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What's New In Our Industry
Florida

An Up-to-Date Summary of What is Happening in Florida Related to Workers' Compensation in All Branches of Government

I. Legislature

1. Calendar 2024 Regular Session

August 4, 2023	Deadline for filing claim bills (Senate Rule 8.81(2))
January 9, 2024	Regular Session convenes 12:00 noon, deadline for filing bills for introduction (Article 111, section 3(b), State Constitution) 12:00 noon, deadline for filing bills for introduction (Senate Rule 3.7(1)
February 24, 2024	Motion to reconsider made and considered the same day (Senate Rule 6.4(4)
February 27, 2024	50th day – last day for regularly scheduled committee meetings (Senate Rule 2.9(2))
March 8, 2024	60th day – last day of Regular Session (Article III, section 3(d), State Constitution)

2. Bills Filed to Date – **2024 Legislative Session**

a. HB 161, SB 362(Companion Bills) Payment of Health Care Providers and Surgical Procedures Under Workers' Compensation

When a health care provider who gives a deposition is allowed to charge a witness fee, the amount charged by the witness may not exceed $300 per hour. This amount represents an increase in the current law that allows for a charge of $200 per hour. Medical care provided by a physician licensed under Chapter 458, Florida Statutes, and Chapter 595, Florida Statutes, shall be paid at the rate of 200% of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater. (Current fee schedule is 110 %.) Maximum reimbursement for surgical procedures shall be 200% of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is

greater. (Current fee schedule is 140 %.) Identical bill filed in 2023 legislative session (SB 1344 and HB 1299.) NCCI priced this proposed multiplier scenario and estimated the percentage impact on medical costs to be an increase of 7.3% totaling $286 million.

b. HB 637, SB 808 (Companion Bills) Employee Selection of Physicians – Presumptions of Compensability of Medical Conditions

A firefighter, law enforcement officer, correctional officer or correctional probation officer is entitled to select his/her own medical care provider if suffering from presumed compensable tuberculosis, heart disease, or hypertension resulting in total or partial disability or death. Prior to receiving treatment from this chosen medical specialist, notice must be given of the claimant's selection of the medical specialist to the carrier, self-insured employer, or Third Party Administrator. The selected medical specialist would be reimbursed at 200% of the Medicare rate. The selected "medical specialist" must be a physician licensed under Chapter 458 or Chapter 459, F.S., who has board certification in a medical specialty inclusive of care and treatment of tuberculosis, heart disease or hypertension.

c. SB 1098, HB 989 (Companion Bills) – Hospital Medical Reimbursement Rates

Senator DiCeglie and Representative LaMarca are sponsors of SB 1098 and HB 989, respectively. These bills contain the Department of Financial Services legislative package. Senator DiCeglie is the Vice-Chair of the Senate Banking and Insurance Committee. Representative LaMarca serves on the House Commerce Committee.

Lines 648 - 652 in SB 1098 and lines 645 – 649 in HB 989 amend s.440.13(12)(a). The amendment language is identical in both bills and affects hospital reimbursement. The new language states: **Reimbursement for emergency services and care, as defined in s. 395.002, without a maximum reimbursement allowance must be at 75 percent of the hospital's charge, unless there is a contract, in which case the contract governs reimbursement.**

The definition of "emergency services and care" and "emergency medical condition" are provided below for reference.

(8) "Emergency medical condition" means:

(a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. *Serious jeopardy to patient health, including a pregnant woman or fetus.*
2. *Serious impairment to bodily functions.*
3. *Serious dysfunction of any bodily organ or part.*

(b) With respect to a pregnant woman:

1. *That there is inadequate time to effect safe transfer to another hospital prior to delivery;*
2. *That a transfer may pose a threat to the health and safety of the patient or fetus; or*
3. *That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.*

(9) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

We are unsure as to the purpose of the amendment, unless hospitals found a loophole in the current reimbursement schedule and are trying to exploit it. The proposed language also does not seem to solve a problem because the current outpatient reimbursement schedule and inpatient per diem rates contemplate this situation.

The outpatient reimbursement schedule in the Hospital Reimbursement Manual provides a two-step process for determining a maximum reimbursement allowance: 1) Use the MRAs by individual CPT code as listed in the Hospital Reimbursement Manual; 2) If no individual CPT code has an MRA, use the MRAs for a groups of similar clinical CPT codes as listed in the Hospital Reimbursement Manual, or reimbursement is pursuant to a contract.

Also, if the provision of emergency services or care results in the treatment of an emergency medical condition, such treatment may result in an inpatient stay. Consequently, the Tier 1 (non-surgical) per diem rate of $7,000, Tier 2 (surgical stay) per diem rate of $11,000, or the Tier 3 (intensive care and coronary care) per diem rate of $13,000 applies.

The bills also add a new section in §440.38, Florida Statutes, that provides that in regards to contracts and purchases made by the Florida Workers' Compensation Self-Insurers Guaranty Association (Association) that are valued at or more than $100,000 (not just contracts with hospitals) must be first approved by the Department of Financing Services through a formal bid solicitation by the Association. This provision relates to all contracts and purchases after July 1, 2024.

d. HB 993, SB 1490 (Companion Bills) First Responder, Post-Traumatic Stress Disorders

HB 993 amends definition of "First Responders" entitled to the presumption of compensability under the Workers' Compensation Act for post-traumatic stress disorders. Includes 911 public safety telecommunicators, Federal Law Enforcement Officers and crime scene investigators entitled to presumption of compensability which includes full-time paid employees, part-time paid employees or unpaid volunteers. Allows for a diagnosis of a "post-traumatic stress disorder" to be diagnosed by a psychiatrist in person or through telehealth as that term is defined in Section 456.47(1), F.S. Defines crime scene investigators' activities creating presumed compensable post-traumatic stress disorder.

e. SB 1658 - Employer Leasing Companies – Obtaining Workers' Compensation Coverage

Amends Section 627.192, Florida Statutes. The bill clarifies the definitions of an employee leasing company, leased employees, and client companies specifically described in utilizing statutory references. Providing basis for determining the premium amounts payable for

employee leasing coverage that would include a complete description of the employee leasing company's and the client company's respective operations. Requires the insurer to be responsible for workers' compensation coverage for all leased and non-leased employees of the client company if the client company fails to secure and maintain separate workers' compensation coverage as required under the workers' compensation statute. The failure of a client company to report a leased employee's hiring shall not serve as a basis for the denial of workers' compensation benefits and does not preclude the charging of additional premiums and penalties by an employee leasing company's insurer against a client company for workers' compensation coverage. Requires insurers to conduct audits to ensure that all sources of payment by leasing companies and client companies including their employees, subcontractors, and independent contractors have been reviewed and the accuracy of classification of employees has been verified.

f. HB 1329 - Recreational Licenses and Permits – Issued Without a Fee

HB 1329 clarifies Section 379.353, Florida Statutes, that provides for the issuance of a fishing license/permit without a fee (fresh water and saltwater) and hunting licenses without a fee for residents who have been certified or determined to be totally and permanently disabled for purposes of workers' compensation under Chapter 440, Florida Statutes.

II. Administrative (Executive Branch of Government)

A. Primary emphasis from an administrative standpoint relating to workers' compensation in the past year relates to the payment of medical for the treatment of injured workers.

1. To understand the administrative activity concerning workers' compensation in Florida is to appreciate the legislative activity that occurred as a result of the 2023 Legislative Session and previous legislative and final administrative attention provided over several years. See past background information as contained in the House Summary Analysis of Committee Substitute/Committee Substitute/House Bill 487 passed by the Legislature on May 3, 2023 and thereafter approved by the Governor.

2. Statutorily, the Division of Workers' Compensation (DWC) is responsible for ensuring that employers provide medically necessary attention to workers injured on-the-job. Insurers must reimburse health care providers based on statewide schedules of Maximum Reimbursement Allowances (MRAs) developed by the DWC or an agreed upon contract price. The DWC mediates and decides utilization reimbursement disputes concerning the payment of such medical. Annually, the three-member panel adopts schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work hardening programs, and pain programs.

3. For the past year, a primary focus from an administrative standpoint has related to reimbursements for prescription bills focusing on cost reimbursements for medications that are prescribed and dispensed by the same medical provider and inpatient hospital costs.

B. Proposed Rules Relating to Medical Practitioners Prescribing and Dispensing Medication.

1. On December 29, 2022, the Department of Financial Services, Division of Workers' Compensation (Division) published a Notice of Proposed Rule 69L-7.730 and 7.740, FAC, which requires the payment of medications prescribed and dispensed by an otherwise authorized doctor if the injured worker chooses to obtain prescribed medication that is dispensed by the prescribing doctor. Pursuant to Section 440.13(3)(j), F.S., the injured worker has free choice in the selection of his pharmacy. It was the interpretation of the Division that medical practitioners were "pharmacies" if those doctors and nurses are registered as dispensing practitioners.

   Simultaneously, the Division published a Statement of Estimated Regulatory Costs (SERC) indicating that this would increase prescription costs by $42.8 million over 5 years or $8.6 million per year. These cost increases were for fully insured employers, and presumably did not include estimated costs for self-insured governmental entities, such as most state, county and municipal government and school district employers

   A report from the Workers' Compensation Research Institute dated June 2022 determined that 65% of pharmaceuticals in Florida were physician dispensed (highest in states reviewed).

2. In the case of *Publix Super Markets, Inc. et al, v. Department of Financial Services, et al,* Case #23-00027, a group of carriers and self-insured employers challenged the mandatory authorization of dispensing practitioners in the proposed rules, with concerns over decreased patient safety and increased costs with physicians prescribing and dispensing. Organizations such as the Workers' Compensation Research Institute (WCRI) suggested through various data studies over the past decade that practitioner dispensing can be associated with changes in prescribing behavior, including use of different medications, more medications, and more expensive medications when practitioners prescribe and dispense. Anecdotal evidence from Florida carriers supports the notion that many practitioners dispense questionable topical medications, and often charge anywhere from hundreds up to $2,000 for cream and gels that are available either over the counter or at a pharmacy for a small fraction of what is being charged by medical care providers that prescribe and dispense.

On March 27, 2023, a Final Order was entered by an Administrative Judge finding that the Division has rule-making authority to interpret the law to mean that injured workers have a free, full and absolute choice of wherever they wish to obtain their medication, including from authorized treating physicians or practitioners registered to dispense medications. A timely appeal was filed. All briefs submitted to Florida's First District Court of Appeals. Oral Argument is to be held on January 16, 2024. **TO ATTEND THE ORAL ARGUMENT ELECTRONICALLY, GO TO THE DISTRICT COURT OF APPEAL'S WEBSITE AT: 1dcaflcourts.gov and CLICK ON ORAL ARGUMENTS, THEN LIVE VIDEO FROM COURTROOMS, CHOOSE THIRD FLOOR COURTROOM – LIVE VIDEO.**

C. Proposed Rules Related to Inpatient Hospital Costs

1. Section 440.13(12), Florida Statutes, requires that the maximum reimbursement allowances (MRAs) for inpatient hospital care shall be based on a schedule of "per diem rates" to be approved by the three-member panel. The reimbursement schedule adopted by the three-member panel in the 2014 Hospital Reimbursement Manual provided a certain amount per day for inpatient care, i.e., a "per-diem" MRA; however, the three-member panel added a "stop loss" provision, which abandoned the per-diem MRA rate if the total hospital bill exceeds a certain amount. If the hospital billed more than this 'stop-loss threshold," the hospital would be reimbursed 75% of whatever the hospital chose to bill. An Order was entered by an Administrative Law Judge (ALJ) that the stop-loss methodology for reimbursing inpatient care was invalid, since it was not consistent with the statute that the bill must be based on a per diem amount. The ALJ concluded that the stop loss provision did not constitute a "per diem" billing rate and therefore, the stop loss provision was invalid.

2. The ALJ's finding of fact, and conclusions of law were rejected by the Department, under the theory that the stop loss payment allowing for a 75% payment of bill costs was a per diem payment schedule consistent with the statute. Notwithstanding the Administrative Judge's opinion, the Division retained the per diem rate structure, which included the stop loss provision. The decision by the Division to retain the stop loss provision was appealed to the Florida First District Court of Appeals. *Zenith Insurance v. Department of Financial Services*, Case Number 1D2023-1346. Initial Briefs have been filed. Ralph Douglas with our Firm is handling this litigation.

3. Effective May 25, 2023, the department implemented a new Hospital Inpatient Fee Schedule which deletes the 'stop-loss methodology in favor of a system of exclusively Per Diem MRAs, set forth in the 2020 Hospital Reimbursement Manual. The Division approved the new 2020 Hospital Fee Schedule, utilizing per diem amounts in excess of those previously mandated. An appeal has been taken concerning the methodology utilized to establish the amount of the new per-diem rates. *Zenith Insurance v. Department of Financial Services,* Case Number 1D2023-1346. *Normandy Insurance Company, et al v. Department of Financial Services,* Case Number 1D23-0830. These new inpatient hospital rates apply to hospital inpatient care beginning on May 25, 2023. The First District Court of Appeals has yet to render an opinion in regards to the original per diem rate filings with the stop loss provisions, *Zenith Insurance v. Department of Financial Services,* and also the amounts of the new per diem rates and how they were established. *Normandy Insurance Company, et al v. Department of Financial Services.* Ralph Douglas in our firm is participating in this litigation.

D. Maximum Workers' Compensation Rate – Effective January 1, 2024

By Administrative Order entered by the Chief Financial Officer of Florida dated November 30, 2023, it has been ordered that the Maximum Medical Improvement rate for work-related injuries and illnesses occurring on or after January 1, 2024 shall be $1,260.

III. Judicial Branch

Only one case has been decided by the Courts since the Firm's previous newsletter which is as provided below. See Firm's Newsletter dated December 7, 2023.

Seminole County, Florida v. Braden
48 FLW D2350
12/23/24

Claimant was a firefighter who was claiming benefits under the workers' compensation heart/lung statute. In the early 2000s, he suffered cardiac problems that the employer accepted as compensable. Benefits were paid and medical care provided. The claimant was released by his cardiac physician following treatment with no ongoing work restrictions. In December 2020, the claimant tested positive for Covid-19. Thereafter, he suffered a heart attack which resulted in extensive medical care. A Claim for Benefits was filed seeking indemnity and medical benefits on the grounds that the heart attack stemmed from heart disease and thus the statutory presumption of work causation under Section 112.18, Florida Statutes, was applicable. The claim was denied in its entirety based on the assertion that the criteria for the presumption was not satisfied and/or the presumption of compensability was rebutted. At the time of the hearing the parties stipulated that Section 112.18, F.S., did apply and that the claimant was entitled to the statutory presumption of work causation.

The employer took the position that the heart attack was caused by the Covid-19 disease which was contracted outside of the work. Medical testimony presented by the employer supported the fact that the claimant's heart attack and medical care was caused by the Covid-19 infection. The JCC ruled that the claimant's heart disease and the need for medical care was caused by the claimant's work, utilizing the presumption of compensability as found in Section 112.18, Florida Statutes.

Initially, the employer asserted that Section 112.18, F.S., that creates the presumption of compensability in certain instances is unconstitutional. This position was rejected by the court.

When the provisions of Section 112.18, F.S., are applicable (which the employer/carrier stipulated to), there is no responsibility on the part of the injured worker to prove causation between work and the resulting injuries claimed to be compensable. Causation is established by the provisions of Section 112.18, F.S., and therefore, in order to prove entitlement to benefits utilizing the presumptions under Section 112.18, F.S., the claimant is under no obligation to establish occupational causation redundantly. Such causation is created by statute. Accordingly, such evidence of a non-work related medical condition causing the heart or hypertension injury could not be utilized to rebut the presumption of causation caused by Section 112.18, Florida Statutes.

Benefits awarded to the injured worker by JCC and this decision affirmed on appeal.