ~~procedures governing the method of payment of wage loss and~~
26 ~~impairment benefits for dates of accidents before January 1,~~
27 ~~1994, and for dates of accidents on or after January 1, 1994.~~

28 (4) TEMPORARY PARTIAL DISABILITY.--

29 (b) Such benefits shall be paid during the continuance
30 of such disability, not to exceed a period of 182 ~~104~~ weeks,
31 as provided by this subsection and subsection (2). Once the

1 injured employee reaches the maximum number of weeks,
2 temporary disability benefits cease and the injured worker's
3 permanent impairment must be determined. ~~The division may by~~
4 ~~rule specify forms and procedures governing the method of~~
5 ~~payment of temporary disability benefits for dates of~~
6 ~~accidents before January 1, 1994, and for dates of accidents~~
7 ~~on or after January 1, 1994.~~

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

22 Section 3. Paragraph (d) of subsection (2) of section
23 440.191, Florida Statutes, is amended to read:

24 440.191 Employee Assistance and Ombudsman Office.--

25 (2)

26 (d) The Employee Assistance and Ombudsman Office may
27 assign an ombudsman to assist the employee in resolving the
28 dispute. If the dispute is not resolved within 30 days after
29 the employee contacts the office, the ombudsman shall, at the
30 employee's request, assist the employee in drafting a petition
31 for benefits and explain the procedures for filing petitions.

1 The employee may be represented by an attorney, and the
2 employer or carrier is liable for attorney's fees and costs.
3 The division may by rule determine the method used to
4 calculate the 30-day period. The Employee Assistance and
5 Ombudsman Office may not represent employees before the judges
6 of compensation claims. An employer or carrier may not pay any
7 attorneys' fees on behalf of the employee for services
8 rendered or costs incurred in connection with this section,
9 unless expressly authorized elsewhere in this chapter.

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

12 440.192 Procedure for resolving benefit disputes.--

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

20 Section 5. Paragraph (c) of subsection (11) of section
21 440.20, Florida Statutes, applies to all claims that the
22 parties have not settled under the current law (1994), unless
23 the claimant was injured before 1994, in which case the
24 previous law (1990) applies to the claimant.

25 Section 6. Paragraph (j) of subsection (4) of section
26 440.25, Florida Statutes, is repealed.

27 Section 7. This act shall take effect upon becoming a
28 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. Provides that compensation is payable for psychological or emotional injury arising out of depression from being out of work. 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 the 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.