

**ANALYSIS OF FLORIDA WORKERS COMPENSATION RATE FILING
PROPOSED EFFECTIVE 10/1/2016**

Overall Proposed Change in Rate Level	19.6%
By Component	
-First-Year Impact of the Florida Supreme Court's Decision in <i>Castellanos</i>	15.0%
-Changes to the Florida WC Health Care Provider Reimbursement Manual	1.8%
-<i>Westphal</i> Impact	2.2%

NCCI estimates that the cost impact due to the Florida Supreme Court's decision in *Castellanos vs. Next Door Company, et al. (Castellanos)* will result in an overall first-year impact on Florida workers compensation system costs of +15.0%. NCCI proposes that this filing apply to new, renewal, and all in-force policies that are effective on or after October 1, 2016. However, *Castellanos* is also expected to increase overall system costs in the state for all claims occurring on or after July 1, 2009 that remain open or are re-opened¹. Therefore, NCCI expects that a significant unfunded liability will be created due to the retroactive impact of this court decision.

This estimate does not include the following:

- Cost impacts related to the First District Court of Appeal's decision in *Miles v. City of Edgewater Police Department* (April 20, 2016), which addressed claimant-paid attorney fees.
- The entire unfunded liability created in the state due to the retroactive nature of the *Castellanos* decision.
- Unanticipated cost impacts not otherwise reflected in this filing that may emerge over time such as additional stakeholder behavioral changes and interactions with subsequent changes to workers compensation benefits or practices in Florida.

Aside from the unfunded liability, the resultant cost impacts of the above, if any, would be reflected in subsequent Florida rate filings.

Summary of *Castellanos* Decision and Resultant Cost Impact

On April 28, 2016, the Florida Supreme Court issued a decision in *Marvin Castellanos v. Next Door Company, et al., (Castellanos)*, No. SC13-2082. The Supreme Court concluded,

"...that the mandatory attorney fee schedule in section 440.34 of Florida Statutes, which creates an irrebuttable presumption that precludes any consideration of whether the fee award is reasonable to compensate the attorney, is unconstitutional under both the Florida and United States Constitutions as a violation of due process."

¹ Note that NCCI's assumptions related to the significance of the unfunded liability are based upon the following filed and approved NCCI Statistical Plan definitions:

Open – Final payment not made

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The result of the Supreme Court's decision is to eliminate the statutory caps on claimant attorney fees and return Florida to the law as it was prior to July 1, 2009 when claimant attorney fees awarded under the fee schedule were required to be “reasonable.”

NCCI estimates that the prospective first-year impact of the *Castellanos* decision will be +15.0% on overall Florida workers compensation system costs.

NCCI has filed for the proposed rates to apply to all policies in effect on October 1, 2016 on a pro-rata basis through the remainder of the term of those policies. Though the *Castellanos* decision was rendered on April 28, 2016, the decision has retroactive impacts on claims open or re-opened from July 1, 2009 (effective date of enacted House Bill 903, which addressed the decision in *Emma Murray vs. Mariner Health Inc. and ACE US*) and forward. Increased system costs which will result from the *Castellanos* decision were not contemplated in the development of workers compensation rates for all policies affected. Because workers compensation ratemaking is prospective only, insurers are not able to recoup premium to cover such unforeseen retroactive system cost increases. Even if the proposed rates are to apply to outstanding policies, a significant portion of the full retroactive impact and unfunded liability remains.

Actuarial Analysis of the Impact of the *Castellanos* Decision

In order to estimate the impact of the *Castellanos* decision on Florida workers compensation system costs, it is necessary to first analyze how the provisions in SB 50A (2003)—specifically those relating to changes in claimant attorney fees—impacted system costs.

The provisions relating to attorney compensation contained in SB 50A were as follows:

- Maintain the “20/15/10/5” attorney fee schedule.
- Alternative hourly fees were eliminated with one exception: an alternative fee of up to \$1,500 may be awarded per accident for medical-only petitions.
- Fees are to be based on “benefits secured” above the offer, only if the employer/carrier makes an offer including attorney fees. Attorney fees are “taxed” against the losing party.

In general, the analyses of the *Castellanos* decision contained in this filing reflect changes in system costs and other metrics between pre- and post-SB 50A time periods (“pre-reform” and “post-reform”). Experience emerging subsequent to the implementation of SB 50A has revealed significant decreases in workers compensation costs—even after adjusting pre-reform values for the expected impacts incorporated in NCCI’s SB 50A rate filing (e.g., adjusting pre-reform losses to the current benefit level). The changes to the claimant attorney compensation provisions contained in SB 50A are credited with accounting for a material portion of these decreases. Thus, in general, NCCI is relying on the changes observed between the pre-SB 50A reform period (an hourly attorney fee system) and the post-reform period (a legislated, mandatory attorney fee schedule system) for the changes that are expected to occur due to the *Castellanos* decision—although the changes would occur in the reverse direction.

A summary of NCCI’s actuarial analyses of the *Castellanos* decision and its impact on workers compensation system costs is described below. In general, NCCI analyzed the changes in overall benefit costs between the pre- and post-reform periods using NCCI’s Financial Call data for both Florida and Florida relative to other states. In addition, NCCI’s Detailed Claim Information (DCI) data was analyzed to estimate the changes in average claim costs for claims with a claimant attorney over these same time periods.

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Recognizing that data for 2003 includes a mix of pre- and post-reform data, this year has been excluded from NCCI's calculations in order to avoid distortions. As the impact of SB 50A's attorney fee change was realized over several years, NCCI used 2005 and 2006 as the post-reform time period in these analyses. This two-year time period allows one to both observe how the impact of the attorney fee changes emerged over time and necessarily avoid the impact of events that occurred beginning in 2007, such as the Great Recession.

Estimated Change in Overall Benefit Costs based on Financial Call Data

Based on premium, loss, and claim count information contained in the Florida 1/1/16 approved workers compensation rate filing, NCCI calculated changes in overall benefit costs for Policy Years 2000 to 2002 (pre-reform) and Policy Years 2005 and 2006 (post-reform) using NCCI Financial Call data evaluated as of 12/31/2014. NCCI then analyzed the observed changes in overall benefit cost levels for both Florida and the surrounding region between the pre- and post-reform periods. The results of the analysis are described below.

The starting point is Florida policy year claim frequency and total (indemnity plus medical) average benefit costs from the Florida 1/1/2016 approved rate filing. The premium and benefit level change adjustment factors embedded in these values are then adjusted to remove the impact of the attorney fee component of the SB 50A pricing². Further, the premium used in determining the claim frequency values is further adjusted to remove all expense-related components. This step is necessary to facilitate a meaningful comparison between the observed changes in Florida and those in the surrounding region. The product of the adjusted claim frequency and average claim severity is divided by \$1M in order to estimate Florida's average pure loss cost in both pre- and post-reform years. NCCI performed similar calculations to estimate the average pure loss cost for the group of southeastern states (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee) as well as a subset of regional states that abut the Gulf of Mexico (Alabama, Louisiana, and Mississippi). The "Gulf states" region was specifically recognized as sharing some similarities with Florida.

During the analysis, the pre-reform period was defined to both include and exclude Policy Year 2000. The average pre- and post-reform pure loss costs for Florida and the surrounding regions were calculated. The Florida figures show that the average pure loss cost level decreased significantly in the state between the pre- and post-reform time periods—an observed decline between 32.1% and 34.1%.

Even after adjusting for approved rate level changes subsequent to the effective date of SB 50A, NCCI recognizes that observed changes in overall benefit costs after SB 50A may have resulted from influences unrelated to changes in attorney fees. Therefore, changes in overall benefit costs observed in regions surrounding Florida were also examined.

As mentioned above, Florida's average pure loss cost decreased in excess of 32% between the pre- and post-SB 50A time periods. This is approximately 25% MORE of a decline than observed in the southeastern states region. Florida's 25% decline in average pure loss cost over and above that observed in the southeastern states region is likely attributed to several factors—not the least of which is the change in the attorney fee provisions contained in SB 50A.

Of the seven states in the southeastern region, all three of the jurisdictions that border the Gulf of Mexico exhibited the most dramatic decreases in average pure loss cost level between the

² The provision for the attorney fee change contained in the SB 50A rate filing needs to be removed since the *Castellanos* decision will extinguish both the quantified and unquantified impacts resulting from the elimination of hourly fees in SB 50A.

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pre- and post-SB 50A time periods. As a region, these three states' average pure loss cost declined approximately 23%. Even though this is a notable percentage decline, it is still far less of a decline relative to the pure loss cost decline observed in Florida over this same time period.

This analysis focused on the magnitude of the decline in Florida's pure loss cost (pre- to post-SB 50A) over and above that observed in the surrounding regions. These results indicate that returning to the hourly-based attorney fee environment that existed pre-SB 50A could increase overall Florida workers compensation system costs between 13.8% and 37.5%.

Estimated Change in Average Claim Costs for Attorney-Represented Claims based on DCI data

The *Castellanos* decision is expected to have the largest impact on the average cost per case for claims with claimant attorney representation. Therefore, an additional analysis was performed which specifically focused on that portion of overall benefit costs. NCCI's DCI data as of a fifth report was used in conjunction with NCCI's Workers Compensation Statistical Plan (WCSP) data to estimate average claim costs (including claimant attorney fees) for claims with attorney representation. DCI data enables a separate analysis of claim information for claims with attorneys—allowing one to focus on the subset of claims directly impacted by a change in attorney fees.

NCCI calculated indemnity and medical total average claim costs for claims with claimant attorney representation, respectively, for the pre- and post-SB 50A time periods. The individual DCI claims were linked to the WCSP claims database in order to incorporate the incurred loss amounts from the WCSP data into the analysis³. In this way, the impact of the SB 50A attorney fee changes can be analyzed based on the same data contained in the annually-approved Florida rate filings. The average claim costs are adjusted to the current benefit level using values from the Florida 1/1/2016 approved rate filing and to remove the impact of the attorney fee component of the SB 50A pricing.

NCCI calculated changes in average total benefit costs for attorney-represented claims between years 2000 to 2002 (pre-reform) and years 2005 to 2006 (post-reform). Savings of more than 25% have been observed. As the *Castellanos* decision will effectively return Florida's attorney compensation structure to the pre-SB 50A, hourly fee-based system, it also indicates a return to the pre-SB 50A level of attorney-represented claim costs. Hence, the potential first-year impact of the *Castellanos* decision on overall workers compensation benefit costs is estimated to be between +15.0% and +16.1%, which is the ratio of pre- to post-SB 50A average claim costs with attorney representation multiplied by the proportion of total claim costs that have claimant attorney representation during the post-reform period (43.6%⁴). Note that these estimated cost impacts do not reflect any impact on overall system costs due to changes in lost-time claim frequency, which would be expected as a result of the *Castellanos* decision.

In order to limit the impact that individual large claims may have on the analysis, an additional supplemental analysis was performed. The largest one percent of claims based on reported DCI total incurred losses was excluded. These results indicate that returning to the hourly-based attorney fee environment that existed pre-SB 50A could increase overall Florida workers compensation system costs between 16.7% and 18.1%.

³ Approximately 80% of the claims were linked between the DCI and WCSP databases. For the remaining claims, the DCI-reported incurred values were utilized.

⁴ Based on DCI and WCSP data.

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Claimant Attorney Fees and Loss Adjustment Expenses

Claimant attorney fees are included in the indemnity loss data reported to NCCI, and defense attorney fees are included in the loss adjustment expense (LAE) data reported to NCCI. Therefore, since claimant attorney fees are included in the data on which all of the above-discussed cost estimates are based, no separate cost impact for claimant attorney fees has been included in this filing.

As *claimant* attorney behavior changed post-reform, there was a corresponding change in behavior related to *defense* attorneys. For example, there is qualitative input that as claimant attorneys worked fewer hours on cases and agreed to quicker settlements, defense attorneys also worked fewer hours on cases and earned reduced fees. The post-reform reduction in defense attorney costs has been reflected in the LAE component of the approved Florida workers compensation rates. The LAE component is a ratio of expenses to losses. It is anticipated that the *Castellanos* decision will result in both increased expenses and increased losses. At this time, NCCI expects that both will generally increase at the same rate. As such, no change to the current LAE provision is being proposed in this filing.

NCCI estimates that the update to the Florida Workers' Compensation Health Care Provider Reimbursement Manual (FWCRM) to the 2014 Medicare level, effective July 1, 2016, will result in an overall average Florida workers compensation system cost impact of +1.8%.

Summary of Changes

Senate Bill 1402 ratifies the Florida Division of Workers' Compensation updates to the FWCRM for professional health care providers, effective July 1, 2016. The prior FWCRM, which became effective 2/4/2009, is based on 2008 Medicare Conversion Factor and Resource Based Relative Value Scale (RBRVS) geographic-specific reimbursement levels. The revised FWCRM is based on 2014 Medicare Conversion Factor and RBRVS geographic-specific reimbursement levels. Note that the Maximum Reimbursement Amounts in the prior and revised FWCRMs are limited to no less than the MRAs published in the 2003 FWCRM. The changes impact reimbursements for physician services as well as Category 1 hospital outpatient services.

NCCI estimates that the cost impact due to the Florida Supreme Court's decision in *Bradley Westphal v. City of St. Petersburg, etc., et al. (Westphal)* will result in an overall impact on Florida workers compensation system costs of +2.2%. NCCI proposes that the impact of this court decision apply to new, renewal, and all in-force policies that are effective on or after October 1, 2016.

This analysis only addresses the expected increase in Florida workers compensation system costs for accidents occurring on or after October 1, 2016. However, *Westphal* is also expected to increase overall system costs in the state for all claims occurring on or after January 1, 1994 that remain open or are re-opened⁵. Therefore, NCCI expects that a significant unfunded liability may be created due to the retroactive impact of this court decision.

⁵ Note that NCCI's assumptions related to the significance of the unfunded liability are based upon the following filed and approved NCCI Statistical Plan definitions:

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Summary of *Westphal* Decision

Bradley Westphal was a firefighter who suffered severe injuries in the course of his employment and began receiving indemnification and medical benefits. Under section 440.15(2)(a) of the Florida statutes, Westphal was entitled to temporary total disability (TTD) benefits for a duration no greater than 104 weeks. When Westphal's entitlement to TTD benefits expired, he was incapable of working or obtaining employment and had not yet reached maximum medical improvement (MMI). As a result, he was denied permanent total disability (PTD) benefits due to the uncertainty of whether he would be found totally disabled when MMI was reached in the future. Westphal was ineligible for benefits under Florida's workers compensation law, yet he remained totally disabled and incapable of engaging in employment—creating a “statutory gap.”

On June 9, 2016, the Florida Supreme Court issued an opinion in *Westphal*. The Court concluded that the maximum 104-week duration for TTD benefits, as applied to a worker like Westphal who falls into the statutory gap at the conclusion of those benefits, does not provide a reasonable alternative to tort litigation. As such, Florida Statutes 440.15(2)(a) was deemed unconstitutional as denial of the right of access to the courts. In its ruling, the Florida Supreme Court employed the remedy of statutory revival and directed that the pre-1994, 260-week TTD benefit limitation be re-established.

Actuarial Analysis

A summary of NCCI's actuarial analysis of the *Westphal* decision and its impact on workers compensation system costs is described below. This analysis is based on data from various sources, including NCCI and the Florida Division of Workers' Compensation (FDWC).

Indemnity—Impact on Temporary Disability Claims

The *Westphal* decision declared the 104-week maximum duration for TTD benefits unconstitutional because of the statutory gap that resulted. Although this particular case involved an injured employee who may have been deemed to be permanently disabled (either totally or partially) when reaching MMI, the decision increased the maximum TTD benefit duration from 104 to 260 weeks for all claimants due TTD benefits. Therefore, the change impacts both the healing period portion of permanent claims as well as those that are purely temporary disability claims. This section of the analysis focuses on the latter— purely temporary disability claims (i.e., claim with no associated permanent disability benefit payments).

In order to determine the average TTD claim duration, NCCI reviewed FDWC data for lost-time claims with dates of injury from 2008 through 2012, having no permanent disability benefit payments. Based on this review, an average TTD claim duration of 56.3 days was determined.

In order to estimate the potential impact on temporary disability claims, NCCI analyzed average TTD claim durations in other jurisdictions using summarized transactional data licensed to NCCI⁶. A comparison of the average TTD claim duration⁷ limited to 104 weeks to the average TTD claim duration limited to 260 weeks was performed for NCCI jurisdictions. Jurisdictions with maximum claim durations less than 260 weeks were excluded from the analysis, along with jurisdictions where the date of MMI is not necessarily mandated or used to terminate TTD

⁶ Based on data used in the *Workers Compensation Temporary Total Disability Indemnity Benefit Duration - 2013 Update* on ncci.com. The latest accident year included in the study is 2011. In this analysis, data from Accident Years 2003 to 2007 is employed since the maturities for these years are in excess of 260 weeks.

⁷ Based on the difference in dates between the first and last TTD benefit payment.

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benefits⁸. The resulting median difference between capping durations at 104 and 260 weeks is 3.5 days. This represents the expected increase in the average claim duration for Florida TTD claims as a result of the *Westphal* decision. An increase of 3.5 days in average TTD claim duration is equivalent to a +6.2% change ($= 3.5 \text{ days} / 56.3 \text{ days}$) in TTD benefit costs. This impact will apply to all temporary disability benefit costs, which comprise 47.7% of indemnity benefits in Florida⁹. Hence, the impact on indemnity benefit costs due to the expected increase in temporary disability claim durations is +3.0% ($= +6.2\% \times 47.7\%$).

Indemnity—Impact on Permanent Disability Claims

Prior to *Westphal*, Florida law provided injured employees with TTD benefits during the continuance of the disability, not to exceed 104 weeks. When total disability is determined to be permanent in nature and the injured employee is unable to engage in at least sedentary employment, the claimant may be eligible for PTD benefits payable until age 75¹⁰. An employee who is ineligible for PTD compensation, but still permanently disabled to some degree, may be eligible for permanent impairment benefits (PIB). In either case, the period during which temporary disability benefits are paid is referred to as the healing period (HP).

Cases involving PTD are relatively rare and typically involve only the most severe injuries. Since HP benefits constitute a small portion of total costs for PTD claims, NCCI estimates that the *Westphal* decision will only minimally impact PTD claim costs.

To estimate the impact on the HP for PIB claims, NCCI analyzed HP durations in an analogous manner to the calculation performed for purely TTD claims. That is, summarized transactional data licensed to NCCI was reviewed for the HP duration on PIB claims for Florida and permanent partial disability (PPD) claims for other NCCI jurisdictions. The resulting median difference between capping HP durations at 104 and 260 weeks is 12.4 days. This represents the expected increase in the average HP duration for Florida PIB claims due to the *Westphal* decision. Using FDWC data for lost-time claims with PIB payments, NCCI calculated an average HP duration of 94.7 days. An increase of 12.4 days on the HP benefit duration is equivalent to a +13.1% change ($= 12.4 \text{ days} / 94.7 \text{ days}$) in HP benefit costs. As HP benefits on PIB claims represent 22.6% of Florida indemnity benefits⁵, the impact on indemnity benefit costs due to the expected increase in HP durations on PIB claims is +3.0% ($= +13.1\% \times 22.6\%$).

Indemnity—Impact on Overall Costs

As indemnity benefits comprise 29.7%¹¹ of total benefit costs in the state, the estimated impact on overall system costs in Florida due to the *Westphal* decision is +1.8% [$= 29.7\% \times (+3.0\% + 3.0\%)$].

Medical

The “statutory gap” described in the *Westphal* decision only applies to indemnity benefits; reimbursement for medical expenses does not expire under the Florida workers compensation system. Even though there is no change to the duration of medical benefits as a result of the

⁸ Jurisdictions included in the analysis are AK, AL, AR, AZ, CO, CT, DC, HI, IA, ID, IL, IN, KS, KY, MD, MO, MS, MT, NE, NH, NM, NV, OK, OR, RI, SC, SD, TN, UT, and VT.

⁹ Based on NCCI Workers Compensation Statistical Plan (WCSP) data for Florida policies having effective dates during the 24-month period ending December 31, 2012.

¹⁰ In some cases, PTD benefits can be extended beyond age 75. For example, for injuries suffered after the employee is age 70, PTD benefits may be payable for up to five years.

¹¹ Based on NCCI Financial Call data for Policy Years 2012 and 2013 projected to October 1, 2016.

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Westphal decision, medical costs are still anticipated to be impacted. Specifically, claimants may alter their behavior and attempt to delay reaching MMI in order to continue receiving TTD benefits. To the extent claimants are successful at delaying a finding of MMI, in addition to the impacts on indemnity benefit costs described above, a different mix of medical services may be provided resulting in an increase in medical costs.

Before a claimant reaches MMI, much of the medical care he/she receives is remedial in nature—i.e., the goal is to treat the underlying cause of the injury and improve the claimant's condition. Once MMI is reached, the bulk of medical care a claimant receives is palliative in nature, as medical treatments are primarily focused on alleviating symptoms and not necessarily treating the underlying cause. Remedial care costs are generally greater than palliative care costs because of the types of medical treatment used. To the extent that the *Westphal* decision results in delayed MMI and the period of remedial medical care is extended, medical costs are expected to increase. NCCI anticipates this medical cost increase will most likely relate to a portion of medical services provided during the healing period in cases where PIB benefits are awarded.

To estimate the impact on medical costs for permanent impairment claims, we reviewed FDWC data by service category for PIB claims for accidents occurring from 2008 through 2012 for which the claimant reached MMI. NCCI assumed that costs associated with procedures performed at hospitals or ambulatory surgical centers, and procedures involving surgery, anesthesiology, radiology, and pathology would not be materially impacted by the *Westphal* decision. Based on the FDWC data, NCCI estimates that approximately 18% of pre-MMI medical costs on Florida PIB claims will be impacted and that 85% of medical payments on PIB claims (at a fifth report) occur prior to MMI. Further, based on NCCI WCSP data, 79.9% of medical costs on PIB claims occur prior to a fifth report. Altogether, this translates into 12.2% ($=18\% \times 85\% \times 79.9\%$) of medical PIB costs in Florida being impacted by the *Westphal* decision.

As described above, the direct impact on the duration of HP benefits for PIB claims was estimated to be +13.1%. Assuming that 12.2% of medical PIB claim costs will increase by this amount, NCCI estimates that the impact of the *Westphal* decision on medical PIB claim costs will be +1.6% ($= +13.1\% \times 12.2\%$). As PIB medical costs comprise 33.6%⁵ of total medical costs, which comprise 70.3%⁷ of total system costs, this translates into a +0.4% ($= +1.6\% \times 33.6\% \times 70.3\%$) impact on overall Florida system costs.

Indemnity and Medical—Impact on Overall Costs

The estimated impact of the *Westphal* decision on overall Florida system costs is +2.2%. This is the sum the above-described separate indemnity (+1.8%) and medical (+0.4%) impacts on overall costs.

Additional Considerations

Temporary Partial Disability:

Effective January 1, 1994, the maximum benefits in Florida for TTD and temporary partial disability (TPD) were each reduced from 260 weeks to 104 weeks. Florida Statutes 440.15(4)(e), pertaining to the maximum number of weeks for TPD benefits, was also added at that time and reads as follows:

Such benefits shall be paid during the continuance of such disability, not to exceed a period of 104 weeks, as provided by this subsection and subsection (2).

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As subsection (2) references the maximum duration for TTD benefits, this provision from the 1994 reform established a combined total TTD and TPD maximum benefit of 104 weeks, whereas previously the separate maximum for each benefit type was 260 weeks.

In the *Westphal* decision, the court deemed the 104-week maximum duration for TTD benefits in Florida Statutes 440.15(2)(a) unconstitutional and revived the corresponding section of the law in effect prior to 1994 (i.e., a 260-week maximum duration). This created a potential inconsistency in 440.15(4)(e) since subsection (2)(a) no longer provides for benefits not to exceed 104 weeks—serving to create some uncertainty as to what the applicable duration limitation is for TPD benefits.

This analysis assumes a 260-week maximum applied on a combined basis for TTD and TPD benefits. Some alternative interpretations of the *Westphal* decision have been suggested¹² with respect to the limiting of TTD and TPD benefits and include:

- A maximum of 260 weeks of TTD benefits and 104 weeks of TPD benefits
- Separate maximums of 260 weeks for both TTD and TPD benefits

Of the above possible alternatives, a 260-week combined maximum on TTD and TPD benefits results in the minimum potential increase in Florida workers compensation system costs. If this provision of the law is subsequently interpreted to apply differently than the combined 260-week combined maximum for TTD and TPD benefits, NCCI would evaluate the change and reflect the impact, if any, in a future NCCI rate filing in Florida.

Aggravating Factors:

While considerations for changes in claimant behavior are reflected in this analysis, additional influences may emerge over time resulting in an impact greater than the estimated +2.2%. The following are two examples of such potential factors:

- The recent Florida Supreme Court decision in *Castellanos vs. Next Door Company, et al.*, could result in a further lengthening of claim durations and higher medical costs than that currently contemplated in the pricing methodology for the *Westphal* decision described above.
- TTD benefits payable while an injured worker is obtaining training and educational benefits is limited to 52 weeks in Florida, subject to the aggregate maximum duration for TTD. As the aggregate maximum duration for TTD will increase from 104 weeks to 260 weeks as a result of the *Westphal* decision, it is possible that a greater amount of TTD may be sought either while the employee is participating in a training and education program, or through settlement negotiations.

To the extent such aggravating factors, over time, result in an impact due to the *Westphal* decision that is in excess of the estimated +2.2%, any additional increase in claim costs would be reflected in a future NCCI rate filing in Florida.

¹² “Florida Workers’ Comp Adjudication”, Florida Deputy Chief Judge David Langham;
<http://fiojcc.blogspot.com/2016/06/westphal-is-over-questions-remain.html>