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What's New In Our Workers' Compensation Industry Florida

I. Announcement of Annual Workers' Compensation And Safety and Health Conference

For those who have not already heard, the premier Annual Workers' Compensation Conference is scheduled to take place August 18-21 in Orlando. The Workers' Compensation Institute is sponsoring jointly the 78th Annual Workers' Compensation Educational Conference and the 35th Annual Safety and Health Conference at the Marriott World Center during these dates.

For more information about WCI's 78th Annual Workers' Compensation Educational, please visit the WCI Conference Hub.

Special opportunities to meet personally at the conference with state workers' compensation regulators from various states throughout the nation can be made in advance of the conference. See details below under Section III.

II. Legislative Branch of Government

The Governor signed SB 362 which was the last Workers' Compensation Bill passed by the 2024 Florida Legislative Session. (A total of 3 substantive changes in the law passed, 2 of which having been approved by the Governor previously. See prior newsletters for summaries of these workers' compensation bills.)

SB362 summarized:

1. Increases witness fee limits and reimbursement allowances for physicians and surgical procedures under the Workers' Compensation Law.
 - a. Allows health care providers giving a deposition to charge a witness fee up to \$300 per hour, an increase from \$200.
 - b. Limits medical expert witness fees charged by physicians, who have not provided direct services related to the case but have reviewed records, to \$300 per day, up from \$200.
2. Raises maximum reimbursement amounts for services provided by physicians licensed under Chapters 458 or 459, Florida Statutes, to 175% of Medicare's reimbursement rate, up from the previous 110%.



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3. Increases the maximum reimbursement for surgical procedures to 210% of Medicare's rate or the level adopted by the three-member panel as of January 1, 2003, whichever is higher.

Effective Date: 1/1/2025 (See 2024 and 2025 Medical Fee Schedules for Physician and Non-Hospital Medical Services summarized below under Executive/Administrative/Regulatory Branch of Government).

M. Executive/Administrative/Regulatory Branch of Government

Regulators' Participation at Annual Workers' Compensation And Safety & Health Conference

Industry representatives can sometimes find it challenging to travel to various state capitals to meet with workers' compensation regulators. The Annual Workers' Compensation and Safety and Health Conference is fortunate to have workers' compensation regulators from around the country attend the conference and agree to participate. The conference has partnered with the Southern Association of Workers' Compensation Administrators (SAWCA) to provide an opportunity for conference attendees to schedule informal one-on-one meetings with selected state regulators. These meetings will be held on Tuesday, August 20, 2024 and provide a great opportunity to discuss policy and regulatory issues facing your company and to build new relationships or strengthen existing ones. The following states are currently participating in the Ask-A-Regulator Meetings: Alabama, Alaska, Florida, Georgia, Louisiana, Oklahoma, South Carolina, Tennessee, Texas and Washington DC.

Go to Ask the Regulators Sign Up WC Conference (WCI.360.com) if you are interested in scheduling a meeting or meetings with regulator from one or several of these jurisdictions. After you have registered, the state(s) you selected will contact you to schedule your meeting. Additional regulators will be participating in the conference activities. The National Regulators Roundtable presented by SAWCA brings together regulators from throughout the country representing more than half the nation to discuss challenges, concerns and issues facing individual jurisdictions in the oversight of the ever-changing workers' compensation industry. The National Regulators Roundtable is scheduled for Monday, August 19, 2024.

Proposed Rule Changes for Workers' Compensation Applications For Insurance Coverage and Audit Procedures

The Administrative Rule 690-189.003, FAC, Workers' Compensation: Application and Audit Procedures is sought to be amended by the Office of Insurance Regulation as follows:

1. New forms have been developed when applying for workers' compensation insurance coverage.
2. The current voluntary market audit requirements as set forth in the National Council of Compensation Insurance (NCCI) Basic Manual, Florida State Special Audit Rules approved for use by the Office of Insurance Regulation are incorporated by reference into Rule 690-189.003, (4)(a)2, FAC.



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3. For policies with an estimated annual premium of \$10,000 and over, a final physical audit must be conducted on-site on all risks regardless of governing classification code.
4. For all business policies having construction classifications, a final on-site physical audit shall be conducted annually if the estimated annual premium is \$10,000 and over.
5. Physical on-site audits to ensure accurate classification assignments for duties of employees are required. No change in employee classification assignments is permitted unless the carrier has conducted a physical on-site audit to observe employee duties.

Workers' Compensation Criminal Fraud Investigations

The Chief Financial Officer (CFO) announced in formal press releases a number of criminal investigations concerning workers' compensation fraud for the first half of 2024. There were some internal releases that may not have been published that further emphasize the continuing emphasis for detecting criminal fraud within the workers' compensation system. The following four cases have been summarized representing allegations of fraud that are being investigated. Significant cases being considered can be accessed at https://www.myfloridacfo.com/news/press_releases.

- A) On February, 28, 2024, it was announced that Gustavo Antonio Munguia was arrested for workers' compensation criminal premium fraud and grand theft. The defendant was the owner of American Iron Group Corp that was accused of actively concealing his payroll to avoid paying a higher workers' compensation premium. According to the workers' compensation insurance carrier, had additional payroll been reported, American Iron Group Corp would have been assessed approximately \$253,000 in additional premium charges.
- B) On 1/29/2024, it was announced that Angel Santos Tzunun was arrested for workers' compensation criminal fraud for allegedly concealing payroll to avoid paying a higher workers' compensation premium. Fraud detectives determined that Tzunun concealed more than \$2 million in labor costs from contractors and avoided more than \$100,000 in workers' compensation premiums for 2 separate insurance policies.
- C) On 1/26/2024, the announcement was made of the arrest of Juana Ledezma and Luis Ledezma for workers' compensation criminal premium fraud and grand theft for allegedly concealing payroll to avoid paying higher workers' compensation premiums. An investigation revealed that during the policy period in question, the Ledezmas would have been assessed an additional \$127,660 in premium charges.



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D) On April 30, 2024, it was announced the arrest of 16 individuals in a workers' compensation criminal insurance fraud sting operation involving unlicensed contractors in Manatee County. The operation was in collaboration with the Florida Department of Business and Professional Regulation (DBPR) and the Manatee County Sheriff's Office (MCSO).

Assessment Rates for the Florida Workers' Compensation Administration Trust Fund (WCATF) and the Special Disability Trust Fund (SDTF)

Florida's Chief Financial Officer has issued an Order (Case No. 328328-WC) setting the WCATF assessment rate for Calendar Year 2025. The 2025 WCATF assessment rate has been set to remain at 0.79%. This annual assessment funds the "Workers' Compensation Administration Trust Fund" that pays expenses in respect to the administration of the Florida Workers' Compensation Act by the State of Florida. See §440.50(1)(a), Florida Statutes. Florida's Chief Financial Officer also issued an Order (Case No. 328325-WC) setting the assessment rate for the SDTF for Calendar Year 2025. The 2025 SDTF assessment rate is reduced to 0.30%. This represents a steady decrease in the assessment rate for the SDTF over the last fourteen years. See §440.49(8), Florida Statutes. The assessments in general are paid by insurance companies based upon collected premiums received. For self-insureds, assessments are calculated based upon what the premiums for workers' compensation coverage had such a workers' compensation policy been purchased.

The Informational Bulletins and Assessment Rate Orders are available on the Division's website at: www.myfloridacfo.com/division/wc/bulletins/, and the assessment rates are available at: www.myfloridacfo.com/division/wc/insurer/assessments/rates/. Contact Leah Gardner with the Division of Workers' Compensation (850) 413-1705 for additional information.

Physician and NonHospital Medical Services Fee Schedules-2024 and 2025

During the 2023 legislative session, HB 487 amended section 440.13(12), F.S., requiring the Department to publish on its website, by July 1 of each year, the schedule of maximum reimbursement allowances for physician and nonhospital medical services. Subsequently, in the 2024 legislative session, SB 362 increased the percentage of reimbursement for physician services from 110% to 175% of Medicare, and increased reimbursement for surgical procedures from 140% to 210% of Medicare.



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The Department has published on its website the 2024 maximum reimbursement allowances for physician and nonhospital medical services, that will remain in effect for 2024. In accordance with SB362 as above stated, the published fee schedule is no longer subject to approval by the Three-Member Panel but rather incorporates Medicare's reimbursement values. The Department plans to begin rulemaking in July of 2024 to create 2025 Fee Schedules but retaining some or all of the current reimbursement policies.

The Department proposes to delete large sections of the current reimbursement policies, including but not limited to sections requiring providers to obtain prior authorization for medical services, and to document such authorization. Employer/carriers should question the meaning of all changes, which may create confusion regarding provider and carrier responsibilities, and which may violate the statutory requirements for prior authorizations, or otherwise confuse providers of their statutory obligations. Close review on the proposed rules should also be made to ensure, among other concerns, applicability of new rule changes to all pharmacies and dispensing practitioners ensuring that no substantive changes are being made to current procedures that might have an adverse effect on employer/carrier community.

The workshop will be held on Thursday, July 25, 2024 at 10:00 a.m. to 12:00 p.m. EST, Room 155, Summit Lake Drive, Tallahassee, FL 32317. See Notice of Workshop for Rule 69L-2.020, Florida Workers' Compensation Health Care Provider Reimbursement Manual.

DWCEalert myfloridacfo.com. Copies of the proposed rule changes can be accessed by referring the Notice of Workshop Rule as referenced above.

Use of CPT codes as contained in the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2024 Edition, as published by the State of Florida Division of Workers' Compensation, can only be used solely for directly participating in the Florida Workers' Compensation System. CPT codes are copyrighted by the American Medical Association.

Questions regarding the contents of these Fee Schedule amendments should be sent to Charlene Miller, Bureau Chief of the Bureau of Monitoring and Audit, Division of Workers' Compensation at Charlene.Miller@myfloridacfo.com. Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request.



IV. Judicial Branch of Government

Office of Judge of Compensation Claims (OJCC) Participation
at Annual Workers' Compensation Conference

The Office of the Florida Judges of Compensation Claims (OJCC) participates extensively in the jointly held Annual Workers' Compensation and Safety and Health Conference referenced above. Several of the Judges will be speaking at the Conference. The Statewide Nominating Commission will be meeting at 1:00 p.m. on August 19, 2024 at the conference in regards to the appointment/re-appointment of Judges. Details for the meeting can be obtained by referencing <https://www.fljcc.org>.

There will be an OJCC "Meet and Greet" reception at 5:00 p.m. on August 18, 2024 at the Conference (Marriott World Center, Anaheim, Atlanta and Boston Rooms).

Claims Trending

The OJCC has indicated that it is very early in reporting the data related to claims being filed for Florida workers' compensation benefits. Hopefully, the final data report will be available in the next several months. Preliminary data however indicates that Petitions for Benefits filed are up 6% (81,145) with closures of files paralleling this number. New cases are down 1% (31,771); e-filings are up 2.4% (586,850). Trial continuances are the lowest ever reported. Mediations are up, likely highest in over a decade (still in auditing). Most prominent claims for benefits relate to medical authorizations, attorney fees (pro see cases are down), and temporary benefits. 34.42% of claims concern the compensability of accidents. Much more information is ultimately going to be available upon the completion of the Annual Report but these are just some of the early highlights. Much of the gathered information from the Florida experience (including information from the Division of Workers' Compensation) will be useful in measuring individual performance as compared to industry standards/experience.



Recent Case Law Decided by Florida Appellate Courts
Summarized Since Last Newsletter

Captain D's LLC v. Unified Brands, Inc.

49 FLW D1480

7/12/2024

The issue in this case is the amount of recovery by the workers' compensation carrier/employer in recouping workers' compensation benefits paid when injured workers and third party tortfeasors settle civil cause of action. The controlling factor for evaluating the employer/carrier reimbursement rights from such settlement proceeds is the ratio of net recovery by the injured worker from the total value of the damages sustained by the injured worker in the civil cause of action. The question in this case is what the total/full value of the civil case when comparing this to the net amount of the settlement actually received by the claimant.

Court determined that there was a failure on the part of the claimant to establish the full value of the civil case to be compared to the net settlement sums received by the injured worker. Court determined that there was no evidence submitted to establish the full value of the case. Although expert testimony is not required to establish this sum, the injured worker does have the burden of providing competent evidence that demonstrates the full recovery value of the civil case. The sworn testimony of an attorney is competent evidence which could have been considered by the trial court in establishing the full value of the case.

Palm Beach County School District v. Josaphat

49 FLW D1263

6/12/2024

Claim made for medical care following an accident that was accepted as compensable by the employer/carrier. Following the 120 day period from date of accident, the employer/carrier denied that the medical care sought to be paid was not related to accident. The question in this case was whether the employer/carrier's denial of the relationship between the accident and the medical treatment sought was precluded since the denial of the relationship was not made within 120 days of the accident date as required by the 120 day rule.

The Workers' Compensation Statute requires the employer/carrier to provide medically necessary treatment and care for injured workers for such period as the nature of the injury or the process of recovery may require. Medical necessity involves a showing that the medical services



are appropriate to the patient's diagnosis and status of recovery. The claimant has the burden of showing that such requested medical care is medically necessary by the use of medical evidence connecting the requested benefits and the compensable accident (i.e., providing proof that the injury and any resulting manifestations or disability must be established to a reasonable degree of medical certainty based upon objective relevant medical findings and the compensable injury must be the major contributing cause of the resulting injuries.) The court in this case ruled that the claimant failed to establish a causal relationship between the benefits sought and the workplace accident and therefore denied the medical care being claimed.

The JCC determined that the 120 day rule prevented the employer/carrier from asserting that there was no causal relationship between the accident and the medical care sought to be provided. However, the court distinguished between the employer/carrier's conceding compensability of a work accident versus accepting all subsequent claims for benefits. There is no question that an employer/carrier cannot deny compensability of a work accident after the 120 day period as provided for in §440.20(4), Florida Statutes, particularly where, as in this instance, the employer/carrier accepted the employee's injuries as compensable. However, this restriction does not preclude the employer/carrier from arguing that a work accident no longer remains the major contributing cause for the claimant's need for treatment or benefits, i.e., the employer/carrier might have waived its right to challenge compensability of the accident but retained the right to challenge other issues relevant to claimant's entitlement to benefits including major contributing cause. The JCC's denial of the employer/carrier's right to contest a claim for benefits in this instance based on the 120 day rule was reversed.

Detroit Tigers, Inc. v. Sodders

49 FLW D1267

6/12/2024

The issue in this case was the correct calculation of the claimant's average weekly wage. The claimant was a minor league pitcher for the employer whose salary was based upon the minor league sub-classification in which he was playing. His salary would be paid in a pre-determined amount during each month of the baseball season (7 months). The claimant was expected to perform services on a calendar year basis not just during the regular season of play such as playing in exhibition games, winter league games, and any post-season series.

The claimant was injured in a compensable accident and his average weekly wage was determined by the employer/carrier to be in an amount based upon the sub-classification of his job when the accident happened. It was agreed by the parties that the correct average weekly wage should be as determined by §440.14(1)(d), Florida Statutes, which requires computing the



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wages on a full-time weekly wage basis when the other criteria for calculating the AWW were not applicable.

Under §440.14(1)(d), Florida Statutes, the claimant's full-time wages are determined prospectively by using either the contract of employment or the actual earnings of the job where the claimant was working at the time of the accident.

In determining the full-time weekly wage of the claimant, the JCC had broad discretion in determining a fair and reasonable full-time weekly wage under §440.14(1)(d), Florida Statutes. The JCC, however, cannot reform contracts or affect a remedy not provided for in Chapter 440. Court determined that the JCC abused his discretion in rejecting the contract's express term governing the claimant's wages. The contract in this instance specifically said that the claimant would be paid a certain amount of money during the regular baseball season (a 7 month contract, not a year contract). There is no competent and substantial evidence that would suggest that the monthly payments would be for a year-long period as ruled by the JCC. Accordingly, full-time wages as calculated in determining average weekly wage should be based on what was agreed to in the contract between the claimant and the employer.