

# Dispute Resolution: Current Policy Initiatives

House Bill (HB) 1803 was passed during the 2001 legislative session, authorizing a number of changes in the dispute resolution process, as summarized below. DWC involvement with PFB docketing is eliminated. PFBs must include additional specificity. A PFB may be dismissed in part without prejudice. To deny benefits requested on a PFB, carriers will file a “response to petition” with the Division of Administrative Hearings. The claimant or adjuster may attend a mediation conference by electronic means. Written consent of a claimant is required for an additional continuance after the first. Conditions for permitting a lump-sum settlement are modified. If all parties are represented, a mutually agreeable lump-sum settlement does not require JCC approval, except as to attorney fees. JCCs may issue an abbreviated final order in cases where compensability is not denied. The OJCC is directed to develop rules for gathering data necessary for a review of judges’ performance with respect to statutory requirements.

Unlike the 2000 session, a large number of bills were submitted this year relating to various facets of dispute resolution in the workers’ compensation system. In fact, almost all of the provisions in HB 1803 were also listed in other proposed legislation: most notably House Bills 1775 and 1927 and Senate Bills 1188, 1926, 1984, 2212, and 2266. A review of proposed legislation that did *not* pass may be helpful in predicting provisions of the current law that are likely to face future scrutiny and possible revisions in future legislation. In fact, readers of last year’s Dispute Resolution Report will note that almost every major provision relating to dispute resolution in HB 1149,

which did not pass in the 2000 legislative session, reappeared in HB 1803 in this year’s session. The following is a list of major dispute resolution proposals in the seven unsuccessful bills listed above. It is unlikely that this listing will prove as prophetic as that in last year’s report due to the wide range of issues addressed and the fact that some provisions are at odds with one another.

■ *Informal dispute resolution:* There were proposals to eliminate the RFA process, and other bills specifically authorized the division to participate in early intervention efforts. As noted elsewhere in this report, there has already been some shifting of division resources from the RFA to the EIP process since the division itself has supported elimination of the RFA process in favor of a more proactive approach. Thus, it was thought that there should also be legislation giving the division specific authority to contact an injured worker or the worker’s representative directly upon receipt of a notice of injury or death. Another bill provided that the informal dispute resolution process would be considered exhausted if a workers’ compensation managed care arrangement did not respond to a grievance within 30 days of filing.

■ *Petitions for Benefits:* The provisions of HB 1803 were repeated in a number of the other bills, particularly as they relate to partial dismissal of a PFB, renaming the “notice of denial,” and requiring additional specificity in the PFB. There were also various proposals to delete: a service by certified mail requirement for filing a PFB, the petition requirement

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for certification of a good faith effort to resolve the dispute, and the requirement that a worker exhaust the informal dispute resolution process before filing a PFB. Another bill permitted raising grounds for dismissal for lack of specificity up to the time of filing of the pretrial stipulation.

■ *Mediation:* There were proposals to specifically authorize the use of private mediation and a requirement that pretrial stipulations be completed at mediation.

■ *Continuances:* This topic was addressed in other bills, as well as in HB 1803, which requires written consent of the claimant. Other bills required the reporting of multiple continuances or that the continuance must specify the rescheduled date by order.

■ *Statutory Time Lines:* In keeping with the concerns expressed in the October 1999 report of the Committee on Insurance of the Florida House of Representatives, “Resolving Workers’ Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration,” several bills proposed tightening of, or more strictly adhering to, the specified time frame for steps in the dispute resolution process. Two bills would have permitted expedited resolution of certain medical-only claims and those involving specific issues. In contrast, another bill called for the repeal of s. 440.25(4)(j) relating to expedited hearings involving claims for \$5,000 or less.

■ *Attorney Fees and Costs:* The continuing controversy regarding attorney involvement in the workers’ compensation dispute resolution process is shown in the fact that all seven bills addressed the topic of attorney’s fees, although sometimes in contradictory ways. There were both House and Senate versions of bills that would strictly limit attorney fees to the statutory formula. (See the subsection above on Attorney Fees and Costs.) There were also proposals to prohibit attorney fees on specified issues, such as

average weekly wage, medical mileage, independent medical examinations, and some limited-cost medical issues. In contrast, another piece of proposed legislation increased the attorney fee schedule and allowed additional fees of up to \$2,500 if the JCC expressly found that the fees based on benefits secured failed to fairly compensate the attorney. Another bill allowed additional fees of \$1,000 to be paid in medical-only claims and specified that attorney fees would attach 30 days after the filing of a PFB. There were also conflicts among proposed bills regarding responsibility for payment. One bill deleted the entitlement of claimant recovery of attorney fees as specified by s. 440.34(3) F.S., while another provided that the employer was responsible for an employee’s attorney fees and costs in any proceeding before a JCC. In related topics, proposed legislation prohibited use of a mediation conference for the sole purpose of mediating attorney fees and required JCCs to review all settlement proposals, stipulations, and agreements between the claimant and attorney for compliance with the provision concerning attorney fees.

■ *Miscellaneous:* Other provisions in unsuccessful legislation related to dispute resolution included: authorizing a JCC to settle a dispute between two doctors relating to impairment; eliminating JCC jurisdiction over medical bill disputes; providing that injured workers receive all reports at the same time their attorney and the carrier’s attorney receive them; revising the list of evidentiary items; providing that the employer has no duty to preserve evidence in cases of injuries where third parties are liable; providing for a motion to dismiss for lack of prosecution if no recorded activity has been taken on a petition for a period of one year; and prohibiting award of interest on unpaid medical bills.