The Florida Senate

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Committee on Banking and Insurance Senator Bill Posey, Chairman

HOW DOES THE WORKERS' COMPENSATION SYSTEM IN FLORIDA COMPARE TO OTHER STATES?

SUMMARY

In recent years, many stakeholders in the workers' compensation system have contended that Florida has the highest premium rates for workers' compensation insurance in the country, while its benefits are among the lowest. In the last 2 years, Florida has been recognized by independent studies as having the highest or second highest rates (2001) countrywide. Florida was noted as having the highest workers' compensation premium rates of all 50 states in the *Oregon Workers' Compensation Premium Rate Ranking Calendar Year 2000* published by the State of Oregon Department of Consumer and Business Services.

The workers' compensation system in Florida was intended to create " an efficient and self-executing system . . .which is not an economic or administrative burden." [s. 440.015, F.S.] However, Florida has experienced substantial growth in premium costs, medical costs, indemnity costs, and litigation expenses since 1994.

The frequency of permanent total disabilities cases is three times higher than the countrywide average. Attorney involvement is unusually high in Florida, and if an attorney is involved the difference in claim size is 40 percent higher in Florida versus countrywide. In cases where no attorney is involved, the average cost per case for indemnity/medical combined in Florida ($10,424) was comparable to countrywide ($9,753). However, if an attorney was involved, the average cost per case was $41,584 in Florida and $30,227 countrywide.

Although Florida has one of the lowest medical fee schedules for providers, one of the striking features of the current Florida system is the fact that medical costs constitute 64.9 percent the majority of the total losses in Florida (indemnity costs represents the remaining 35.1 percent). In contrast, medical costs constitute only 55.8 percent of the average countrywide total losses and indemnity represents the remaining 44.2 percent.

In September 2001, the Workers Compensation Research Institute (WCRI) released a report entitled, *Benchmarking Florida's Permanent Impairment Benefits*, which noted that the statutory permanent impairment benefits in Florida are among the lowest in ten states reviewed. Florida sets the rate of compensation at 50 percent of the weekly benefit for temporary total disability; many states set the rate of compensation at 100 percent of the weekly benefit. Florida also has the lowest maximum weekly benefit of the large states. The report also noted that the actual average permanent impairment payments per claim were not unusually higher or lower than the five large states reviewed. The report noted that Florida payments were comparable to Connecticut, 26-35 percent higher than Texas, 13-20 percent higher than Wisconsin, 25-38 percent lower than Georgia, and 12-23 percent lower than California.

An estimated $1.3 billion in premiums is lost annually due to fraud related to the employer premium fraud and exemptions in the construction industry, according to a Construction Education Concepts report entitled, *A Study On the Magnitude of Loss of Workers Compensation Premiums in 1997 Due to Employer Fraud and Exemptions in the Construction Industry* (March 2001). Investigation and enforcement of compliance with the workers' compensation coverage requirements is reported to be very difficult, especially in the construction industry where an employer's workforce can change daily depending on the size of a job. Moreover, preventing abuses in the exemption process likewise is equally challenging since the status of a person as an independent contractor or employee can change depending on the type of work being done. As a result of the compliance efforts of the 42 investigators in the Division of Workers' Compensation, an average of $19.4 million in new

workers' compensation premiums has been generated annually during the prior 3 fiscal years, totaling $58.2 million for fiscal years 1997-2000. Based on the results of the division's efforts, given the limited staffing, the extent of noncompliance could be significant.

BACKGROUND

Major reforms of the Workers' Compensation Law that were enacted in 1994 and in prior years attempted to address high premium rates and low benefits. In 1992 and 1993, premiums were steadily increasing at a significant rate--21.2 percent and 7.2 percent, respectively. The 1993 legislation (ch. 93-415, L.O.F.) substantially revised many aspects of the workers' compensation law in an attempt to significantly reduce costs. The 1993 reforms included the following changes:

1. Reduced attorney's fee schedule;
2. Limited increases in the medical fees schedule to the prior year's increase in the Consumer Price Index;
3. Revised the definition of catastrophic injury to specify which injuries constitute permanent total disability and to include any injury eligible for federal income disability or security income benefits;
4. Reduced temporary total disability benefits to 104 weeks (previously 260 weeks);
5. Authorized safety and drug-free workplace credits; and
6. Revised chiropractic services to 18 treatments or 8 weeks from the initial treatment, whichever occurred first.

Administration of the Workers' Compensation System in Florida

Pursuant to s. 440.015, F.S., the Division of Workers' Compensation, within the Department of Labor and Employment Security, is charged with administering the Workers' Compensation Law in a manner that facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

The Bureau of Compliance is charged with the responsibility of ensuring that employers, subject to the Workers' Compensation Law, maintain workers' compensation coverage for their employees and maintains records relating to proof of coverage and exemption from coverage. The Bureau of Rehabilitation and Medical Services certifies and decertifies health care providers, resolves reimbursement disputes, develops medical fee schedules, monitors carriers' compliance with reimbursement policies, monitors utilization and billing practices of providers, and provides reemployment services and training.

The Office of the Judges of Compensation Claims is responsible for hearing and resolving disputed workers' compensation issues under the authority of ch. 440, F.S.

Medical Fee Schedules

A three-member panel, consisting of the Insurance Commissioner or his designee, and two members appointed by the Governor is charged with the responsibility for determining statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians and hospitals. The maximum percentage of increase in the individual reimbursement schedule is capped at the percentage increase in the Consumer Price Index for the prior year. Reimbursements for all fees and other charges for medical treatment cannot exceed the amounts provided by the maximum reimbursement allowance approved by the three-member panel and developed and adopted by rule by the Division of Workers' Compensation. [s.440.13 (12), F.S.] Individual physicians are required to be reimbursed at the usual and customary charge, the agreed-upon contractual amount, or the maximum reimbursement allowance, whichever is less. Inpatient hospitals care is reimbursed on a per diem basis and outpatient hospital care is reimbursed at 75 percent of the usual and customary rate.

Section 440.134, F.S., which authorizes the delivery of medical services through a managed care arrangement, does not specifically address reimbursement to such providers. The Division of Workers' Compensation has opined that the fee schedule does not apply to medical services delivered through a managed care arrangement, since 440.13(12), F.S., "does not require an insurer to negotiate any health care provider payment based on the schedules approved by the panel for medical services provided through an insurer's WCMCA (workers' compensation managed care arrangement)."

Medical and Indemnity Benefits

The delivery of medical benefits can be provided to employees through a managed care or non-managed care system, at the option of the employer, effective October 1, 2001. [ch. 2001-91, L.O.F.] Both delivery systems allow for one change in physician. [ss. 440.13(2) and 440.134(10), F.S.]. The Agency for Health Care Administration recently determined that the "opt-out" provision "…effected a prospective only substantive amendment" to the law. The agency also stated that the determination of whether the "opt-out" provision for employers is a substantive change in law that applies only to dates of accident after October 1, 2001, or procedural change which would apply to all persons, regardless of the date of injury, would be determined by a judge of compensation claims by evaluating the insurance policy/contract in effect at the time of the injury. "If the policy/contract in effect at the time of injury specifies that managed care shall be used…then…the JCC must so hold true." Therefore, employers may not be allowed to "opt-out" of managed care for employees injured prior to October 1, 2001, which may require employers to maintain two different methods for the delivery of medical benefits.

Florida provides the following types of indemnity benefits: permanent total, temporary total, temporary partial, impairment income benefits, and death benefits. Benefits are contingent upon the date of the accident, the employee's wages for the previous 13 weeks (which determines the average weekly wage), and the compensation rate (which is calculated at 66 2/3 percent of the average weekly wage and subject to a maximum rate of 100 percent of the statewide average weekly wage).

Attorney's Fees

In Florida, the judges of compensation claims use a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees must equal 20 percent of the first $5,000 of the benefits secured, 15 percent of the next $5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured and to be provided during the first 10 years, and 5 percent of the benefits secured after 10 years. [s. 440.34, F.S.]

However, the judge of compensation claims has the discretion to increase or decrease the attorney's fees based on the following factors: 1) time and labor involved; 2) fee customarily charged in the locality for similar services; 3) amount involved in controversy and the benefits resulting; 4) time limitation imposed by claimant or circumstances; 5) experience, reputation, and the ability of the lawyer; and 6) contingency or certainty of a fee. Generally, a claimant is responsible for the payment of his or her attorney's fees, except in the following situations: 1) claimant successfully asserts a claim for medical only; 2) claimant's attorney successfully prosecutes a claim previously denied by the employer/carrier; 3) claimant prevails on the issue of compensability previously denied by the employer/carrier; and 4) claimant successfully prevails in proceedings related to the enforcement of an order or modification of an order. [s. 440.34, F.S.]

Election of Exemption from Workers' Compensation Coverage

Employers are required to provide workers' compensation coverage, unless they obtain an exemption from coverage. [s. 440.38, F.S.] Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure. Corporate officers, partners, and sole proprietors actively engaged in the construction industry may elect to be exempt from the workers compensation system by filing a notice of election to be exempt and providing certain information to the Division of Workers Compensation along with a $50 filing fee. No more than three corporate officers of a corporation and three partners in a partnership actively engaged in the construction industry may elect to be exempt. [s. 440.05, F.S.]

METHODOLOGY

Data on workers' compensation costs and benefits was obtained from the Workers' Compensation Research Institute (WCRI), National Council on Compensation Insurance (NCCI), National Association of Insurance Commissioners, Division of Workers' Compensation, insurance carriers, and other sources. Comparable information for other states was also obtained. The workers' compensation laws of other states were compared to Florida's laws. Data related to current exemptions from coverage was obtained from the Division of Workers' Compensation.

FINDINGS

In September 2001, NCCI issued a report entitled, *Florida Workers' Compensation—Cost Drivers Overview*. One of the striking features of the current Florida system is the fact that medical costs constitute

64.9 percent the majority of the total losses in Florida (indemnity costs represents the remaining 35.1 percent). In contrast, medical costs constitute only 55.8 percent of the average countrywide total losses and indemnity represents the remaining 44.2 percent. The report identified three significant cost drivers: 1) high frequency of permanent total claims (27 per 100,000 workers—three times higher than countrywide), which results in the total costs for Florida's permanent total claims being more than 2.5 times the countrywide average; 2) high medical costs for permanent partial claims - two times higher than countrywide and increasing at an annual rate of 6.5 percent, and, 3) high medical costs for temporary total claims - 60 percent higher than countrywide and increasing at an annual rate of 11.2 percent. In addition, the report noted the following cost drivers:

1. **Hospital costs.** Hospital costs are relatively high in Florida according to WCRI studies. Hospital costs represent almost 50 percent of medical expenditures and "…this is a significant reason for high medical costs."
2. **Physician costs.** Although the fee schedule in Florida is relatively low in comparison to other states, NCCI suggested that a high utilization of physician services was occurring or a relatively expensive mix of procedures were being provided. According to NCCI, "Florida does not have unusual types of injuries that would explain the higher costs."
3. **Attorney involvement.** If attorneys are not involved, the difference in claim costs between Florida and countrywide was minimal; however, if attorneys are involved, the difference in claim size in Florida and countrywide is nearly 40 percent. The report suggested that attorneys might contribute to the frequency of permanent total claims and to the increased medical services.

Similar and additional findings related to cost drivers in Florida were noted by WCRI. The remaining sections of the findings provide greater details regarding findings made by NCCI and WCRI regarding cost drivers in Florida.

Trends in Claim Costs

According to WCRI's report entitled, *Compscope Benchmarks: Multistate Comparisons, 1994-1999*, Florida has higher claims costs for lost-time cases than in most states studied in an eight state review. Florida's average claim cost, at 12-months' maturity, was $21,235 and the eight state average was $17,775. [1]The study attributed the higher costs to the higher percentage of permanent partial disability claims (46 percent of lost-time cases) in Florida and frequent litigation.[2] The study also noted that benefit delivery expenses are higher in Florida than in the other states because of medical cost containment expenses and frequent defense attorney involvement and higher than average defense attorney payments.[3] The study concluded that the higher indemnity costs "…was fueled in particular by a growing number of PPD claims and claims with lump-sum settlements as well as growing duration of disability."[4]

The WCRI report also noted that the average total cost per paid claim rose from 1995 through 1998 at a rate of 10 percent per year.[5] The average total cost per paid claim was $1,964 in accident year 1994; however, the average total cost per claim increased to $2,726 by 1998.[6] What factors triggered the increase in costs? According to the study, the following cost drivers were identified:

1. **Rapid growth in benefit-delivery expenses was a key cost driver.** Benefit delivery expenses per indemnity claim increased significantly: 18 percent (or $964 per claim) for accident years 1996 - 1997, and 39 percent ($1,577 per claim) from 1997 - 1998. The significant growth in benefit delivery expenses was triggered by the mandated delivery of medical benefits through managed care arrangements. For the period of 1996 to 1998, the increase in medical delivery expenses added $427 to the average cost per indemnity claim.
2. **Increase in the amount of indemnity and medical benefits paid.** Average indemnity benefits per indemnity claim increased 15 percent during the period of 1996-1998 (from $3,661 to $4,208). This increase was attributed to the significant increase in claims with permanent impairment benefits and lump sum settlements. The study noted that the average benefits for temporary total benefits increased 10 percent annually from 1996 - 1998. Medical payments per

[1] Helvacian, N. and Read, S. 2001. *Compscope Benchmarks: Multistate Comparisons, 1994-1999.* Cambridge, MA. Workers Compensation Research Institute. p. 116.
[2] Ibid. p. 112.
[3] Ibid. p. 113.
[4] Ibid. p. 116.
[5] Helvacian, N. and Read, S. 2001.*Compscope Benchmarks: Florida 1994-1999.* p. 116.
[6] Ibid. p. xiv.

claim for lost-time cases were high, particularly in permanent partial disability cases. Medical benefits in claims on average increased at a rate of 5.4 percent per year between the years 1994 -1998.

3. **Indemnity Benefits were paid more frequently.** Indemnity benefits were paid on approximately 20 percent of all claims in 1998, versus 18 percent in 1996.

Recently, the Workers' Compensation Research Institute released a report entitled, *Benchmarking Florida's Workers' Compensation Medical Fee Schedules* (September 2001) that compared Florida's fee schedule to other large states and southern states, the Medicare fee schedule in Florida, and the Florida fee schedule implemented September 30, 2001. The report also benchmarked hospital reimbursements in Florida with other states. Florida's medical fees were compared with California, Connecticut, Georgia, Louisiana, Massachusetts, Minnesota, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, and Texas. The following major findings were noted by WCRI:

1. The Florida fee schedule that was in effect prior to September 30, 2001 was significantly lower than neighboring states and large states evaluated. The fee schedule amounts (overall and for each major medical service group) are either the lowest or among the lowest in the United States.
2. The new fee schedule, which became effective September 30, 2001, will lower fees overall by 2 percent on average. Florida had the second lowest fee schedule among the eight larger states (California, Connecticut, Massachusetts, Minnesota, New York, Pennsylvania, and Texas) evaluated. Massachusetts had the lowest fee schedule of the eight states primarily due to the relatively low surgery reimbursement rates.
3. On average, Florida's fee schedule is equal to those prescribed by the Medicare fee schedule (2000 edition). The report noted that Florida reimbursements for certain categories, such as evaluation and management (-37 percent) and radiology (-19 percent) are significantly lower than the Medicare fee schedule. In contrast, surgery fees were 14 percent above the Medicare fee schedule.
4. The average payments per service paid to Florida hospitals were generally the highest of the eight large states and as much as five times higher than the Florida fee schedule amounts authorized for non-hospital providers for similar services. The average fees paid to hospitals also increased by 13 percent per year for injuries incurred during the period of 1996-98.

A review of statutory benefits for temporary total disability provided by other states indicates that the duration of benefits in Florida is lower than 13 states. Many states (29) do not specify a time limitation; rather, they allow benefits to continue for the duration of the disability. Six states, including Florida, limited benefits to 104 weeks. Ten states provide benefits based on 70 percent or more of the employee's wages. The majority of the states (including Florida) provide benefits based on 66 2/3 percent of the average wages. Recently, WCRI noted the duration of temporary total benefits has been increasing, particularly since 1994 when the Legislature reduced the maximum number of weeks and allowed settlements for future medical benefits.

Recently, the Workers' Compensation Research Institute released a report entitled, *Benchmarking Florida's Permanent Impairment Benefits* (September 2001), that compared Florida's benefits with nine other states (Colorado, Connecticut, Georgia, Illinois, Indiana, New Jersey, North Carolina, Texas, and Washington). The study noted the following significant findings:

1. *Statutory* benefits in Florida are less than other large states studied. Florida sets the rate of compensation at 50 percent of the weekly benefit for temporary total disability; many states set the rate of compensation at 100 percent of the weekly benefit. Florida also has the lowest maximum weekly benefit of the large states.
2. *Actual* average permanent impairment payments per claim were not unusually higher or lower than five large states reviewed. The report noted that Florida payments were comparable to Connecticut, 26-35 percent higher than Texas, 13-20 percent higher than Wisconsin, 25-38 percent lower than Georgia, and 12-23 percent lower than California.

The WCRI study concluded that the difference between the actual payments and statutory benefits per claim may differ due to the implementation of the statutory benefits: judicial behavior in making awards, impairment rating behavior of the medical providers, and settlement behavior of the parties. WCRI stated that the higher payments in Florida for impairment benefits "…may actually include an implicit payment for settling a permanent total disability claim."

Why is the actual payment higher than the statutory benefit? According to WCRI's report entitled, *Permanent Partial Disability: Interstate Differences* (1999), "…in instances where the worker seems likely to become a claimant for permanent total disability, the settlement value of the PPD (permanent partial disability) claim is influenced by the value of a PTD (permanent total disability) claim and the likelihood of the worker's being rated for permanent total disability. Because the probability of receiving a PTD award appears to be higher in Florida than in many states, in practice many PPD cases appear to settle for more than they would were they based strictly on impairment." Recently, NCCI reported that Florida has an usually high frequency of permanent total claims - three times higher than countrywide. Some persons attribute the higher frequency in permanent total disability determinations in Florida due to the inclusion of eligibility for social security disability income as part of the criteria for meeting the definition of catastrophic injury and eligibility for permanent total disability benefits.

Although attorney fees were reduced in 1993, Florida has seen a significant growth in litigation rates. Defense attorney involvement in Florida has almost doubled during the period of 1994 - 1998. In recent years, the Division of Workers' Compensation has noted that attorneys are involved in filing over 95 percent of the request for assistance (informal dispute resolution process). In a comparison with eight other states, Florida had the highest litigation rates, measured by the percent of claims with defense attorney involvement of the eight states. Florida had defense attorney involvement rate of 30 percent, versus 19 percent or less in the other eight states.

According to NCCI, attorney involvement in Florida has a more significant fiscal impact in Florida than countrywide. In cases where no attorney is involved, the average cost per case for indemnity/medical combined in Florida ($10,424) was comparable to the countrywide average ($9,753). However, if an attorney was involved, the average cost per case was $41,584 in Florida and $30,227 countrywide. The costs for medical and indemnity benefits are impacted. The higher than expected medical costs in Florida could be attributed to the attorney involvement in Florida. In the WCRI report entitled, *Compscope Benchmarks: Multistate Comparisons, 1994-99,* the average defense attorney payment reported in Florida, ($3,313) was the highest of the eight states per 1996 claims, at 36 months' maturity.

Why has attorney involvement increased significantly in Florida? Some stakeholders contend that litigation costs can be driven by claimants being uninformed of rights, their dissatisfaction with their medical care, and the nonreceipt or late payment of benefits. The WCRI suggested that the increase might be attributable to: 1) changes in 1993 law which allowed a worker to receive permanent impairment benefits and return to work; and 2) settlements allowing the washout or closure of future medical benefits. Current data maintained by the division does not provide sufficient data to adequately address or determine the specific cost drivers relating to attorney's fees and litigation expense. In recent years, litigation expense data has been grouped with attorney's fees data, which prevents a comparison of actual fees to the statutory fee schedule or trends regarding actual fees.

The WCRI report, entitled, *Permanent Partial Disability: Interstate Differences 1994-1999,* noted that "Because PPD benefits tend to be the most litigated benefits, attorney involvement and fees are subjects of particular interest to policymakers." The report noted that 20 states, including Florida, use a tiered fee schedule for the payment of claimants' attorneys' fees. Other states generally set the fee as percentage of the settlement, ranging from 5 -10 percent in Maine to 33.33 percent in Iowa, Nebraska, Nevada, Ohio, South Carolina. In New Mexico, fees are capped at $12,500 for both claimant and defense attorneys. California allows attorney's fee of up to 15 percent. Sixteen states use a dollar amount or percentage cap on attorney's fees and 21 states provide a mechanism for attorneys to appeal their fees.

In 39 states, the injured worker generally is responsible for the payment of his or her attorney's fees. In 18 of these 39 states, it was noted that there were no circumstances in which the liability for the payment of the claimant's attorney's fees shifted. The Illinois Workers Compensation Act provides that in the event the amount of the claim to be paid for compensation does not exceed the written offer made to the claimant by the employer/carrier prior to representation by an attorney; no fees are due to any such attorney.

Generally, Illinois prohibits attorney's fees in excess of 20 percent of the compensation recovered and paid, unless approved by the Industrial Commission. Texas establishes a schedule of billable hours for certain types of services provided by attorneys and limits attorney's fees for claimants to 25 percent of the worker's benefits. Defense attorney's fees are limited to $150 per hour for attorneys and $50 per hour for legal

assistant time. New York does not limit attorney's fees for lump-sum settlements or other awards.

According to study recently released by Construction Education Concepts entitled, *A Study On the Magnitude of Loss of Workers' Compensation Premiums in 1997 Due to Employer Fraud and Exemptions in the Construction Industry* (March 2001), an estimated $1.2 - $2.8 billion in workers' compensation premiums is lost, on annual basis, due to employer premium fraud and exemptions in the construction industry. (The report noted that a conservative estimate of the lost premiums was $1.3 billion.) In 1999, Florida had an estimated written workers' compensation premium of $2.5 billion. The report noted that in 1997 construction industry premiums collected totaled $912,244,160, which was less than the estimated premiums lost attributable to employer fraud and exemptions. However, the estimated lost premiums were not reduced to account for self-insured employers, which represent approximately 30 percent of all employers in Florida.

In 1997, the Statewide Grand Jury recommended that the Department of Labor stop considering employers to be in compliance with the law when they purchase coverage clearly insufficient for their employees. In regards to this practice by the Division of Workers' Compensation, the Statewide Grand Jury stated, " We do not believe the Legislature ever intended that an employer who engages in premium fraud should ever be considered by any state agency to be in compliance with Chapter 440 in any way, shape, or form." In response to a recent staff inquiry regarding the implementation of the Grand Jury's recommendations, the division provided the following response as to why this recommendation had not been implemented:

- "The Division considers an employer in compliance with the Workers' Compensation Law if the employer has any type of workers' compensation insurance policy or does not exceed the threshold number of employees. An employee who has any valid workers' compensation insurance policy is in civil compliance with ch. 440, F.S., but may be in criminal violation pursuant to s. 440.105(4)(b), F.S. An employer found by the division to be in violation of this section is referred to the Department of Insurance, Division of Insurance Fraud for prosecution. In addition, the employer is required to provide proof of an insurance policy to the division."
- "If the policy is a minimum premium policy, the division also requests that the employer provide a statement from the carrier, saying that the carrier is satisfied with the premium on the policy and the number of employees covered. The division also submits a report to the carrier including the number of employees found on the employer job site, so that the carrier can make informed business decisions based on the practices of that employer."

RECOMMENDATIONS

It is recommended that the Legislature consider the following:

1. Amending s. 440.10(1)(f), F.S. which authorizes the Division of Workers' Compensation to assess against an employer who willfully fails to secure coverage a penalty not to exceed $5,000 for each employee who is classified by the employer as an independent contractor, but who is not, by eliminating the term, "willfully," thereby eliminating the need to prove intent.
2. Revising the current exemption requirements by eliminating exemptions below the subcontractor level. All persons contracting with a subcontractor would be required to obtain coverage. Any changes in the exemption requirements should be implemented over several years to ensure that employers understand provisions under the new law.
3. Clarifying s. 440.38, F.S., to provide that an employer purchasing inadequate insurance coverage is not in compliance with the coverage requirements of the Workers' Compensation Law.
4. Revising the penalty provisions for contractors licensed under the provisions of chapter 489, F.S., to parallel the Division of Workers' Compensation provisions.
5. Revising the standard for permanent total disability by revising the definition of catastrophic injury to exclude the reference to injuries that would otherwise qualify an individual for social security disability or supplemental income, as provided in CS/SB 1188 during the 2001 Session. Presently, an employee can be awarded permanent total disability whether or not the employee has applied for or has been granted or denied social security benefits.
6. Increasing the permanent impairment benefits from 33 percent to 66 2/3 percent of the temporary total benefits, as provided in CS/SB 1188 during the 2001 Session.
7. Revising attorney's fee provisions to only allow fees to attach 30 days after the receipt of the petition by

the carrier/employer, rather (than 44 days after filing the request for assistance) as provided in CS/SB 1188 during the 2001 Session.

8. Establishing a per accident cap on the discretionary hourly attorney's fee award rate, as provided in CS/SB 1188.

9. Discouraging frivolous claims by providing that no attorney's fees are due if the compensation awarded does not exceed the written offer to the claimant by the employer/carrier prior to representation by an attorney.

10. Clarifying that the managed care opt-out is to be applied retroactively, regardless of the date of injury. The opt-out provision was intended to provide employers with greater flexibility and potential savings by allowing the employer to determine what type of health care delivery system would best meet their needs.

11. Adopting a fee schedule for hospitals to address the increasing costs. A majority of the states have adopted fees schedules to contain medical costs.

12. Revising data collection requirements for providers and hospitals or require an annual independent study for the determination of whether the current method for reimbursement is reasonable, promotes cost containment, efficiency in the delivery of health care in the workers' compensation system, and that the reimbursement is sufficient to ensure availability of such medically necessary remedial treatment, care and attendance to injured workers. [Section 440.13(12), F.S.]

13. Revising the utilization and billing oversight process to ensure that the division takes a more proactive role in detecting overutilization and improper billing by providers. Although it is the carrier's primary responsibility, the division has an integral role in actively ensuring that providers comply with provisions of ch. 440.