

April 23, 2025

## What's New In Our Workers' Compensation Industry Florida

“An up to date summary of what is happening in Florida related to workers compensation in all branches of government.”

### Legislative Branch of Government

HB 1281 and SB 1522 are identified as “Department bills” for consideration at this year’s legislative session. Since these bills have not been referred to any legislative committees or subcommittees, there has been some doubt among many that the matters referenced in these Bills will not be considered in this Session. Because of this, the bills were not previously summarized in our newsletters. However, out of an abundance of caution, this summary is provided should a committee or subcommittee be assigned to review the content of these bills or should these matters be the subject of future legislative action: The following is a summary of the various positions of these bills as related to workers’ compensation matters.

1. Special Disability Trust Fund (Fund) There is a recognition that the Fund does not authorize reimbursements to employer/carriers for excess benefits paid for a pre-existing condition related to accidents or injuries suffered on or after January 1, 1998. The Fund created to make reimbursements maintained by assessments on all carriers authorized on or after January 1, 1998, but such reimbursements from the Fund are not authorized to be refunded for accidents after January 1, 1998. The Legislative response to this situation is to extinguish the Fund and close it “in an orderly manner.” (Assessments would likewise stop). Any proof of claim against the Fund that had not received an offer letter on or before December 31, 2026, would be barred from reimbursement. In order to be reimbursed, a carrier must submit a request for reimbursement on an accepted claim in fiscal years 2026-2027 or 2027-2028. Reimbursement amounts would be the estimated outstanding loss value for the claim as calculated in 2028, discounted to a present value of 4%. Special reimbursement provisions would apply to death cases.
2. Failure of Employer To Obtain Required Requisite Workers’ Comp Coverage If the Employer fails to secure the payment for required workers’ compensation coverage or to produce the required business records requested by the Department, the Department “must” issue a stop-work order on the Employer for the cessation of all business operations. The non-compliant employer must pay a \$1,000 penalty which could be paid by credit card.

3. Self Insureds In order to qualify as a self-insured, the applicant must certify that it has the financial strength necessary to ensure timely payment of current and future claims for workers' compensation benefits both individually and on behalf of a wholly majority owned subsidiary. As a condition to obtain self-insured status, a qualifying security deposit can be required. The amendments proposed would allow for the Department to adopt rules regarding the amount and condition of a "qualifying security deposit" utilizing certain established criteria.
4. Disputes Concerning Payment Of Medical Services Any health care provider that contests the disallowance or adjustment of a medical bill must, within 60 days after receipt of a Notice of disallowance or adjustment of payment, petition the Department to resolve the dispute. Current law requires the Notice to be filed with the Department within 45-days. Modified information that must be contained in the Notice to the Department are provided for.
5. Three Member Panel Recommendations To Improve The Workers' Compensation Healthcare Delivery System Beginning on or before January 15, 2030, and every 5 years thereafter, the three member panel as provided for in Section 440.13(12) F.S., shall make recommendations to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation healthcare delivery system. Currently, the three member panel makes these recommendations/reports biannually.

### **Judicial Branch of Government**

Normandy Ins. Co. y v. Mohammed Bouayad and Value Car Rental, LLC  
372 So. 3d 671 (1<sup>st</sup> DCA 2023); 48 FLW D2045 (1<sup>st</sup> DCA 2023) (on Motion for Rehearing en banc). Previously summarized in our Newsletter dated September 3, 2024.

This case involved an employer being shot on the premises of the employer for unknown reasons and by an unidentified shooter. Notwithstanding the fact that the shooting took place on the employer's premises during worktime hours, the claimant failed to prove that the shooting was "occupationally caused." Accordingly, the First District Court of Appeals denied benefits reversing the Judge of Compensation Claims determination that workers compensation workers' compensation benefits to the injured worker, were payable. The case was certified to the Florida Supreme Court for review and in a very unusual action, the Supreme Court accepted jurisdiction. The question certified to the Supreme Court was: "When an act of a third-party tortfeasor is the sole cause of an injury to an employee who is in the course and scope of employment, can the tortfeasor's act satisfy the occupational causation element, as defined by Section 440.02(36), Florida Statutes, necessary for compensability under the worker's compensation law." The substance of the issue under consideration is extremely significant especially in regards to employer responsibility for paying civil damages and the "exclusive remedy for the injured worker is not the receipt of the workers comp benefits.

Oral argument has been scheduled in this case for June 3, 2025, at 9:00 a.m., EDT. Reference to the Supreme Court schedule for oral argument can be obtained on the Supreme Court's website.

## Administrative Branch of Government

### DWC Holds Public Forum On Provider Reimbursement Manual

The Division of Workers' Compensation (DWC) recently held a Public Forum to solicit input from all sides of the Workers' Compensation Community regarding the 2024 Florida Workers' Compensation Health Care Provider Reimbursement Manual, a/k/a the Provider Manual. This Manual, incorporated by formal rule at 69L-7.020, FAC provides policies, guidance and instruction regarding obligations, duties and essentially rules for requesting, authorizing and providing compensable medical treatment and services for injured workers. As a result of a statutory change by the 2024 Legislature, the 2024 Provider Manual took effect January 1, 2025. The new Manual deleted the old physician and non-facility provider 'Fee Schedules', which are now updated annually by the DWC and published separately.

Earlier in 2024, the DWC held formal Public Workshops and hearings to address earlier proposals to massively revise the 2024 Manual, and to delete most of the language and guidance referenced therein. As a result of the 2024 hearings, the DWC kept most of the prior language but made some adjustments. As mentioned above, the old "Fee Schedules" were deleted. The DWC had previously promised to hold further workshops to improve the health care systems in workers' compensation; the most recent public forum was follow up to that commitment.

DWC did not present formal amendments to the current rules at the recent forum. However they did take public comment from two speakers and requested public comment for proposals or concerns.

It is our impression that the DWC is quietly revising its policy regarding how carriers authorize medical treatment. Because §440.13 specifically requires carriers to have written procedures relating to the authorization of medical treatment, it is clear the DWC will be auditing carriers for the context of those written procedures. The DWC may also be using such procedures as part of their internal process when they determine reimbursement disputes, although they have not engaged in any rulemaking to address this. Based on the current industry culture, we recommend that all carriers review their processes for receiving, reviewing and either providing or denying authorization for medical treatment.

If you have any questions, please contact Ralph Douglas in our Tallahassee office at (850) 222-8121.