



## Preliminary Cost Impact Analysis

### Florida Senate Bill 1582

As Received on 3/3/2017

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**NCCI has completed a preliminary cost impact analysis of Florida Senate Bill (SB) 1582. This analysis includes a description of each proposed change and a range of the potential magnitude and direction of its cost impact.**

The analysis was completed in an expedited manner and is considered preliminary. NCCI may supplement this document with a complete and final analysis of the bill at a later date. It is possible that the estimated impact of the final analysis will differ materially from what is provided in this document. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI's final assessment of the cost impact of the bill.

### Preliminary Cost Impacts

**NCCI estimates that the combination of the proposed changes outlined below would result in a small to moderate<sup>1</sup> decrease on overall workers compensation (WC) system costs in Florida.**

### Summary and Analysis

#### Attorney Fees

SB 1582, if enacted, would result in the following changes to attorney fees:

- Allow attorneys to accept fees paid directly by or on behalf of the injured worker outside of an award against the employer or carrier without the need for approval by a Judge of Compensation Claims (JCC).
- Allow for departure from the attorney fee schedule in the form of an hourly rate not to exceed \$250 per hour, to be approved by the JCC in situations where the JCC finds that an alternative fee is warranted based on circumstances specified in the bill.
- In such cases where the claimant is entitled to recover attorney fees, the recovery would be limited to the fee as calculated by the schedule or the fee calculated based on an alternative hourly rate, if approved by the JCC.

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<sup>1</sup> Definition of Impacts on Overall System Costs:

Small is less than 1.0%

Moderate is between 1.0% (inclusive) and 3.0%

Sizable is between 3.0% (inclusive) and 5.0%

Significant is greater than or equal to 5.0%

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The level of attorney compensation has both direct and indirect cost impacts on the WC system. The direct impact on claim costs relates to the change to the fee amounts themselves. The indirect impact on claim costs relates to the influence that attorney compensation has on the number of claims with attorney involvement and the associated costs. Based on historical data, Florida has notably higher claimant attorney involvement compared to other NCCI states. In addition, the average cost of claims *with* claimant attorney involvement are two to three times higher than claims *without* attorney involvement, on average.

The current "20/15/10/5" fee schedule, detailed in Section 440.34 of the Florida Statutes, is applied to benefits secured by the injured worker's attorney. Due to the Florida Supreme Court opinion in *Castellanos vs. Next Door Company, et al.*, the attorney fee calculated by the schedule must also be considered reasonable by the JCC or the fee may be recalculated based on an hourly rate.

SB 1582, if enacted, would allow deviation from the current schedule to situations where the JCC finds, based on the circumstances specified in the bill, that an alternative fee is warranted. To the extent this provision limits upward deviations compared to current practice, along with the ability to deviate downward from the schedule, a small<sup>1</sup> decrease in WC system costs may result due to a decrease in the overall level of attorney compensation.

Changing how often a claimant can recover claimant attorney fees from the employer or insurer and the amount eligible for recovery would have a direct impact on system costs. SB 1582, if enacted, would limit recoveries for claimant attorney fees to the amount awarded by the JCC, which could result in a small to moderate<sup>1</sup> decrease. This change could also have an indirect impact on system costs by influencing a claimant's decision to retain the services of an attorney after considering the possibility that their net compensation (i.e., benefits secured less attorney fees) may be less than it would have been had they not been represented in situations where the claimant attorney fee per a retainer agreement is higher than what can be recovered from the employer or insurer. Factoring in potential indirect cost impacts from behavioral changes, the decrease in WC system costs due to this provision could be greater.

**Altogether, the proposed changes to the claimant attorney fee-related provisions contained in SB 1582 could result in a small to moderate<sup>1</sup> decrease in overall system costs in Florida.**

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#### Temporary Total Benefits (TTD) and Temporary Partial Benefits (TPD)

SB 1582, if enacted, would result in codifying the maximum TTD and TPD benefit duration to 260 weeks. According to the Florida Supreme Court decision in *Bradley Westphal v. City of St. Petersburg, etc., et al.* and the appellate court decision in *Jones v. Food Lion, Inc.*, TTD and TPD benefits may be provided up to a maximum of 260 weeks. **NCCI estimates that codifying the maximum duration for TTD and TPD benefits at 260 weeks would have no impact on WC system costs in Florida.**

#### Ratemaking

Currently, Florida operates on a full administered rates system. SB 1582, if enacted, would replace the current administered rate system with a prospective loss costs system **While this provision may result in a significant shift in the way that workers compensation (manual) rates are determined in Florida, this provision would not directly affect the benefit costs paid to injured employees.**

#### Excess Defense and Cost Containment Expense (DCCE) and Refunds

SB 1582, if enacted, would result in the following requirements for insurers:

- Require insurers to report three *accident years* of DCCE and incurred losses, developed to ultimate, to the FLOIR.
- Require insurers with excessive DCCE, defined as DCCE greater than 15% of incurred losses for the 3 *accident years* defined in the bill, to return the excess portion to policyholders in the form of a cash refund or credit towards the future purchase of insurance and treated as policyholder dividends.

The currently approved statewide DCCE provision included in the Florida rates is 14.2%, which is calculated as the ratio of the estimated ultimate DCCE to ultimate losses. The DCCE ratio of an individual insurer is dependent on many factors and can vary considerably around the statewide average. SB 1582, if enacted, would result in insurers with excessive DCCE, as defined in the bill, incurring additional expenses in the form of refunds or credits toward future policies both in terms of the amounts returned to policyholders as well as the administration of such a process.

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This provision could impact system costs on an indirect basis, as it could result in insurers reducing *any* of the expenses considered to be DCCE (e.g. vocational rehabilitation, treatment utilization reviews) to ensure their DCCE ratio remains below the 15% limit. While this provision could potentially lower overall DCCE costs, it may result in an increase in WC benefits, as insurers may be less inclined to perform certain cost containment measures or decide to pay the benefits requested (on petitions for benefits) or offer higher settlement amounts rather than disputing cases where such action may be justifiable.

**If SB 1582 were enacted, the ultimate impact on WC system costs from this provision is uncertain since its application is not fully detailed in the bill and would depend on changes in behavior.**

Please note that the bill does not prescribe or is unclear on

- how the three accident years would be combined to calculate DCCE as a percent of incurred losses or
- how insurers should develop their DCCE to ultimate; a wide variety of calculation methods could be utilized with varying results or
- how after excessive DCCE is returned, what adjustment, if any, would be used to calculate the ratio in subsequent valuations to reflect returned dollars on the two overlapping accident years.

Also note that section 627.2151, paragraph (2) of SB 1582 states that each insurer would be required to report DCCE and incurred losses on an accident year basis. However, in paragraph (3), it refers to data filed for the three most recent calendar years.

#### Additional Provisions

SB 1582, if enacted, would result in the following changes:

- Require claimants and attorneys to provide the specific amount and calculation of benefits requested in a petition.
- Specify that the time an employer or carrier has to respond to a claimant regarding certain medical selections is based on business days, not calendar days.

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The magnitude of the potential cost impact due to these proposed changes is uncertain. However, NCCI estimates the directional impact of these changes would be a decrease.

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