

May 28, 2024

What's New In Our Workers' Compensation Industry Florida

I. Legislative Branch

The following bills passed by the 2024 Legislative Session have either been signed by the Governor or otherwise not acted upon by the Governor. For these bills that have been signed by the Governor, the effective dates are noted below.

HB 989 - Emergency Service Medical Fees

1. Reimbursement for emergency services and care as defined in s. 395.002 which does not include a maximum reimbursement allowance are based on 250% of Medicare, unless there is a contract, in which case the contract governs reimbursement. Upon this subparagraph taking effect, the department shall engage with an actuarial services firm to begin development of maximum reimbursement allowances for services subject to the reimbursement provisions of this subparagraph. This subparagraph expires June 30, 2026.

Effective on becoming law – when signed by the Governor. Approved by the Governor on May 2. This new reimbursement allowance schedule relates dates of service on or after the date the Governor signed the bill into law.

SB 362 - Medical Provider Fees

Increases witness fee limits and reimbursement allowances for physicians and surgical procedures (hereinafter referenced as applicable providers) under Workers' Compensation Law.

1. Allows health care providers giving a deposition to charge a witness fee in an amount up to \$300 per hour, an increase from \$200.
2. Limits expert witness fees for applicable providers that have not provided direct services related to the case but have reviewed records, to \$300 per day, up from \$200.
3. Raises maximum reimbursement for applicable providers under chapters 458 or 459 to 175% of Medicare's reimbursement rate, up from the previous 110%.
4. Increases the maximum reimbursement for surgical procedures performed by applicable providers to 210% of Medicare rates or the level adopted by the three-member panel as of January 1, 2003, whichever is higher.

Effective Date: 1/1/2025 – Still has not been presented to the Governor for approval. New reimbursement allowances for dates of service on or after January 1, 2025

SB 808 – Selection of Medical Providers by Injured Worker

Permits firefighters, law enforcement officials, correctional officers, and correctional probation officers (hereinafter referred to as professionals) to choose to be treated by a medical specialist for specified conditions under defined circumstances.

1. Requires these professionals to notify their workers' compensation carrier, self-insured employer, or third-party administrator when selecting a medical specialist, unless in an emergency.
2. Mandates that the selected medical specialist (chosen by the professional) unless alternate medical care is selected by the employer/carrier within 5 business days is authorized of the request for care, with an appointment scheduled within 30 days.
3. Continuous care selected by medical specialists must be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension, reimbursed at no more than 200 percent of the Medicare rate.
4. Defines "medical specialist" as a physician with board certification in a specialty covering tuberculosis, heart disease, or hypertension.

Effective Date: 10/1/2024 – Presented to Governor for signature. The Governor must act on this bill by 6/5/24.

II. Executive Administrative Branch

Below are listed Administrative matters that are pending on appeal related to health care reimbursement interpretations under the Workers' Compensation Act. These cases are summarized with their pending status noted. If a more detailed explanation is needed, contact Ralph Douglas in our Tallahassee office who is handling this litigation on behalf of employer/carriers.

1. Practitioner Prescribed and Dispensed Medication: the First DCA Held Oral Argument in January regarding whether the DFS/DWC rules holding that a dispensing practitioner is legally a pharmacist and can prescribe and dispense medication if the authorized doctor is chosen to dispense by the injured worker. We anticipate an Appellate Order, possibly in the summer of 2024.
2. Hospital Reimbursement Manual: The issues in this case is whether the 2014 Hospital Reimbursement Manual's "Stop-Loss Reimbursement" Methodology for inpatient hospital treatment is valid. The issues have been briefed and we anticipate an Order from the First DCA sometime in 2024.
3. Hospital Stop-Loss Reimbursement Disputes and Mediation: The DFS has designated a Mediator for carriers and hospitals to mediate stop loss disputes. The DFS will pay for the mediator if carriers and hospitals agree to attend mediation on their pending 'stop-loss' disputes.
4. Hospital Reimbursement Manual: The issue in this case is whether the Three-Member Panel and the DWC invalidly exercised their authority in setting the amount of the Per-Diem Reimbursement in the 2020 Hospital Manual by failing to consider what other medical reimbursement programs reimburse (as required by statute) when setting the per

diem MRAs. The issues have been briefed and we anticipate an Order from the First DCA sometime in 2024.

III. Judicial Branch

Bottling Group LLC v. Bastien
49 FLW D906
4/24/24

Employer/carrier denied workers' compensation benefits to injured worker based on the fact that the accident and resulting injuries did not occur within the course and scope of the claimant's employment. Thereafter, the claimant filed a civil cause of action against the employer. The question in this case was whether the exclusive remedy defense provisions of the workers' compensation statute were waived by the employer's position in denying workers' compensation benefits that the accident was not within the claimant's course and scope of employment. In particular, can the employer/carrier deny that an accident was not in the course and scope of employment thereby denying workers' compensation benefits and when a civil cause of action is filed, claim that the accident is controlled by the terms of the workers' compensation statute because of the exclusive remedy provisions of the statute. Court determined that the employer/carrier was equitably estopped in asserting the exclusive remedy doctrine as a defense to the claimed civil liability for the accident. In this case, it was the workers' compensation carrier that had denied workers' compensation benefits. It was the employer's position that the employer could not be estopped from asserting exclusive remedy defenses by actions taken by the employer's workers' compensation carrier. This argument was rejected by the court. Equitable estoppel can also preclude the assertion of exclusive remedy defense by a carrier based on actions taken by the employer.

Girardin v. An Fort Myers Imports LLC d/b/a/ Autonation Toyota et al
49 FLW D990
5/8/24

Non-professional attendant care was awarded to the claimant for her husband's provision of various services. Attendant care (non-professional) was ordered based upon a generalized finding of all services provided. The JCC did not break down what services provided by the claimant's husband that would qualify for reimbursement under the Workers' Compensation Act. Accordingly, the judge's order was overturned on appeal. Non-professional attendant care that falls within the scope of household duties and other services normally and gratuitously provided by family members is not compensable pursuant to Section 440.13(1)(b), Florida Statutes. Much of what the claimant's husband did for the claimant included care for children, cooking, cleaning; however, chores such as cooking, cleaning and driving the kids to commercial stores are not the type of attendant care that is payable under the Workers' Compensation Act.

American Airlines Group v. Lopez
49 FLW D1103
5/22/24

Pursuant to Section 440.19(2), Florida Statutes, the payment of indemnity benefits and the furnishing of remedial treatment, care, and attendance tolls the running of the statute of limitations. The payment of attorney fees and costs is not a benefit and thus is not considered a tolling event. The "reservation" over amount of fees and costs does not toll the statute of limitations.

Palm Beach County School District v. Smith
49 FLW D1105
5/22/24

Petition(s) filed requesting the payment of multiple types of benefits. Some of the benefits claimed were granted and others denied. Still other claims were voluntarily dismissed by the claimant. The question in this case is related to an order for payment of costs was whether multiple orders denying costs would be payable when some of the claimed benefits were denied and others granted. Some of the claimed benefits or petitions were withdrawn. For those petitions for benefits that were withdrawn, the employer/carrier became the "prevailing party" and therefore would be entitled to the payment of costs pursuant to Section 440.34(3), Florida Statutes. Even though some benefits were awarded for claims for the payment of attorney's fees related to other claimed benefits, the JCC can still award costs payable to the employer/carrier for those claims that were denied or withdrawn.