

1 A bill to be entitled

2 An act relating to workers' compensation; amending s.
3 440.02, F.S.; revising definition of the term
4 "specificity"; amending s. 440.105, F.S.; deleting a
5 criminal penalty with respect to attorneys receiving
6 certain fees not approved by a judge of compensation
7 claims; amending s. 440.13, F.S.; revising the period
8 within which a carrier must authorize an employee to
9 make a one-time change of authorized physicians;
10 amending s. 440.192, F.S.; revising criteria requiring
11 the Office of the Judges of Compensation Claims to
12 dismiss a petition for benefits; requiring the
13 claimant or attorney to make a good faith effort to
14 resolve a dispute before filing a petition; requiring
15 the dismissal of petitions and authorizing sanctions
16 for failing to make such a good faith effort;
17 specifying that prejudice does not attach to dismissal
18 of a petition; requiring that the judge of
19 compensation claims enter an order on a motion for
20 dismissal for lack of specificity within a specified
21 time; revising the time within which a claimant must
22 file an amended petition after dismissal for lack of
23 specificity; deleting a provision prohibiting the
24 award of certain attorney fees payable by the carrier,
25 to conform to changes made by the act; amending s.
26 440.34, F.S.; providing that a claimant in workers'
27 compensation proceedings is responsible for payment of
28 her or his attorney fees; prohibiting a judge of
29 compensation claims from awarding attorney fees
30 payable by the carrier or employer; revising
31 provisions requiring the approval by a judge of

32 compensation claims of attorney fees payable by a
33 claimant and retainer agreements between a claimant
34 and her or his attorney; deleting provisions for the
35 award of attorney fees payable by a carrier or
36 employer, to conform; creating s. 440.341, F.S.;
37 requiring that the reasonable costs of workers'
38 compensation proceedings be taxed against the
39 nonprevailing party; amending s. 440.45, F.S.;
40 deleting a cross-reference, to conform; providing an
41 effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Subsection (40) of section 440.02, Florida
46 Statutes, is amended to read:

47 440.02 Definitions.—When used in this chapter, unless the
48 context clearly requires otherwise, the following terms shall
49 have the following meanings:

50 (40) "Specificity" means information on the petition for
51 benefits sufficient to put the employer or carrier on notice of
52 the exact statutory classification and outstanding time period
53 for each requested benefit, the specific amount of each
54 requested benefit, the calculation used for computing the
55 requested benefit, ~~of benefits being requested~~ and includes a
56 detailed explanation of any benefits received that should be
57 increased, decreased, changed, or otherwise modified. If the
58 petition is for medical benefits, the information shall include
59 specific details as to why such benefits are being requested,
60 why such benefits are medically necessary, and why current
61 treatment, if any, is not sufficient. Any petition requesting
62 alternate or other medical care, including, but not limited to,

63 petitions requesting psychiatric or psychological treatment,
64 must specifically identify the physician, as defined in s.
65 440.13(1), who is recommending such treatment. A copy of a
66 report from such physician making the recommendation for
67 alternate or other medical care shall also be attached to the
68 petition. A judge of compensation claims shall not order such
69 treatment if a physician is not recommending such treatment.

70 Section 2. Paragraph (c) of subsection (3) of section
71 440.105, Florida Statutes, is amended to read:

72 440.105 Prohibited activities; reports; penalties;
73 limitations.—

74 (3) Whoever violates any provision of this subsection
75 commits a misdemeanor of the first degree, punishable as
76 provided in s. 775.082 or s. 775.083.

77 ~~(c) It is unlawful for any attorney or other person, in
78 his or her individual capacity or in his or her capacity as a
79 public or private employee, or for any firm, corporation,
80 partnership, or association to receive any fee or other
81 consideration or any gratuity from a person on account of
82 services rendered for a person in connection with any
83 proceedings arising under this chapter, unless such fee,
84 consideration, or gratuity is approved by a judge of
85 compensation claims or by the Deputy Chief Judge of Compensation
86 Claims.~~

87 Section 3. Paragraph (f) of subsection (2) of section
88 440.13, Florida Statutes, is amended to read:

89 440.13 Medical services and supplies; penalty for
90 violations; limitations.—

91 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

92 (f) Upon the written request of the employee, the carrier
93 shall give the employee the opportunity for one change of

94 physician during the course of treatment for any one accident.
95 Upon the granting of a change of physician, the originally
96 authorized physician in the same specialty as the changed
97 physician shall become deauthorized upon written notification by
98 the employer or carrier. The carrier shall authorize an
99 alternative physician who shall not be professionally affiliated
100 with the previous physician within 5 days, excluding Saturdays,
101 Sundays, and legal holidays, after receipt of the request. If
102 the carrier fails to provide a change of physician as requested
103 by the employee, the employee may select the physician and such
104 physician shall be considered authorized if the treatment being
105 provided is compensable and medically necessary.

106
107 Failure of the carrier to timely comply with this subsection
108 shall be a violation of this chapter and the carrier shall be
109 subject to penalties as provided for in s. 440.525.

110 Section 4. Subsections (2), (4), (5), and (7) of section
111 440.192, Florida Statutes, are amended to read:

112 440.192 Procedure for resolving benefit disputes.—

113 (2) Upon receipt, the Office of the Judges of Compensation
114 Claims shall review each petition and shall dismiss each
115 petition or any portion of such a petition that does not on its
116 face meet the requirements of this section and the definition of
117 specificity in s. 440.02 and specifically identify or itemize
118 the following:

119 (a) The name, address, and telephone number, ~~and social~~
120 ~~security number~~ of the employee.

121 (b) The name, address, and telephone number of the
122 employer.

123 (c) A detailed description of the injury and cause of the
124 injury, including the Florida county or, if outside of Florida,

125 the state location of the occurrence and the date or dates of
126 the accident.

127 (d) A detailed description of the employee's job, work
128 responsibilities, and work the employee was performing when the
129 injury occurred.

130 (e) The specific time period for which compensation and
131 the specific classification of compensation were not timely
132 provided.

133 (f) The specific date of maximum medical improvement,
134 character of disability, and specific statement of all benefits
135 or compensation that the employee is seeking. A claim for
136 permanent benefits must include the specific date of maximum
137 medical improvement and the specific date that such permanent
138 benefits are claimed to begin.

139 (g) All specific travel costs to which the employee
140 believes she or he is entitled, including dates of travel and
141 purpose of travel, means of transportation, and mileage and
142 including the date the request for mileage was filed with the
143 carrier and a copy of the request filed with the carrier.

144 (h) A specific listing of all medical charges alleged
145 unpaid, including the name and address of the medical provider,
146 the amounts due, and the specific dates of treatment.

147 (i) The type or nature of treatment care or attendance
148 sought and the justification for such treatment. If the employee
149 is under the care of a physician for an injury identified under
150 paragraph (c), a copy of the physician's request, authorization,
151 or recommendation for treatment, care, or attendance must
152 accompany the petition.

153 (j) If the average weekly wage calculated by the employer
154 or carrier is disputed, the specific amount of compensation
155 claimed to be accurate and the methodology claimed to accurately

156 calculate the average weekly wage. If the petition does not
157 include a claim under this paragraph, the average weekly wage
158 and corresponding compensation calculated by the employer or
159 carrier are presumed to be accurate.

160 ~~(k)(j)~~ A specific explanation of any other disputed issue
161 that a judge of compensation claims will be called to rule upon.

162
163 ~~The~~ Dismissal of any petition or portion of such a petition
164 under this subsection ~~section~~ is without prejudice and does not
165 require a hearing.

166 (4) Before filing a ~~The~~ petition, ~~must include a~~
167 ~~certification by~~ the claimant or, if the claimant is represented
168 by counsel, the claimant's attorney, must make ~~stating that the~~
169 ~~claimant, or attorney if the claimant is represented by counsel,~~
170 ~~has made~~ a good faith effort to resolve the dispute. A petition
171 for benefits must include a certification by the claimant or, if
172 the claimant is represented by counsel, the claimant's attorney,
173 ~~and~~ that the claimant or attorney made such a good faith effort
174 but were ~~was~~ unable to resolve the dispute with the carrier or
175 employer, if self-insured. Upon determining that the claimant
176 or, if the claimant is represented by counsel, the claimant's
177 attorney, has not made such a good faith effort to resolve the
178 dispute, the judge of compensation claims shall dismiss the
179 petition and may impose sanctions to ensure compliance with this
180 subsection. Certification by the division that the claimant or
181 attorney has made a good faith effort to resolve the dispute is
182 prima facie evidence of compliance with this subsection.

183 (5) (a) All motions to dismiss must state with
184 particularity the basis for the motion. The judge of
185 compensation claims shall enter an order upon such motions
186 without hearing, unless good cause for hearing is shown.

187 Dismissal of any petition or portion of a petition under this
188 subsection is without prejudice.

189 (b) Upon motion that a petition or portion of a petition
190 be dismissed for lack of specificity, the judge of compensation
191 claims shall enter an order on the motion, unless stipulated in
192 writing by the parties, within 10 days after the motion is filed
193 or, if good cause for hearing is shown, within 20 days after
194 hearing on the motion. When any petition or portion of a
195 petition is dismissed for lack of specificity under this
196 subsection, the claimant must be allowed 10 ~~20~~ days after the
197 date of the order of dismissal in which to file an amended
198 petition. Any grounds for dismissal for lack of specificity
199 under this section which are not asserted within 30 days after
200 receipt of the petition for benefits are ~~thereby~~ waived.

201 ~~(7) Notwithstanding the provisions of s. 440.34, a judge~~
202 ~~of compensation claims may not award attorney's fees payable by~~
203 ~~the carrier for services expended or costs incurred prior to the~~
204 ~~filing of a petition that does not meet the requirements of this~~
205 ~~section.~~

206 Section 5. Section 440.34, Florida Statutes, is amended to
207 read:

208 440.34 Attorney ~~Attorney's~~ fees; costs.—

209 ~~(1)~~ A claimant is responsible for payment of her or his
210 own attorney fees fee, gratuity, or other consideration may not
211 be paid for a claimant in connection with any proceedings
212 arising under this chapter, and a judge of compensation claims
213 may not award attorney fees payable by the carrier or employer.
214 Any retainer agreement between a claimant and her or his
215 attorney must be unless approved by the judge of compensation
216 claims or court having jurisdiction over such proceedings as
217 consistent with The Florida Bar's rules of professional conduct,

218 and attorney fees payable by the claimant must be approved by
219 the judge of compensation claims to ensure compliance with the
220 retainer agreement. ~~Any attorney's fee approved by a judge of~~
221 ~~compensation claims for benefits secured on behalf of a claimant~~
222 ~~must equal to 20 percent of the first \$5,000 of the amount of~~
223 ~~the benefits secured, 15 percent of the next \$5,000 of the~~
224 ~~amount of the benefits secured, 10 percent of the remaining~~
225 ~~amount of the benefits secured to be provided during the first~~
226 ~~10 years after the date the claim is filed, and 5 percent of the~~
227 ~~benefits secured after 10 years. The judge of compensation~~
228 ~~claims shall not approve a compensation order, a joint~~
229 ~~stipulation for lump sum settlement, a stipulation or agreement~~
230 ~~between a claimant and his or her attorney, or any other~~
231 ~~agreement related to benefits under this chapter which provides~~
232 ~~for an attorney's fee in excess of the amount permitted by this~~
233 ~~section. The judge of compensation claims is not required to~~
234 ~~approve any retainer agreement between the claimant and his or~~
235 ~~her attorney. The retainer agreement as to fees and costs may~~
236 ~~not be for compensation in excess of the amount allowed under~~
237 ~~this subsection or subsection (7).~~

238 ~~(2) In awarding a claimant's attorney's fee, the judge of~~
239 ~~compensation claims shall consider only those benefits secured~~
240 ~~by the attorney. An attorney is not entitled to attorney's fees~~
241 ~~for representation in any issue that was ripe, due, and owing~~
242 ~~and that reasonably could have been addressed, but was not~~
243 ~~addressed, during the pendency of other issues for the same~~
244 ~~injury. The amount, statutory basis, and type of benefits~~
245 ~~obtained through legal representation shall be listed on all~~
246 ~~attorney's fees awarded by the judge of compensation claims. For~~
247 ~~purposes of this section, the term "benefits secured" does not~~
248 ~~include future medical benefits to be provided on any date more~~

249 ~~than 5 years after the date the claim is filed. In the event an~~
250 ~~offer to settle an issue pending before a judge of compensation~~
251 ~~claims, including attorney's fees as provided for in this~~
252 ~~section, is communicated in writing to the claimant or the~~
253 ~~claimant's attorney at least 30 days prior to the trial date on~~
254 ~~such issue, for purposes of calculating the amount of attorney's~~
255 ~~fees to be taxed against the employer or carrier, the term~~
256 ~~"benefits secured" shall be deemed to include only that amount~~
257 ~~awarded to the claimant above the amount specified in the offer~~
258 ~~to settle. If multiple issues are pending before the judge of~~
259 ~~compensation claims, said offer of settlement shall address each~~
260 ~~issue pending and shall state explicitly whether or not the~~
261 ~~offer on each issue is severable. The written offer shall also~~
262 ~~unequivocally state whether or not it includes medical witness~~
263 ~~fees and expenses and all other costs associated with the claim.~~

264 ~~(3) If any party should prevail in any proceedings before~~
265 ~~a judge of compensation claims or court, there shall be taxed~~
266 ~~against the nonprevailing party the reasonable costs of such~~
267 ~~proceedings, not to include attorney's fees. A claimant is~~
268 ~~responsible for the payment of her or his own attorney's fees,~~
269 ~~except that a claimant is entitled to recover an attorney's fee~~
270 ~~in an amount equal to the amount provided for in subsection (1)~~
271 ~~or subsection (7) from a carrier or employer:~~

272 ~~(a) Against whom she or he successfully asserts a petition~~
273 ~~for medical benefits only, if the claimant has not filed or is~~
274 ~~not entitled to file at such time a claim for disability,~~
275 ~~permanent impairment, wage loss, or death benefits, arising out~~
276 ~~of the same accident;~~

277 ~~(b) In any case in which the employer or carrier files a~~
278 ~~response to petition denying benefits with the Office of the~~
279 ~~Judges of Compensation Claims and the injured person has~~

280 ~~employed an attorney in the successful prosecution of the~~
281 ~~petition;~~

282 ~~(c) In a proceeding in which a carrier or employer denies~~
283 ~~that an accident occurred for which compensation benefits are~~
284 ~~payable, and the claimant prevails on the issue of~~
285 ~~compensability; or~~

286 ~~(d) In cases where the claimant successfully prevails in~~
287 ~~proceedings filed under s. 440.24 or s. 440.28.~~

288

289 ~~Regardless of the date benefits were initially requested,~~
290 ~~attorney's fees shall not attach under this subsection until 30~~
291 ~~days after the date the carrier or employer, if self-insured,~~
292 ~~receives the petition.~~

293 ~~(4) A claimant's In such cases in which the claimant is~~
294 ~~responsible for the payment of her or his own attorney~~
295 ~~attorney's fees, such fees are a lien upon compensation payable~~
296 ~~to the claimant, notwithstanding s. 440.22.~~

297 ~~(5) If any proceedings are had for review of any claim,~~
298 ~~award, or compensation order before any court, the court may~~
299 ~~award the injured employee or dependent an attorney's fee to be~~
300 ~~paid by the employer or carrier, in its discretion, which shall~~
301 ~~be paid as the court may direct.~~

302 ~~(6) A judge of compensation claims may not enter an order~~
303 ~~approving the contents of a retainer agreement that permits~~
304 ~~placing any portion of the employee's compensation into an~~
305 ~~escrow account until benefits have been secured.~~

306 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
307 ~~the judge of compensation claims may approve an alternative~~
308 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
309 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
310 ~~compensation claims expressly finds that the attorney's fee~~

311 ~~amount provided for in subsection (1), based on benefits~~
312 ~~secured, fails to fairly compensate the attorney for disputed~~
313 ~~medical-only claims as provided in paragraph (3)(a) and the~~
314 ~~circumstances of the particular case warrant such action.~~

315 Section 6. Section 440.341, Florida Statutes, is created
316 to read:

317 440.341 Costs.—If any party should prevail in any
318 proceedings before a judge of compensation claims or court,
319 there shall be taxed against the nonprevailing party the
320 reasonable costs of such proceedings, not to include attorney
321 fees.

322 Section 7. Paragraph (c) of subsection (2) of section
323 440.45, Florida Statutes, is amended to read:

324 440.45 Office of the Judges of Compensation Claims.—
325 (2)

326 (c) Each judge of compensation claims shall be appointed
327 for a term of 4 years, but during the term of office may be
328 removed by the Governor for cause. Prior to the expiration of a
329 judge's term of office, the statewide nominating commission
330 shall review the judge's conduct and determine whether the
331 judge's performance is satisfactory. Effective July 1, 2002, in
332 determining whether a judge's performance is satisfactory, the
333 commission shall consider the extent to which the judge has met
334 the requirements of this chapter, including, but not limited to,
335 the requirements of ss. 440.25(1) and (4)(a)-(e), ~~440.34(2)~~, and
336 440.442. If the judge's performance is deemed satisfactory, the
337 commission shall report its finding to the Governor no later
338 than 6 months prior to the expiration of the judge's term of
339 office. The Governor shall review the commission's report and
340 may reappoint the judge for an additional 4-year term. If the
341 Governor does not reappoint the judge, the Governor shall inform

342 the commission. The judge shall remain in office until the
343 Governor has appointed a successor judge in accordance with
344 paragraphs (a) and (b). If a vacancy occurs during a judge's
345 unexpired term, the statewide nominating commission does not
346 find the judge's performance is satisfactory, or the Governor
347 does not reappoint the judge, the Governor shall appoint a
348 successor judge for a term of 4 years in accordance with
349 paragraph (b).

350 Section 8. This act shall take effect July 1, 2017.