

SUMMARY OF WORKERS' COMPENSATION BILL DRAFT

Petitions for Benefits

Section 1. Section 440.02, F.S.

Requires the claimant's petition for benefits (PFB) to the employer or carrier to specifically state the amount of each requested benefit and the calculation used to compute the requested benefit. Intended to clarify the amount at issue in a workers' compensation dispute.

Section 3. Section 440.13, F.S.

Defines a "business day" as weekdays, not including state holidays, and changes certain time frames from days to business days in order to provide sufficient time for the parties to respond to one another.

Section 4. Section 440.192, F.S.,

Requires a Judge of Compensation Claims to dismiss without prejudice a petition for benefits that does not meet the definition of specificity created by the bill in s. 440.02, F.S., and the requirements of this section. Requires a PFB for permanent benefits to include the specific date of maximum medical improvement and the date permanent benefits are claimed to begin. A PFB must include the specific amount of compensation claimed and the methodology used to calculate the average weekly wage if the AWW calculated by the employer or carrier is being disputed. Provides a time frame for the JCC to issue an order on a motion to dismiss a PFB for lack of specificity.

Attorney's Fees

Section 2. Section 440.105, F.S.

Deletes the prohibition against attorneys and others to receive a fee or other consideration unless approved by a Judge of Compensation Claims. In Miles v. City of Clearwater the Florida Supreme Court decided that the restrictions in s. 440.105, F.S., and s. 440.34, F.S., when applied to a claimant's ability to retain counsel under a contract that calls for the payment of a reasonable fee, are unconstitutional.

Section 5. Section 440.34, F.S.

Retains the statutory fee schedule for setting claimant attorney's fees of 20 percent of the first \$5,000 in benefits secured, 15 percent of the next \$5,000 in benefits secured, and 10 percent of the remaining benefits secured during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years.

Directs the JCC to consider the “Lee Engineering” factors in each case and allows the JCC to decrease or increase the attorney fee subject to a maximum hourly rate of \$250. The criteria for the JCC to set an attorney’s fee are:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
2. The fee customarily charged in the locality for similar legal services.
3. The amount involved in the controversy and the benefits resulting to the claimant.
4. The time limitation imposed by the claimant or the circumstances.
5. The experience, reputation, and ability of the lawyer or lawyers performing
6. The contingency or certainty of a fee.

Deletes the alternative attorney’s fee for medical-only claims of \$150 per hour, not to exceed \$1,500, which may be awarded once per accident.

Workers’ Compensation Rates – Conversion to Loss Cost System

Existing Florida law requires every workers’ compensation insurer to file with the OIR its full rates (benefits, expenses, profits, and contingencies) and classifications which the insurer proposes to use. However, an insurer may satisfy this obligation by becoming a member of a licensed rating organization that makes such filings on its behalf. Currently, all workers’ compensation insurers are members of the National Council on Compensation Insurance (NCCI), the sole licensed rating or advisory organization in the state. Insurers may compete on price using options such as deviations, dividends, retrospective rating plans, and large deductibles that are subject to OIR’s approval.

Florida is one of 7 states that uses an “administered” or “full rate” system for workers’ compensation rates in which a rating or advisory organization files the rate. NCCI calculates the full rate in Florida, which includes the benefits paid, loss adjustment expenses, commissions, taxes, general expenses, and profit and contingency factors. Conversely, 38 states use some type of loss costs system in which a rating or advisory organization files the rates that are projected to cover losses, while each insurer is required to separately file the remaining components of the rates needed to cover expenses and profit, known as loss costs multipliers. Loss Costs are the benefits paid and in some states also include loss adjustment expenses.

The bill switches Florida from an administered rate system to a loss costs system.

Section 8. Section 627.062, F.S.

Specifies that workers’ compensation rate filings that develop prospective loss costs are subject to the Rating Law and to approval of the Office of Insurance Regulation.

Section 9. Section 627.072(5), F.S.

Deletes the existing methodology used to calculate administered workers' compensation rates. Deleted because the bill requires the development of workers' compensation rates using a loss costs system.

Section 10. Section 627.091, F.S.

Requires each workers' compensation and employer's liability insurer to file rates with the Office of Insurance Regulation independently. Allows the insurer to make a rate filing that adopts the OIR's approved loss costs that were filed by a licensed rating organization. Insurers will use their own individual experience for the other aspects of a rate filing, such as loss adjustment expenses, commissions, taxes, general expenses, and profit and contingency factors. A licensed rating organization is prohibited from developing final rates or multipliers for expenses, profit, or contingencies. A licensed rating organization may file supplementary rating information that includes policywriting rules, rating plan classification codes, experience modification plans, and rules for other factors or relativities.

Section 13. Section 627.211, F.S.

Requires the OIR to evaluate insurance company solvency in its annual report on the workers' compensation insurance to the Legislature. Also conforms to the establishment of a loss costs ratemaking system by deleting provisions governing individual insurer rate deviations from an administered rate.

Sections 6, 7, 11, 12, 15, 16, 17, 18, and 19. Sections 627.041, 627.0612, 627.093, 627.101, 627.291, 627.318, 627.361, 627.371, and 624.482, F.S.

Technical, conforming changes related to the conversion to a loss costs system for workers' compensation ratemaking.

Limit on Excessive Defense and Cost Containment Expenses

Defense and cost containment expenses (DCCE) are part of an insurer's loss adjustment expenses. They generally include expenses related to the insurer's defense of a petition for benefits, expenses related to containing claim costs. Such expenses include insurance company attorney fees (not claimant's fees paid by the insurer), expert witnesses, medical examinations and autopsies, medical fee review panels, bill auditing, treatment utilization reviews, preferred provider network expenses, and vocational rehabilitation in certain circumstances. The past 6 annual NCCI rate filings have contained DCCE that ranges from 14.2 percent to 17.7 percent of incurred losses. The 2015 and 2016 rate filings each had DCCE below 15 percent of incurred losses.

Section 14. Section 627.2151, F.S.

Provides that an insurer's defense and cost containment expenses are excessive if they exceed 15 percent of the insurer's incurred losses for the average of the 3 most recent calendar years. Each insurer

must return amounts over 15 percent DCCE to policyholders via either a cash refund or credit toward the future purchase of insurance. Each insurer must file its DCCE and incurred losses annually, beginning for the 2018 calendar year. The first year excessive DCCE refunds will be available is 2021. Refunds will not be provided if the insurer demonstrates to the OIR that the refund will render the insurer financially impaired or insolvent.

Effective Date: July 1, 2017