

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1351 Workers' Compensation Fees

**SPONSOR(S):** Insurance & Banking Subcommittee; Stone

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	8 Y, 4 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

In Florida's workers' compensation system, the Three-Member Panel, consisting of the Chief Financial Officer, an employer representative, and an employee representative, adopts uniform schedules of maximum reimbursement allowances for physicians, hospitals, ambulatory surgical centers, and other service providers. Biennially, the Three-Member Panel is required to submit recommendations to the Florida Legislature on methods to improve the workers' compensation health care delivery system.

Hospital outpatient services in workers' compensation are reimbursed at 75 percent of "usual and customary charges," except as otherwise provided. The term usual and customary charges is not defined in statute and its meaning varies among insurers. For inpatient hospital care, maximum reimbursement allowances are based on a schedule of per diem rates approved by the Three-Member Panel. When inpatient charges exceed a specified amount, the hospital is reimbursed 75 percent of charges.

The 2013 Biennial Report of the Three-Member Panel recommended in part that hospital inpatient and outpatient services be reimbursed pursuant to Medicare's hospital inpatient and outpatient prospective payment systems, with a payment adjustment factor. The bill reflects these recommendations. It provides that all compensable charges for hospital outpatient care be reimbursed at up to 140 percent of the Medicare outpatient prospective payment system, except as otherwise provided. For inpatient hospital care, the maximum reimbursement allowances are to be based on up to 140 percent of the Medicare inpatient prospective payment system. Both inpatient and outpatient reimbursement rates must be approved by the Three-Member Panel no later than October 1st of each year for the following calendar year.

The National Council on Compensation Insurance has estimated a preliminary cost savings to the system of -7%, or \$200 million, if hospital inpatient and outpatient fee schedules are both based on 140 percent of Medicare reimbursement rates. As the bill allows for reimbursements of up to 140 percent of Medicare, additional savings would be realized if reimbursement rates are lower than 140 percent of Medicare.

The bill has no fiscal impact on state or local government. It is effective July 1, 2014, except as otherwise provided.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Workers' Compensation Medical Benefits**

For work-related injuries sustained by employees, workers' compensation provides medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require, including medicines, medical supplies, durable medical equipment, and prosthetics.<sup>1,2</sup>

#### **Maximum Reimbursement Allowances**

In Florida, the Three-Member Panel adopts uniform schedules of maximum reimbursement allowances in workers' compensation for physicians, hospitals, ambulatory surgical centers, and other service providers.<sup>3</sup> The Three-Member Panel consists of the Chief Financial Officer, an employer representative, and an employee representative, with the latter two members appointed by the Governor and confirmed by the Senate. Biennially, the Three-Member Panel is required to submit recommendations to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

#### **Hospital Outpatient Reimbursement**

Hospital outpatient services must be reimbursed at 75 percent of "usual and customary charges," except as otherwise provided in the workers' compensation law.<sup>4,5</sup> The term usual and customary charges is not defined in statute and its meaning varies among insurers.

#### **Hospital Inpatient Reimbursement**

Maximum reimbursement allowances for inpatient hospital care are based on a schedule of per diem rates approved by the Three-Member Panel.<sup>6</sup> The bulk of inpatient hospital services are paid according to the established surgical or non-surgical per diem amount. The Florida Workers' Compensation Hospital Reimbursement Manual contains the schedule of per diem rates. However, if the inpatient charges, excluding the charges for implants, exceed \$51,400, the hospital is reimbursed 75 percent of charges.

#### **Medical Cost Drivers**

Medical expenses account for 69 percent of total workers' compensation benefits costs in Florida; indemnity (monetary) benefits account for 31 percent of total costs.<sup>7</sup> Payments for hospital inpatient services represent 18.6 percent of total medical payments; payments for hospital outpatient services

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<sup>1</sup> Section 440.13(2)(a), F.S.

<sup>2</sup> The workers' compensation law also provides compensation (indemnity benefits) for disability when the injury causes the employee to miss more than 7 days of work.

<sup>3</sup> The Division of Workers' Compensation's website lists reimbursement manuals for health care providers (Rule 69L-7.020, F.A.C.), dentists (Rule 69L-7.020, F.A.C., Section IV), hospitals (Rule 69L-7.501, F.A.C.), pharmacies (Rule 69L-7.020, F.A.C, Section V), durable medical equipment (Rule 69L-7.020, F.A.C., Section VI), and ambulatory surgical centers (Rule 69L-7.100, F.A.C.). See <http://www.myfloridacfo.com/division/WC/provider/reimbursement-manuals.htm> (Last accessed: March 14, 2014).

<sup>4</sup> Section 440.13(12)(a), F.S.

<sup>5</sup> The difficulties in defining usual and customary charges are illustrated in *One Beacon Insurance Agency v. Agency for Health Care Administration* (958 So.2d 1127). The First District Court of Appeal (1st DCA) ruled against the Agency for Health Care Administration in a medical reimbursement dispute involving an ambulatory surgical center. The 1st DCA determined that it was the Legislature's intent to eliminate calculation of a usual and customary charge based on the fees of any one provider in favor of a calculation of such charge based on the average fees of all providers in a given geographical area. The Division of Workers' Compensation's attempts to comply with this ruling have resulted in three separate proposals to the Three-Member Panel since 2008.

<sup>6</sup> Section 440.13(12)(a), F.S.

<sup>7</sup> January 1, 2014, workers' compensation filing by the National Council on Compensation Insurance (NCCI). NCCI is the designated statistical agent and rating organization for workers' compensation insurance in Florida. NCCI's responsibilities include collecting and analyzing data from workers' compensation insurers conducting business in Florida and submitting rate filings to the Office of Insurance Regulation. NCCI is often asked by the Florida Legislature to provide cost impacts of pending legislation to the Florida's workers' compensation system.

represent 18.8 percent of total medical payments.<sup>8</sup> A recent study by the Workers' Compensation Research Institute (WCRI)<sup>9</sup> found that the rapid growth in hospital payments per claim mainly drove increases in medical payments per workers' compensation claim in Florida from 2005 to 2011.

### **Recommendations of the Three-Member Panel**

The Three-Member Panel, in its 2013 biennial report to the Legislature,<sup>10</sup> recommended that the reimbursement methodologies for both outpatient<sup>11</sup> and inpatient hospital services<sup>12</sup> be changed to provide for reimbursements based on percentages of Medicare. It was recommended that outpatient hospital services be reimbursed at 120 to 140 percent of Medicare's payments under Medicare's outpatient prospective payment system. In the alternative, the Three-Member Panel recommended that the term "usual and customary charge" be defined to make all stakeholders aware of its intended meaning and when it is to be used in determining reimbursement amounts.

In the 2013 report, the Three-Member Panel also recommended that inpatient hospital services be reimbursed at 120 or 140 percent of Medicare's payments under Medicare's inpatient prospective payment system.

The bill reflects the recommendations by the Three-Member Panel to base hospital reimbursements for workers' compensation care and treatment on Medicare's hospital inpatient and outpatient prospective payment systems, combined with a payment adjustment factor. Specifically, it provides that all compensable charges (charges covered by workers' compensation) for hospital outpatient care be reimbursed at up to 140 percent of the Medicare outpatient prospective payment system, except as otherwise provided. For inpatient hospital care, the maximum reimbursement allowances are to be based on up to 140 percent of the Medicare inpatient prospective payment system. The Three-Member Panel must approve hospital outpatient and hospital inpatient reimbursement schedules by October 1st of each year for the following calendar year.

The National Council on Compensation Insurance has estimated a preliminary cost savings to the system of -7%, or \$200 million, if hospital inpatient and outpatient fee schedules are both based on 140 percent of Medicare reimbursement rates.<sup>13</sup> As the bill allows for reimbursements of up to 140 percent of Medicare, additional savings would be realized if reimbursement rates are lower than 140 percent of Medicare.

## **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 44013(12)(a), F.S., relating to guides of maximum reimbursement allowances under the workers' compensation system.

**Section 2.** Amends s. 440.13(12)(b), F.S., to make a conforming change.

**Section 3.** Provides an effective date of July 1, 2014, except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>8</sup> Correspondence from NCCI dated March 10, 2014, on file with the Insurance & Banking Subcommittee.

<sup>9</sup> WCRI is an independent research organization that analyzes workers' compensation systems for states with which it contracts. WCRI provides information through studies and data collection efforts, and does not take positions on the issues it researches. See "CompScope™ Medical Benchmarks for Florida, 14th Edition," by WCRI, a 16-state study on overall medical payments per workers' compensation claim. Available at the WCRI website: [https://www.wcrinet.org/cgi-bin/search.asp?Q=14th edition&E=1&X=0&S=80](https://www.wcrinet.org/cgi-bin/search.asp?Q=14th%20edition&E=1&X=0&S=80) (Last accessed: March 17, 2014).

<sup>10</sup> The "Three-Member Panel, 2013 Biennial Report" is available at <http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/Default.htm> (Last accessed: March 16, 2014).

<sup>11</sup> Currently, outpatient hospital services are reimbursed at 75 percent of usual and customary charges, except as otherwise provided.

<sup>12</sup> Currently, inpatient hospital services are reimbursed at approved per diem rates.

<sup>13</sup> Correspondence from NCCI dated March 10, 2014, on file with the Insurance & Banking Subcommittee.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill decreases workers' compensation rates, businesses may pass their savings on to consumers or, in some cases, expand and hire additional workers. The bill reimburses inpatient and outpatient hospital care at up to 140 percent of Medicare. It has been estimated that providing reimbursement at 140 percent of Medicare will decrease payments to hospitals by \$200 million. If reimbursements are based on less than 140 percent, payments to hospitals will decrease further. It is unclear whether hospitals will seek to offset the decrease in reimbursements for services provided in workers' compensation with increased costs for services provided outside the workers' compensation system.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The proposed committee substitute made the following changes:

- Clarified that hospital outpatient care in workers' compensation is to be reimbursed pursuant to Medicare's outpatient schedule.

- Deleted statutory language that is inconsistent with the reimbursement provisions of the bill.

The staff analysis is drafted to reflect the committee substitute.