



Florida  
**TaxWatch**

# Keeping Workers' Compensation Premiums Low Through Independent Medical Review

DECEMBER 2018



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**Senator Pat Neal**  
Chairman of the Board of Trustees

**Dominic M. Calabro**  
President & Chief Executive Officer

Dear Fellow Taxpayer:

Florida law requires most employers to carry workers' compensation insurance to cover their employees in the event they are injured at work. This insurance is invaluable to both employers and employees, providing a financial "safety net" in the event of a job-related accident or illness. This safety net is critical --- without it, the impact of a serious accident or illness could be devastating to the employee and their family.

A recent study found that Florida ranked 33<sup>rd</sup> among the 50 states and the District of Columbia in terms of workers' compensation insurance premium rates. Two Florida Supreme Court cases --- *Westphal v. City of St. Petersburg* and *Castellanos v. Next Door Company* --- have the potential to significantly increase workers' compensation insurance premiums paid by employers.

California has implemented a cost-effective, non-judicial process developed by MAXIMUS Federal Services, Inc., in which disputes about the medical treatment of injured workers are resolved by physicians instead of by the courts. This Independent Medical Review (IMR) process has been shown to resolve disputes timely (in approximately one month) and save the taxpayers more than \$1 billion annually.

In this research report, TaxWatch looks at the success of the IMR program in California in an attempt to answer the question "what if IMR was in use in Florida?" TaxWatch is pleased to present policymakers and stakeholders with an independent analysis of a program we think may be helpful in keeping the costs of workers' compensation insurance down while helping to ensure that injured workers receive appropriate treatment.

Sincerely,

A handwritten signature in black ink that reads "Dominic M. Calabro".

Dominic M. Calabro  
President & CEO

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## Introduction

Before workers' compensation laws were enacted, the only recourse available to U.S. workers who suffered serious injuries on the job and survivors of workers who were killed on the job, and who wanted compensation for their (or their survivors') injuries, was to sue their employer. Few workers, however, took this action because the lawsuits were expensive, and the workers didn't have sufficient funds.

By the early 20th century, the American public had become sympathetic to the injured workers' plight and demanded reforms. In 1911, Wisconsin passed the first workers' compensation law in the U.S. Other states quickly followed and, by 1920, a majority of states had passed a workers' compensation law.<sup>1</sup> The last state (Mississippi) enacted its workers' compensation laws in 1948.

If an employee is injured or becomes ill while working and cannot work because of the injury, the employee is paid from the employer's workers' compensation insurance. Although the benefits afforded to injured workers are enumerated in state laws, the types of benefits are fairly consistent, including:

- Medical coverage --- Includes medical expenses for doctor, hospital and nursing care; medications; diagnostic tests; physical therapy; and medical equipment.
- Disability --- Provides partial reimbursement of wages lost during a temporary or permanent disability. The disability may be total or partial.
- Rehabilitation --- Provides vocational training for workers who must change occupations due to their injury.
- Death --- Pays death benefits to the surviving spouse and minor children of workers killed on the job.<sup>2</sup>

It is important to note that, when an employee is injured or becomes ill in the workplace and accepts the workers' compensation insurance, they must necessarily give up the right to sue their employer. Workers' compensation is intended to be the sole remedy available to employees who are injured at their workplace.

Most Florida employers are required to carry workers' compensation insurance to cover injuries suffered while on the job. Specific employer coverage requirements are based on the type of industry, number of employees and entity organization.<sup>3</sup> Workers' compensation insurance is designed to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer.<sup>4</sup>

In Florida, the Division of Workers' Compensation within the Department of Financial Services is the primary regulator for ensuring employees receive the proper benefits under this coverage, which includes benefits for medical expenses, disability, or death. The Office of Insurance Regulation (OIR) regulates the rates, forms, and solvency for workers' compensation insurance coverage. The amount of compensation is established by law.<sup>5</sup>

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<sup>1</sup> Retrieved from [www.thebalance.com/workers-compensation-insurance-4073323](http://www.thebalance.com/workers-compensation-insurance-4073323), February 1, 2018.

<sup>2</sup> Ibid.

<sup>3</sup> Retrieved from [www.myfloridacfo.com/division/wc/Employer/coverage.htm](http://www.myfloridacfo.com/division/wc/Employer/coverage.htm), January 31, 2018.

<sup>4</sup> Section 440.015, Florida Statutes.

<sup>5</sup> Retrieved from [www.flair.com/Sections/PandC/WC/default.aspx](http://www.flair.com/Sections/PandC/WC/default.aspx), March 02, 2018.

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The premiums Florida employers pay for workers' insurance are based upon a system in which employers are categorized into groups called classifications. Each classification is assigned a rate, which may vary from state to state. All employers located in one state that are assigned to a particular classification will pay the same rate.<sup>6</sup>

Florida is one of 35 states and District of Columbia that has adopted the classification and rating system developed by the National Council on Compensation Insurance (NCCI). The NCCI periodically evaluates the current loss costs or rates for each state to ensure they are adequate but not excessive. First, the NCCI reviews the aggregate premium and loss data it has collected from insurers operating in a particular state. This is to determine whether insurers have experienced more or fewer losses in that state than initially projected. Next, the NCCI evaluates premium and loss data for each class code. Depending on the results, the NCCI may recommend an increase or decrease to some or all of the loss costs or rates used in that state.<sup>7</sup> It is important to note that the NCCI is an advisory organization and has no regulatory authority.

A December 2016 study by the Oregon Department of Consumer and Business Services<sup>8</sup> compared the workers' compensation premium rates for each state and the District of Columbia against the national median premium rate of \$1.84 for every \$100 of payroll. Rates ranged from a low of \$0.89 for every \$100 of payroll (North Dakota) to a high of \$3.24 for every \$100 of payroll (California). Florida, with a premium rate of \$1.66 for every \$100 of payroll, ranked 33rd among the states in 2016. Only 17 states and the District of Columbia had premium rates lower than Florida's.

## Understanding Premium Rates

For employers who want to keep the premium rates they pay as low as possible, it is important to understand how premiums are calculated. Workers' compensation premiums are calculated using the following formula:<sup>9</sup>

$$\text{Rate} \times (\text{Payroll} / 100) \times \text{Experience Modifier} = \text{Premium}$$

As discussed previously, the rate is based on a classification system where employees in the same industry who have similar duties and responsibilities are assigned the same classification. The assigned rates recognize that some occupations are riskier than others, so it should be no surprise that the rate for firefighters is considerably higher than the rate for land use planners or attorneys. An employer's payroll is then divided by 100, and the result is then multiplied by the assigned rate. Payroll includes all salaries, wages, bonuses, etc., paid to employees.

The experience modifier reflects an employer's loss history compared to the average loss history for that industry. An employer with an average loss history will have an experience modifier of 1.0. An employer with a better than average loss history will have an experience modifier that is less than 1.0, which translates to a reduced premium. An employer with a worse than average loss history will have an experience modifier that is greater than 1.0, which translates to an increased premium. The better a company's loss history, the lower the company's premium.

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<sup>6</sup> Retrieved from [www.thebalance.com/workers-compensation-classifications-462808](http://www.thebalance.com/workers-compensation-classifications-462808), February 1, 2018.

<sup>7</sup> Retrieved from [www.thebalance.com/national-council-on-compensation-insurance-462812](http://www.thebalance.com/national-council-on-compensation-insurance-462812), February 1, 2018.

<sup>8</sup> Department of Consumer and Business Services, "Oregon Workers' Compensation Premium Rate Ranking Calendar Year 2016," December 2016.

<sup>9</sup> Retrieved from [www.thebalance.com/lowering-workers-compensation-premiums-462783](http://www.thebalance.com/lowering-workers-compensation-premiums-462783), March 02, 2018.

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Consider the following examples:

- Employer A has a rate of 0.15, a payroll of \$10 million, and an average loss history (experience modifier of 1.0). Firm A's premium is calculated as:

$$0.15 \times (\$10,000,000 / 100) \times 1.0 = \$15,000$$

- Employer B has a rate of 0.15, a payroll of \$10 million, and a better than average loss history (experience modifier of 0.8). Firm B's premium is calculated as:

$$0.15 \times (\$10,000,000 / 100) \times 0.8 = \$12,000$$

- Employer C has a rate of 0.15, a payroll of \$10 million, and a worse than average loss history (experience modifier of 1.2). Firm C's premium is calculated as:

$$0.15 \times (\$10,000,000 / 100) \times 1.2 = \$18,000$$

## Keeping Workers' Compensation Costs Down

There are things an employer can do to reduce their experience modifier and, as a result, their workers' compensation premiums. Because Floridians are working longer before retiring, the workplace is an ideal place to promote good health and wellness practices. Safety programs and employee training, for example, can eliminate hazards that can lead to accidents and injuries if they are rigorously enforced. Making sure company equipment and vehicles are maintained in top operating condition can reduce workplace accidents and injuries. It is also important to make sure employees are classified correctly. These are just a few.

There are, however, some factors that drive up workers' compensation costs that are beyond the control of the employer. Economic downturns, such as the Great Recession of 2007-2009, have effects that are notably severe, including a decline in the gross domestic product, reduced housing prices, reduced stock prices, and increased unemployment.<sup>10</sup>

The rising cost of prescription drugs is another factor. Soaring drug prices are driving up health care costs each year. In 2016, Americans spent \$328.6 billion on prescription drugs.<sup>11</sup>

According to the most recent national health expenditure data published by the Centers for Medicare and Medicaid Services, retail prescription drug spending grew at an average pace of 4.8 percent between 2006 and 2015, with two of the highest-growth years occurring in 2014 (12.4 percent) and 2015 (9.0 percent).<sup>12</sup> When drug prices rise, many with health insurance still see their out-of-pocket costs go up. As a result, many of the commonly prescribed drugs have become unaffordable for many patients.

As more and more employees are furloughed or laid off, payroll decreases. Since payroll is one factor used to calculate workers' compensation premiums, payroll deductions should (all other things being equal) decrease. While this may initially seem like a good thing, statistics show that, while premium dollars are decreasing, claim dollars may not.

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<sup>10</sup> Robert Rich, "The Great Recession," retrieved from [www.federalreservehistory.org/essays/great\\_recession\\_of\\_200709](http://www.federalreservehistory.org/essays/great_recession_of_200709), March 03, 2018.

<sup>11</sup> Centers for Medicare & Medicaid Services, NHE Fact Sheet (December 6, 2017) ([www.cms.gov/research-statisticsdata-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html](http://www.cms.gov/research-statisticsdata-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html)).

<sup>12</sup> Quintiles IMS Institute, Understanding the Drivers of Drug Expenditure in the U.S. (September 2017) ([www.iqvia.com/institute/reports/understanding-the-drivers-of-drug-expenditure-in-the-us](http://www.iqvia.com/institute/reports/understanding-the-drivers-of-drug-expenditure-in-the-us)).

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For example, NCCI data show in 2010 in Arizona municipalities, for every \$1 received for workers' compensation premiums, \$1.32 was spent on claims.<sup>13</sup> This overage has to be paid.

In most states, medical costs make up the majority of workers' compensation dollars spent. The average American spends nearly \$10,000 per year on personal health care, according to the most recent estimates from the U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services (CMS), and that figure is expected to increase over time.<sup>14</sup>

CMS projects national health spending to grow at an average rate of 5.5 percent per year from 2017-2026 and to reach \$5.7 trillion by 2026. While this projected average annual growth rate is more modest than that of 7.3 percent observed over the longer-term history prior to the recession (1990-2007), it is more rapid than was experienced from 2008-16 (4.2 percent). Health spending is projected to grow 1.0 percentage point faster than the Gross Domestic Product (GDP) per year over the 2017-26 period. As a result, the health share of the GDP is expected to rise from 17.9 percent in 2016 to 19.7 percent by 2026. These projected increases will be largely driven by changes in projected income growth, increases in prices for medical goods and services, and enrollment shifts from private health insurance to Medicare related to the aging of the population.<sup>15</sup>

A 2017 study by WalletHub compared the 50 states and the District of Columbia across 35 measures of cost, accessibility and outcome to determine where Americans receive the best and worst health care. Florida ranked 43rd overall and ranked 48th in terms of costs. Only Louisiana, North Carolina, and Alaska have higher healthcare costs.<sup>16</sup>

Another factor in keeping workers' compensation costs low is the length of time during which an injured worker can receive benefits. In Florida, temporary total disability (TTD) benefits end when the first of any these three events occurs:<sup>17</sup>

- Employee returns to work;
- Maximum medical improvement (MMI) is established, and permanent benefits may begin; or
- The cap on the number of weeks for receiving these benefits is reached.

The statutory time limitation on TTD benefits has been reduced from 350 weeks in 1968, to 260 weeks in 1990, and finally to 104 weeks in 1994.<sup>18</sup> This latest limit was called into question in a June 2016 ruling by the Florida Supreme Court.

In *Westphal v. City of St. Petersburg*, the Court determined that denying disability benefits to a worker who is totally disabled and incapable of working, and who has not yet reached maximum medical improvement (MMI), is unconstitutional. Under Florida law,<sup>19</sup> an injured worker was entitled to temporary total benefits for either 104 weeks or until reaching MMI, whichever occurred first. For an injured worker to be considered for permanent disability benefits, it must be determined that he or she has reached MMI and is permanently disabled at that point.

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<sup>13</sup> Arizona Municipal Risk Retention Pool, "Workers' Compensation: What Factors Affect My Premium," retrieved from [www.amrrp.org/Resources/Documents/What%20Factors%20Affect%20Premium.pdf](http://www.amrrp.org/Resources/Documents/What%20Factors%20Affect%20Premium.pdf), March 03, 2018.

<sup>14</sup> Richie Bernardo, "2017's Best & Worst States for Health Care," WalletHub, August 07, 2017, retrieved from <https://wallethub.com/edu/states-with-best-health-care/23457/>, March 04, 2018.

<sup>15</sup> Centers for Medicare & Medicaid Services, "National Health Expenditure Fact Sheet," U.S. Department of Health and Human Services, retrieved from [www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html](http://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html), March 04, 2018.

<sup>16</sup> *Ibid.* Fn 14

<sup>17</sup> "Workers' Compensation on Florida: A Case History," Florida TaxWatch Briefing, August 2016.

<sup>18</sup> *Ibid.*

<sup>19</sup> Section 440.15, Florida Statutes.

Westphal exhausted his 104 weeks of temporary benefits before reaching MMI. As a result, Westphal lost his temporary benefits before he became eligible to be considered for permanent disability benefits. This created what the Court considered to be a “statutory gap in benefits, in violation of the constitutional right of access to court.” The Court also directed that the term of eligibility for temporary benefits be extended to 260 weeks (five years), consistent with a prior Florida law.

Legal fees associated with workers’ compensation claims can be significant. During the 2016-17 fiscal year, Florida’s Office of the Judges of Compensation Claims approved nearly \$186 million in workers’ compensation-related legal fees, a 36 percent increase over the previous fiscal year.<sup>20</sup> More than \$75 million in hourly fees were approved for claimants’ attorneys, a nearly 200 percent increase from the \$25.8 million in hourly fees that were approved the previous year.<sup>21</sup>

This increase is attributed, in large part, to an April 2016 Supreme Court decision. In *Castellanos v. Next Door Company*, the Court determined that the enactment of a mandatory attorney’s fee schedule by the Florida Legislature in 2009 is unconstitutional as a violation of due process under both the Florida and United States Constitutions.<sup>22</sup> A dispute about Castellanos’ injuries ultimately went before a Judge of Compensation Claims, and Castellanos was awarded \$822.70 in benefits. Under the current attorney’s fee schedule, Castellanos’ attorney, who spent 107.2 hours on the case, was entitled to \$164.54, or \$1.53 an hour.<sup>23</sup> As a result, judges are now authorized to award fees outside the established fee schedule if adhering to the schedule yielded unreasonable results.

After the Westphal and Castellanos rulings, NCCI requested a 19.6 percent increase in workers’ compensation rates. The Florida OIR issued an Order in September 2016 rejecting NCCI’s requested increase. NCCI submitted an amended rate filing in compliance with the Florida OIR’s order and, in October 2016, the Florida OIR issued a final order granting approval to NCCI for an overall combined statewide average rate increase of 14.5 percent.<sup>24</sup> The revised rate filing addressed the impact of Castellanos and Westphal, as well as legislatively-mandated updates to the Florida Workers’ Compensation Health Care Provider Reimbursement (HCPR) Manual. The individual rate impacts include:

- A 10.1 percent statewide average rate increase for *Castellanos v. Next Door Co.*;
- A 2.2 percent statewide average rate increase for *Westphal v. City of St. Petersburg*; and
- A 1.8 percent statewide average rate increase from updates to the Florida Workers’ Compensation HCPR Manual.<sup>25</sup>

The Legislature tried unsuccessfully in 2017 to address the attorney fees issue, which many blame for the 14.5 percent rate increase in 2016. The House and Senate were unable to reach agreement on a reasonable cap for attorney fees before time ran out.

20 News Service of Florida, “Report: Legal Fees for Workers’ Comp Jump 36 Percent,” Tampa Bay Times, December 28, 2017, retrieved from [www.tampabay.com/news/business/banking/Report-Legal-fees-for-workers-comp-jump-36-percent\\_164006955](http://www.tampabay.com/news/business/banking/Report-Legal-fees-for-workers-comp-jump-36-percent_164006955), March 06, 2018.

21 Ibid.

22 Marvin Castellanos, Petitioner, v. Next Door Company, et al., Respondents, No. SC13-2082, Decided: April 28, 2016.

23 Jeyshree Ramachandran, Jim Woods, Simon K. Wong, “What’s Next for Workers’ Compensation Attorney Fees in Florida,” retrieved from [www.milliman.com/insight/2016/Whats-next-for-workers-compensation-attorney-fees-in-Florida/](http://www.milliman.com/insight/2016/Whats-next-for-workers-compensation-attorney-fees-in-Florida/), March 06, 2018.

24 “It’s Official: Florida Workers’ Comp Rates Going Up Nearly 15%,” Insurance Journal, October 24, 2016, retrieved from [www.insurancejournal.com/magazines/features/2016/10/24/429746.htm](http://www.insurancejournal.com/magazines/features/2016/10/24/429746.htm), March 14, 2018.

25 Ibid.

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In October 2017, NCCI requested a 9.6 percent reduction in workers' compensation rates. The Florida OIR issued an Order in rejecting NCCI's requested decrease. NCCI submitted an amended rate filing in compliance with the Florida OIR's order and, in November 2017, the Florida OIR issued a final order granting approval to NCCI for a slightly higher decrease of 9.8 percent.<sup>26</sup>

In 2018, the Florida House passed a bill (HB 7009) that would permit a Judge of Compensation Claims to award attorney fees up to \$150 per hour, if supported by statements of accrued hours be verified statements, rather than attestations. This bill died in the Senate.

## Workers' Compensation Dispute Resolution

The process of workers' compensation dispute resolution in Florida is shown in Appendix A.<sup>27</sup> Injured employees in Florida wishing to dispute denial of treatment or benefits may contact the Division of Workers' Compensation Employee Assistance and Ombudsman Office (EAO), who works on the injured employee's behalf to resolve issues with their workers' compensation claim.

If the insurance company denies the injured worker's informal request to obtain benefits, the employee must file a Petition for Benefits. The insurance company must, within 14 days of receipt of the Petition, either pay or deny the employee's claim. If the Petition is denied, mediation is held within 130 days of the Petition's filing.

If the mediation is unsuccessful, the matter is referred to a Workers' Compensation Judge, who schedules and conducts a pre-trial hearing. A final hearing must be conducted within 90 days of the pre-trial hearing. If the employee is unwilling to accept the Workers' Compensation Judge's decision, the employee may file an appeal with the First District Court of Appeals within 90 days of the Workers' Compensation Judge's Final Order.

## Independent Medical Review

Independent medical review (IMR) is a cost-effective, non-judicial process developed by MAXIMUS Federal Services, Inc., (MAXIMUS) in which disputes about the medical treatment of injured employees are resolved by physicians, rather than through the often cumbersome and costly court system. A related process, Independent Bill Review (IBR), objectively examines payment disputes between providers and claims administrators. IMR is currently used by the California Division of Workers' Compensation (DWC). The IMR process used by the California DWC is shown in Appendix B.

A request for medical treatment in the California workers' compensation system must go through a "utilization review" (UR) process to confirm that it is medically necessary before it is approved. If utilization review denies, delays, or modifies a treating physician's request for medical treatment because the treatment is not medically necessary, the injured employee can ask for a review of that decision through IMR.<sup>28</sup> Appropriately qualified, independent medical

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26 Amy O'Connor, "Florida Orders Workers' Comp Rate Decrease of 9.8%," Insurance Journal, November 2, 2017, retrieved from [www.insurancejournal.com/news/southeast/2017/11/02/470199.htm](http://www.insurancejournal.com/news/southeast/2017/11/02/470199.htm), March 14, 2018.

27 Division of Workers' Compensation, "Workers' Compensation System Guide (Revised December 2017)", Florida Department of Financial Services, retrieved from [www.myfloridacfo.com/Division/wc/pdf/WC-System-Guide.pdf](http://www.myfloridacfo.com/Division/wc/pdf/WC-System-Guide.pdf), March 05, 2018.

28 Retrieved from [www.dir.ca.gov/dwc/imr.htm](http://www.dir.ca.gov/dwc/imr.htm), March 05, 2018.

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professionals use principles of “evidence-based” medicine<sup>29</sup> to determine whether the requested treatment is medically necessary. The costs of IMR are paid by employers and are based upon the nature of the medical treatment dispute and the number of medical professionals needed to resolve the dispute.

Injured workers whose request for treatment has been denied or modified through the utilization review process may, within 30 days, submit a signed IMR application that has been completed (except for the signature) by the Utilization Review Claims Administrator, along with a copy of the utilization review decision.

Upon receipt of an eligible application, the contracted Independent Medical Review Organization (IMRO) requests medical records from the claims administrator, the worker, the attorney if represented, and the requesting physician. After the medical records are received, the IMRO assigns the case to an expert physician reviewer. Unless the case is terminated or withdrawn during the process, it is resolved when the assigned physician reviewer communicates the IMR decision(s) to the worker or representative, employer or insurer, and requesting physician in a Final Determination Letter (FDL).<sup>30</sup>

## Workers’ Compensation Reform in California

In the 2002-04 California legislative sessions, broad reforms were presented to reduce medical care and indemnity benefit costs in the workers’ compensation system. Reforms focused on delivery management and cost containment, while also ensuring appropriate delivery of quality care. The reforms proved successful and, as a result, medical costs and costs per claim declined sharply. Insurance rates paid by employers dropped by more than 60 percent.<sup>31</sup>

This trend began to reverse in 2008 when system costs started rising once again. Data from the Commission on Health and Safety and Workers’ Compensation (CHSWC) revealed that costs per claim increased 43% from the post-reform low in 2005 and were up approximately 14% from the pre-reform all-time high in 2003. In addition, overall system costs rose by almost \$1 billion per year, making California the third-most-costly workers’ compensation system in the nation.<sup>32</sup> As system costs increased, so did insurance premiums. In 2012, the Governor signed into law a workers’ compensation reform package (SB 863) designed to offset an increase in permanent disability benefits with cost-savings reforms, anchored by IMR.

### Outcomes

California lawmakers authorized IMR in 2012 with the expectation that IMR would reduce workers’ compensation disputes once doctors, attorneys, and other participants came to understand which services could be approved because they meet evidence-based medicine standards. In 2016, the IMRO processed nearly 250,000 applications, a slight decrease from 2015. Of those, 69 percent (172,452) were determined to be eligible for review. Concurrently, 176,002 cases were decided through the IMR process, involving 343,141 treatment request decisions. Overall, 8.4 percent of these treatment request decisions were overturned, meaning the IMRO decided that the disputed service

29 IMR reviewers apply the Medical Treatment Utilization Schedule (MTUS) Medical Evidence Search Sequence and MTUS Methodology for Evaluating Medical Evidence in making a determination of medical necessity for a requested treatment.

30 California Department of Industrial Relations, “2017 Independent Medical Review (IMR) Report: Analysis of 2016 Data,” retrieved from [www.dir.ca.gov/dwc/imr/reports/2017\\_IMR\\_Annual\\_Report.pdf](http://www.dir.ca.gov/dwc/imr/reports/2017_IMR_Annual_Report.pdf), March 05, 2018.

31 Jeremy Merz, “Protecting Reforms Can Maintain System Balance, Provide Timely Benefits, Minimize Employer Costs,” California Chamber of Commerce, retrieved from <https://advocacy.calchamber.com/wp-content/uploads/policy/issue-reports/Workers-Compensation-Protecting-Reform-2017.pdf>, March 07, 2018.

32 Ibid.

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was medically necessary and appropriate 91.6 percent of the time.<sup>33</sup> During 2017, 91.2 percent of UR decisions appealed to IMR were affirmed.<sup>34</sup> In the first half of 2018, 90.1 percent of UR decisions appealed to IMR were affirmed.

In 2016, 167,563 (95.2 percent) of the 176,002 cases decided using IMR were for applications that listed representation (attorney) for the injured worker. For those cases where the injured worker had representation, the results of the utilization review were upheld in 86.6 percent of the cases. This is similar for those cases where the injured worker did not have representation (84.1 percent).<sup>35</sup>

As in the previous two calendar years, requests for pharmaceuticals in 2016 comprised nearly half (43.5 percent) the issues in dispute, with opioids the most common drug class (30 percent). Requests for pharmaceuticals have remained the most frequent issue in dispute through the first half of 2018. Rehabilitation services (such as physical therapy, chiropractic, and acupuncture) was the second-most-requested category (13.6 percent), followed by diagnostic testing (13.3 percent). The treatment category most often overturned was evaluation and management (with a 20 percent overturn rate), which includes specialist consultations and dental services, followed by psychiatric services, which had an 18 percent overturn rate.<sup>36</sup>

In 2016, there were 149,360 treatment requests for pharmaceuticals, 44,981 (30 percent) of which were for opioids. Of the 40,670 IMR decisions involving opioids, 4,311 (9.5 percent) were overturned.<sup>37</sup> The Division of Workers' Compensation has adopted an evidence-based drug formulary --- an approved list of prescription drugs that offer the overall greatest value --- to augment the provision of high-quality medical care. The Division has also updated its Medical Treatment Utilization Schedule (MTUS) treatment guidelines to include best practices governing the use of opioids to manage or treat pain. New data from the California Workers' Compensation Institute indicate that, not only is the percentage of claims with opioid prescriptions down, the claims that do involve opioids are now using lower dosages and have fewer opioid prescriptions overall.<sup>38</sup>

California taxpayers can take some comfort knowing that the expert reviewers making up the IMRO upheld treatment decisions regarding requests for opioids more than 90 percent of the time. In addition, treatment providers who consistently prescribe opioids contrary to the established best practices governing the use of opioids run a greater risk of identification as a result of IMR.

## *Timeliness*

Standard IMR decisions must be issued within 30 days of receipt of the medical records. Decisions for expedited applications<sup>39</sup> are due within 72 hours. During calendar year 2016:

- The average time required to process an IMR, from the date the Notice of Assignment and Request for Information (NOARFI) was mailed to the date the FDL was mailed, decreased from 58 days to 31 days;

<sup>33</sup> California Department of Industrial Relations, "2017 Independent Medical Review (IMR) Report: Analysis of 2016 Data," retrieved from [www.dir.ca.gov/dwc/imr/reports/2017\\_IMR\\_Annual\\_Report.pdf](http://www.dir.ca.gov/dwc/imr/reports/2017_IMR_Annual_Report.pdf), March 05, 2018.

<sup>34</sup> Workcompcentral, "CWC Study Finds Record High Number of IMR Decisions Issued Through June," retrieved from [ww3.workcompcentral.com/news/story/id/0f16e48193ecfb4a681c06a2d99b22a6672117da](http://ww3.workcompcentral.com/news/story/id/0f16e48193ecfb4a681c06a2d99b22a6672117da), October 26, 2018.

<sup>35</sup> California Department of Industrial Relations, "2017 Independent Medical Review (IMR) Report: Analysis of 2016 Data," retrieved from [www.dir.ca.gov/dwc/imr/reports/2017\\_IMR\\_Annual\\_Report.pdf](http://www.dir.ca.gov/dwc/imr/reports/2017_IMR_Annual_Report.pdf), March 05, 2018.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Workers' Comp Executive, "Opioid Use Declines," Vol.28, No. 18, October 10, 2018.

<sup>39</sup> An expedited review is a utilization review or independent medical review conducted when the injured worker's condition is such that the injured worker faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decision-making process would be detrimental to the injured worker's life or health or could jeopardize the injured worker's permanent ability to regain maximum function.

- The average time required from receipt of the medical records to issuance of the FDL decreased from 24 days to 14 days; and
- The average time from receipt of the application to issuance of a decision for an expedited review was from one to five days.<sup>40</sup>

The median number of days between the time an IMR application was received and a decision issued was 31 days during the first quarter of 2018 and 34 days during the second quarter. Approximately 75 percent of the decisions were issued within 38 days during the first half of 2018.<sup>41</sup>

## Cost Savings

The costs of IMR are paid by employers and are based upon the nature of the medical treatment dispute and the number of medical professionals needed to resolve the dispute.

For IMR requests submitted on or after Jan. 1, 2015:

- Standard IMRs involving non-pharmacy-only claims --- \$390 per IMR;
- Expedited IMRs involving non-pharmacy-only claims ---\$515 per IMR; and
- Standard IMRs involving pharmacy-only claims --- \$345 per IMR.<sup>42</sup>

The California Workers' Compensation Insurance Rating Bureau (WCIRB) estimates that the workers' compensation reform package saved taxpayers \$1.3 billion in 2016, a large part of which is attributed to a decrease in medical costs, which were not initially "priced" by the WCIRB because too many variables and unknowns existed about regulatory implementation when SB 863 passed.<sup>43</sup> The WCIRB is a private organization with governmental responsibility. It is financially supported exclusively by insurance carriers in whose interest it operates.<sup>44</sup>

By reducing the timeframe for resolving workers' compensation disputes from up to one year or more to 30 days or less, IMR is expected to produce frictional savings in lien costs, medical and legal reports, expedited hearings, temporary disability duration, and litigation costs. IMR also has the potential to significantly affect medical treatment costs.<sup>45</sup>

Although the costs of IMR are significantly lower on a per case basis than the cost to resolve a dispute through litigation, the WCIRB reported that IMR has had no effect in reducing costs and has created \$70 million in new system costs, largely due to unexpected IMR volume --- more than three times initial projections. The WCIRB also found that, while the number of eligible IMR requests has increased since 2014, there have been reductions in the average fee for an IMR.<sup>46</sup> Most stakeholders believe that achieving long-term structural savings requires reducing frictional costs which, by extension, requires a well-functioning IMR process.<sup>47</sup>

40 California Department of Industrial Relations, "2017 Independent Medical Review (IMR) Report: Analysis of 2016 Data," retrieved from [http://www.dir.ca.gov/dwc/imr/reports/2017\\_IMR\\_Annual\\_Report.pdf](http://www.dir.ca.gov/dwc/imr/reports/2017_IMR_Annual_Report.pdf), March 05, 2018.

41 Workcompcentral, "CWCI Study Finds Record High Number of IMR Decisions Issued Through June," retrieved from [ww3.workcompcentral.com/news/story/id/0f16e48193ecfb4a681c06a2d99b22a6672117da](http://ww3.workcompcentral.com/news/story/id/0f16e48193ecfb4a681c06a2d99b22a6672117da), October 26, 2018.

42 Retrieved from [www.dir.ca.gov/dwc/imr.htm](http://www.dir.ca.gov/dwc/imr.htm), March 05, 2018.

43 Jeremy Merz, "Protecting Reforms Can Maintain System Balance, Provide Timely Benefits, Minimize Employer Costs," California Chamber of Commerce, retrieved from <https://advocacy.calchamber.com/wp-content/uploads/policy/issue-reports/Workers-Compensation-Protecting-Reform-2017.pdf>, March 07, 2018.

44 Workers' Comp Executive, "What Will the 2019 Rate Cut Be," Vol.28, No. 18, October 10, 2018.

45 WCIRB California, "Senate Bill No. 863 WCIRB Cost Monitoring Report - 2016 Retrospective Evaluation," November 17, 2016.

46 Ibid.

47 See fn 43.

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## What if IMR Was In Use In Florida?

California's successful workers' compensation reform suggests that replacing Florida's dispute resolution process (see Appendix A) with the IMR process used in California might produce similar results in Florida.

The Office of Judges of Compensation Claims reports that 70,365 Petitions for Benefits (PFBs) were filed during fiscal year 2016-17, a 4.6 percent increase over fiscal year 2015-16. Virtually all PFBs include claims for related benefits, such as penalties and/or interest on late paid indemnity benefits, and attorneys' fees and costs for the prosecution of the PFB.<sup>48</sup> Of this total, 2,881 claimants filed their Petition on a pro se basis, in which the claimants chose to represent themselves instead of hiring an attorney.<sup>49</sup> Of the 70,365 PFBs filed in fiscal year 2016-17, 12,505 were dismissed prior to mediation,<sup>50</sup> leaving 57,860 PFBs to complete the dispute resolution process.

State mediators held 16,079 mediation sessions were held during fiscal year 2016-17, at an average cost of approximately \$169 per session.<sup>51</sup> The possible outcomes for mediation range from the lowest level of resolution (impasse) to the highest level of resolution (settled). In fiscal year 2016-17, 70.37 percent of PFBs filed included some issue or issues that remain unresolved at the conclusion of mediation.<sup>52</sup> These PFBs that remain unsettled after completion of mediation are then scheduled for a pre-trial hearing and a final hearing.

Florida law<sup>53</sup> requires a final hearing to be conducted within 210 days of PFB filing, with the resulting final order to be published and served within 30 days of the final hearing. Judges are permitted to schedule "expedited" final hearings on some portion of PFBs, leading faster resolution of issues that involve relatively minor expense.

The Office of the Judges of Judicial Claims is required by law<sup>54</sup> to approve all attorney's fees paid by or on behalf of an injured worker. In fiscal year 2016-17, \$439,609,031 was expended on the combined claimant attorney fees (\$185,676,766) and defense attorneys' fees (\$253,932,265). This represents a significant increase, about 16%, from the fiscal year 2015-16 aggregate fee total, and represents a significant increase of 36.07 percent in claimant fees (most likely due to Castellanos), along with a more modest 5 percent increase in defense fees.<sup>55</sup>

### *Potential Savings*

The statewide average number of days from the date of PFB filing to the commencement of trial during fiscal year 2016-17 was 212 days. It took an average of 19 more days to complete the trial and enter the trial order.<sup>56</sup> As a result, an injured worker in Florida who challenges the denial of treatment or benefits can expect to wait an average of 231 days before their case is properly disposed. In contrast, California's non-judicial IMR process is designed to dispose of an injured worker's dispute in about 30 days, an average savings of 6-7 months for each PFB.

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48 Division of Administrative Hearings, "2016-2017 Annual Report of the Office of the Judges of Compensation Claims," retrieved from [www.jcc.state.fl.us/JCC/publications/reports/2017OJCCAnnRpt/OJCC%202017%20Annual%20Report/12/](http://www.jcc.state.fl.us/JCC/publications/reports/2017OJCCAnnRpt/OJCC%202017%20Annual%20Report/12/), March 15, 2018.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Section 440.25(4)(d), Florida Statutes.

54 Section 440.34, Florida Statutes.

55 Division of Administrative Hearings, "2016-2017 Annual Report of the Office of the Judges of Compensation Claims," retrieved from [www.jcc.state.fl.us/JCC/publications/reports/2017OJCCAnnRpt/OJCC%202017%20Annual%20Report/12/](http://www.jcc.state.fl.us/JCC/publications/reports/2017OJCCAnnRpt/OJCC%202017%20Annual%20Report/12/), March 15, 2018.

56 Ibid.

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At a cost of \$390 for each IMR, roughly the cost of two mediation sessions under Florida's current system, resolution of the 57,860 PFBs litigated by Florida's Office of the Judges of Compensation Claims would have cost approximately \$22.6 million. Time is money and being able to resolve a PFB in 30 days instead of 7-8 months or longer through a non-judicial process will save an indeterminate, but significant, amount of money in PFB processing costs. Given the non-judicial nature of IMR, one would also expect a sizeable reduction in attorney fees, which in fiscal year 2016-17 totaled more than \$439 million.

The transition from the current judicial dispute resolution process to a non-judicial process like IMR could free up the \$13.3 million budget for the Office of the Judges of Compensation Claims. The Legislature would have the choice of reducing or eliminating the Office or reassigning some or all of the 31 Judges to hear other pending cases at the Division of Administrative Hearings.

## Conclusions and Recommendations

IMR is a non-judicial process for resolving workers' compensation medical disputes in a timely manner, reducing the timeframe for dispute resolution from up to a year or longer down to 30 days. In doing so, frictional savings result from a reduction in lien costs, medical-legal reports, expedited hearings, temporary disability duration, and litigation costs. IMR provides a balance between providing timely and fair benefits to injured workers and minimizing costs to employers.

California's experience with IMR suggests that inappropriate care is consistently being denied, and the medical treatment decisions made in utilization reviews are being upheld through IMR. This has significance in Florida, given the growing opioid addiction crisis. IMR could be a useful tool in limiting the supply of opioids for patients and making sure that opioids are being prescribed consistent with established prescription guidelines.

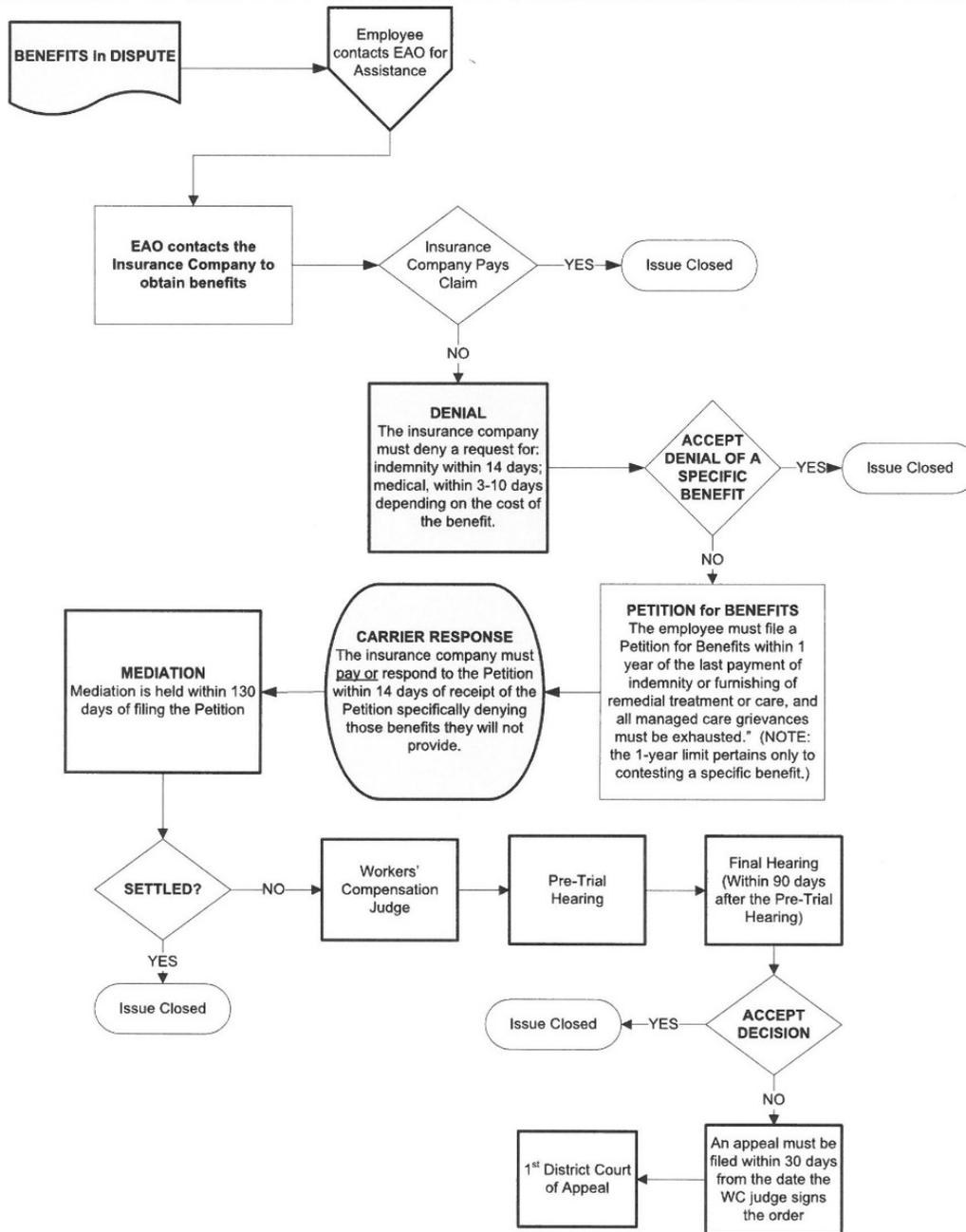
IMR will significantly reduce the amount of time required to process and resolve a workers' compensation, from 7-8 months or longer to about one month. At a cost of approximately \$400 per IMR, the cost of resolving a workers' compensation dispute will decrease significantly as well.

Replacing a judicial dispute resolution process with a non-judicial process should have a significant impact on the amount of workers' compensation-related attorney fees awarded, which totaled almost \$440 million during fiscal year 2016-17 (and represented a 16 percent increase over the previous fiscal year). Considering the Castellanos ruling, it is reasonable to expect attorney fees in workers' compensation disputes to continue to increase. If that happens, then it is reasonable to expect NCCI to recommend significant increase in workers' compensation rates, the costs of which will then be passed along to employers and taxpayers.

Florida TaxWatch thinks IMR is worthy of consideration by the Legislature as a way to keep down Florida's rising workers' compensation costs. TaxWatch recommends the Legislature more fully evaluate the pros and cons of IMR; calculate the potential savings to the state; and identify the steps necessary to implement IMR in Florida.

# APPENDIX A

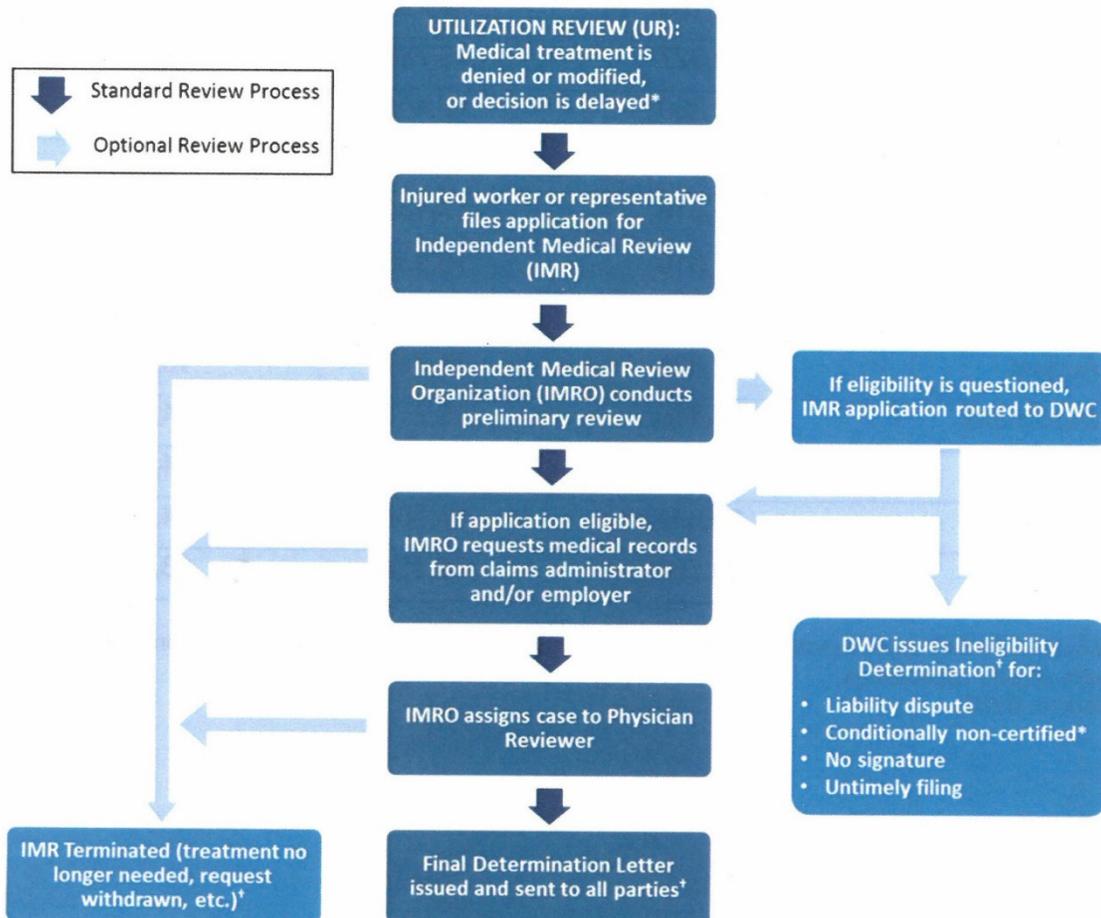
## Florida Dispute Resolution Process - Flow of Benefit Dispute Resolution



Source: "Workers' Compensation System Guide," Florida Department of Financial Services, Revised December 2017.

## APPENDIX B

### Independent Medical Review



\* Treatment decisions may be delayed if physician or claims administrator has not provided the information requested. This is referred to as "conditionally non-certified."

† Closed cases

Source: "2017 Independent Medical Review (IMR) Report: Analysis of 2016 Data," California Department of Industrial Relations.

## ABOUT FLORIDA TAXWATCH

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The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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