

# MEMORANDUM

**Date:** September 9, 2003  
**To:** Safety Officers, WC Coordinators  
**FROM:** Denzil Weimorts  
**RE:** Statutory Changes for Chapter 440 (Senate Bill 50A)

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The Legislature passed Senate Bill 50A that substantially changes Chapter 440. Below is a summary of most of the changes that will determine how our program adjusts workers' compensation claims in the future. The changes, unless otherwise stated in the act, will become effective October 1, 2003.

## **Definitions (440.02)**

**Accident:** adds the following to definition; "An injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus or mold, is not an injury by accident arising out of employment unless there is clear and convincing evidence.....".

**Catastrophic injury:** definition now only includes a permanent impairment constituted by the loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, or paraplegia or quadriplegia. No longer included are injuries that otherwise qualify injured employee for Social Security disability.

## **Coverage (440.09)**

**Major contributing cause:** The injury, its occupational cause, and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries. For purposes of this section, "major contributing cause" means the cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence. Pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable. .... Major contributing cause must be demonstrated by medical evidence only.

**"intentionally engaged in any criminal act for the purpose of securing workers' compensation benefits":** for the purpose of this section, "intentional" shall include, but is not limited to, pleas of guilty or nolo contendere in criminal matters. This section shall apply to accidents, regardless of the date of the accident. For injuries occurring prior to January 1, 1994, this section shall pertain to the acts of the employee described in s. 440.105 or criminal activities occurring subsequent to January 1, 1994. ....

### **Mental or nervous injuries (440.093)**

A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. (This was moved from 440.02(1), Definitions.) Section 440.093 was added and deals with mental or nervous injuries. States that the physical injury must be and remain the major contributing cause.....limits the payment of permanent benefits for mental or nervous injury to 3 months following date of MMI for the physical injury. Mental & nervous injuries are only compensable in accordance with the terms of this section.

### **Medical Services (440.13)**

**Professional or Nonprofessional Attendant Care:** The physician shall prescribe such care in writing. The employer or carrier shall not be responsible for such care until the prescription for attendant care is received by the employer and carrier, which shall specify the time periods for such care, the level of care required, and the type of assistance required. A prescription for attendant care shall not prescribe such care retroactively.

**Chiropractic Care:** increases treatment limits from 18 to 24 treatments or from 8 to 12 weeks beyond date of the initial chiropractic treatment.

**Initial treatment:** the employee is not entitled to recover any amount personally expended for the initial treatment or care unless he or she has requested the employer to furnish that initial treatment or service and the employer failed, refused, or neglected to do so within a reasonable time or unless the nature of injury requires such initial treatment, nursing, and services and the employer or his or her superintendent or foreman, having knowledge of the injury, has neglected to provide the initial treatment or care.

**Change of Physician:** Upon the granting of a change of physician, the originally authorized physician in the same specialty shall become deauthorized upon written notification by the E/C. The carrier shall authorize an alternative physician who shall not be professionally affiliated with the previous physician within 5 days after receipt of the request. If the carrier fails to provide a change of physician as requested by the employee, the employee may select the physician and such physician shall be considered authorized if the treatment being provided is compensable and medically necessary.

**Physician-patient privilege:** an employee who reports an injury or illness to be work-related waives any physician-patient privilege with respect to any condition or complaint reasonable related to the condition which the employee claims compensable. Release of medical information by health care provider does not require the authorization of the employee. If the medical provider is outside of Florida, the employee shall sign an authorization allowing the E/C access to medical records.

**Independent Medical Examinations:** The employer and employee shall be entitled to only one IME per accident and not one IME per medical specialty. The party requesting and selecting the IME shall be responsible for all expenses associated with said examination. If the employee prevails in a medical dispute as determined in an order by a JCC or if benefits are paid or treatment provided after the employee has obtained an IME based upon the examiner's findings, the costs of such examination shall be paid by the E/C. The E/C is not responsible for scheduling any IME other than an the E/C IME.

**Timely Payment of Medical Bills:** the department shall monitor and audit carriers as provided in s. 624.3161, to determine if medical bills are paid timely. E/C may be subject to fine, for each late payment that is below the minimum 95-percent performance standard (this was changed from 90-percent).

**Reimbursements to Medical Providers:** It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increased through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following: 1) Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers. 2) Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule that applies to nonhospital providers. 3) Outpatient reimbursement for scheduled surgeries shall be reduced from 75% to 60% of charges. 4) Maximum reimbursement for physician licensed under chapter 458 or 459 shall be increased to 110% of reimbursement allowed by Medicare. 5) Maximum reimbursement for surgical procedures shall be increased to 140% of reimbursement allowed by Medicare.

#### **Managed Care (440.134)**

**Grievance:** means a written complaint, other than a petition for benefits, filed by the injured worker pursuant to the requirements of the managed care arrangement, expressing dissatisfaction with the insurer's workers' compensation managed care arrangement's refusal to provide medical care or the medical care provided.

**Medical Care Coordinator:** expanded to include a chiropractic physician licensed under chapter 460, or a podiatric physician licensed under chapter 461.

#### **Determination of Pay (440.14)**

Changed language from "the time of injury" to " the date of the accident. AWW is determined by wages from the 13 calendar weeks before the date of accident, excluding the calendar week during which the accident occurred. Also, "substantially the whole of 13 weeks" has been changed from 90% to 75%.

#### **Compensation for Disability (440.15)**

**Permanent total disability:** A catastrophic injury as defined in s. 440.02(38) shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability (PTD). This removes the "otherwise qualify for social security disability" as a qualifier for PTD eligibility. In all other cases, no compensation for PTD shall be payable if the employee is engaged in, or is physically capable of engaging in at least sedentary employment.

PTD benefits shall be payable until the employee reaches age 75, notwithstanding any age limits. If the accident occurred on or after the employee reaches age 70, benefits shall be payable during the continuance of PTD, not to exceed 5 years following the determination of PTD.

For injuries occurring after June 30, 1955, the injured employee is entitled to receive additional weekly compensation benefits equal to 3% (changed from 5%) of the weekly compensation rate, multiplied by the number of calendar years since date of injury (limited by the maximum compensation rate in year of payment). These supplemental payments shall not be paid or payable after the employee reaches age 62.

**Permanent impairment benefits:** Benefits are due and payable within 14 days (changed from 20 days) after the carrier has knowledge of the impairment. Benefits are paid bi-weekly (changed from weekly) at the rate of 75% (changed from 50%) of the employee's average weekly temporary total disability benefit; provided however, that such benefits shall be reduced by 50% for each week in which the employee has earned income equal to or in excess of the employee's AWW.

Impairment income benefits are only payable for impairment ratings for physical impairments. If objective medical findings can substantiate a permanent psychiatric impairment resulting from the accident, permanent impairment benefits are limited to 1% for permanent psychiatric impairment.

Notwithstanding permanent impairment benefits, for accidents occurring on or after October 1, 2003, entitlement to impairment income benefits begins on the day after employee reaches MMI or the expiration of temporary benefits, whichever occurs earlier, and continues for the following periods:

1. Two weeks of benefits are paid for each percentage point of impairment from 1 percent up to and including 10%.
2. Three weeks for each percentage point from 11% up to and including 15%.
3. Four weeks for each percentage point from 16% up to and including 20%.
4. Six weeks for each percentage point from 21% or higher.

**Temporary partial disability:** New rules for processing payments, though benefit amounts are calculated the same. Also, if employee is terminated from post injury employment based on the employee's misconduct, or if employee leaves employment while receiving temporary partial benefits without just cause, temporary partial benefits are not payable.

### **Occupational diseases (440.151)**

Occupational disease means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.

### **Compensation for Death (440.16)**

Funeral expenses are increased from \$5,000 to \$7,500. Compensation for eligible dependents is increased from \$100,000 to \$150,000.

### **Procedure for resolving benefit disputes (440.192)**

Petition for benefits must meet the definition of specificity in s. 440.02. A petition must contain claims for all benefits that are ripe, due, and owing on the date the petition is filed.

### **Alternate dispute resolution; claim arbitration (440.1926)**

The E/C and employee may mutually agree to seek consent from a JCC to enter into binding claim arbitration in lieu of any other remedy provided for in this chapter.

**Time for payment of compensation and medical bills; penalties for late payment (440.20)**

Increase from 30 days to 45 days the time for processing pharmacy bills. Changes penalty for late payment of compensation to 20% of unpaid installment, removing “or \$5” whichever is most. For medical services provided on or after January 1, 2004, increasing the minimum timely performance standard from 90% to 95%. Provides for new penalty amounts for late payment of medical bills that do not meet 95% standard.

With respect to lump-sum settlement under this subsection, states “an employer or carrier does not have a duty to investigate or collect information regarding child support arrearages.”

**Attorney fees; costs (440.34)**

Any attorney’s fees approved by a JCC for benefits secured on behalf of a claimant must equal 20% of first \$5,000 of benefits secured, 15% of next \$5,000 of benefits secured, 10% of remaining benefits secured for the 10 years following filing of claim, and 5% of the benefits secured after 10 years. Basically does away with the “hourly” attorney fee with the exception of the following: The JCC may approve an alternative attorney’s fee not to exceed \$1,500 only once per accident, on a maximum of \$150 per hour, if the JCC expressly finds that attorney fee based on benefits secured fails to fairly compensate for disputed medical-only claim.

Also added to the section is: “If any party should prevail in any proceedings before a JCC or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney’s fees.