



REFRESHER: PCB COM 18-01 WORKERS' COMPENSATION

BACKGROUND

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries. Florida courts have recently found multiple parts of Florida's workers' compensation laws unconstitutional in the areas of attorney fees, time limits on temporary wage replacement benefits, and the right of an injured worker to pay for their own attorney.

Last session's workers' compensation bill, CS/HB 7085, passed the House, but died in Senate Returning Messages. It was reintroduced by the Commerce Committee and will be handled by Chair Burgess. It was reported favorably as a Committee Bill on November 14, 2017.

The bottom line: PCB COM 18-01 addresses the recent court rulings and would amend Florida's workers' compensation laws to uphold the Legislature's stated intent behind workers compensation: "to ensure the quick and efficient delivery of disability and medical benefits to injured workers and to facilitate their return to gainful reemployment at a reasonable cost to the employer."

BILL HIGHLIGHTS

The bill addresses the right of an injured worker to pay for their own attorney (*Miles case*).

- Under the legislation, injured workers are now able to pay for their own attorney, when previously this was prohibited.

The bill addresses temporary wage replacement benefits (*Westphal and Jones cases*).

- The bill increases temporary wage replacement benefits from 104 weeks to 260 weeks combined, and fills the gap between temporary and permanent wage replacement benefits for certain injured workers.
- When merited, these changes will help injured workers receive continuous benefits, whereas before they did not.

The bill addresses issues involving attorney fees (*Castellanos case*).

- The current fee structure for attorneys is percentage based. That is, attorneys are paid by the insurer based on a percentage of the amount of benefits the attorney obtains for their client. In some cases; however, the value of the benefit obtained in court is too low to fairly compensate an attorney for their time. In *Castellanos*, the court found this caused an access to courts issue. In short, the fee structure was preventing some injured workers from obtaining representation and getting their day in court. To correct this, the Supreme Court resurrected hourly attorney fees as an alternative to the current percentage based fee.



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- The bill allows for hourly attorney fees only in certain instances. This ensures injured workers can find an attorney, but limits the cost impact on the system.

The bill increases opportunities for competition.

- The bill allows insurers to decrease premiums by a uniform percentage not to exceed 5 percent, subject to regulatory review (but not preapproval).
 - Giving insurers the opportunity to offer lower premiums creates competition that benefits the consumer. Previously this was not an option without burdensome regulatory filings.

The bill addresses system cost drivers.

- Controls incentives for attorney involvement.
 - The insurer would no longer pay fees on pre-litigation attorney services.
 - Gives more opportunity for insurers to accept claims without suffering attorney fees by attaching attorney fees after 45 days instead of 30 days.
 - Increases specificity of information necessary to establish the facts of a case in a petition.
- Collects additional data on the cost of attorneys for the plaintiff and the defense.
 - Retainer agreements have to be filed with the Judge of Compensation Claims.
 - More details will be collected on insurer defense fees. This includes total amount paid and attorney hours incurred on litigated claims, and total amount paid that is unrelated to litigation.
- Moves to Medicare based reimbursement for most outpatient medical procedures.
 - Having Medicare based reimbursement for most outpatient procedures eliminates the opportunity for providers to increase reimbursements by simply increasing charges.
- Enhances preauthorization requirements for recommended medical treatment.
 - Requires insurers to authorize or deny medical authorization requests within three business days, unless there are incomplete/missing forms or documentation.