

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/CS/SB 1580

INTRODUCER: Health Policy; Banking and Insurance Committee; and Senator Hays

SUBJECT: Workers' Compensation Cost Task Force

DATE: April 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.	Lloyd	Stovall	HP	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1580 creates the Workers' Compensation Cost Task Force, which is composed of 17 members. The Chief Financial Officer or his or her designee will serve as chair of the task force. The purpose of the task force is to analyze workers' compensation costs. Specifically, the task force is required to:

- Review and analyze the recommendations of the *Three-Member Panel 2013 Biennial Report* in the context of reducing workers' compensation costs.
- Develop a report that includes its findings and recommendations to the Legislature regarding a new payment methodology for hospital inpatient and outpatient reimbursements in workers' compensation cases, which would reward efficiency, quality, and outcomes.
- Address other factors related to workers' compensation costs, including, but not limited to, the volume of inpatient and outpatient services, the number of accidents and workers' compensation claims, fraud, the cost per claim and treatment, and tort costs related to workers' compensation care.

The task force is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

The bill provides that the Department of Financial Services (DFS) will provide administrative and staff support services for the task force. Members of the task force are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S. The DFS estimates the total costs associated with the task force would be \$38,320.98.

The Office of Insurance Regulation (OIR), in consultation with the task force, shall prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The bill provides the specific review elements for the report. The report is due to the task force for approval by September 1, 2014, and must be delivered to the Senate President and Speaker of the House of Representatives by November 1, 2014.

II. Present Situation:

Florida's Workers Compensation Law

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the DFS is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment. Section 440.13, F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, generally may not exceed the applicable fee schedules adopted by the three-member panel or authorized in this section.

The three-member panel (panel) consists of the Chief Financial Officer, or his or her designee, and two members appointed by the Governor, subject to confirmation by the Senate, one member who is a representative of employers and another member who is a representative of employees. The panel determines statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. In addition to establishing reimbursement allowances, the panel is required to submit recommendations biennially 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.

In 2013, the three-member panel report¹ included the following recommendations that have not been addressed by the Legislature:

- Remove the statutory mandate in s. 440.13(12)(a), F.S., that requires reimbursement for outpatient hospital services to be based on a percent of "usual and customary charges" and fix the reimbursement amounts to 120 percent or 140 percent of Medicare's payments under its Outpatient Prospective Payment System; or, in the alternative;
 - If a change in the methodology for hospital outpatient reimbursement services is not adopted, define "usual and customary charge" in a manner so that all stakeholders are aware of its intended meaning and when it is to be used in determining reimbursement for medically necessary treatment, care and attendance provided in an outpatient hospital setting.
- Remove the statutory mandate in s. 440.13(12)(a), F.S., that requires reimbursement for inpatient hospital services to be based on per diem and fix the reimbursement amounts to

¹ See The Three-Member Panel 2013 Biennial Report, *available at* http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/3MP_Report_2013.pdf. (last visited April 4, 2014).

120 percent or 140 percent of Medicare's payments under its Inpatient Prospective Payment System.²

Retrospective Rating Plans

Current Florida law and the rating plans approved by OIR allow for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred during the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.³

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over \$1,000,000 in standard premium. The Department of Insurance (predecessor of the OIR) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.⁴ Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.⁵ The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in a majority of states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.⁶ The NCCI retrospective rating plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually, or in any combination with any other commercial casualty lines of insurance, exceeds an annual standard premium eligibility threshold of \$500,000 for the term of a retrospective rating plan.

III. Effect of Proposed Changes:

The bill creates the Workers' Compensation Cost Task Force. The DFS will provide administrative and staff support services relating to the functions of the task force. The bill

² The three other recommendations were addressed by the Legislature in 2013 (Chapter 2013-131, s.1, Laws of Fla., and Chapter 2013-141, s. 6, Laws of Fla.).

³ OIR, *Senate Bill 952 Agency Analysis*, (Feb. 27, 2014) (on file with the Senate Committee on Health Policy).

⁴ See *Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance*, Case No. 94-0892 (Fla. DOAH 1994).

⁵ *Id.*

⁶ E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).

requires the task force to organize by July 1, 2014. The bill provides that the task force shall be composed of the following 17 members:

- The Chief Financial Officer, or his or her designee, who shall serve as chair of the task force.
- An attorney who practice workers' compensation law, appointed by the Speaker of the House of Representatives.
- The Insurance Consumer Advocate.
- The Secretary of the Department of Health, or his or her designee.
- The employee member of the three-member panel.
- One member who represents a critical access hospital, appointed by the Speaker of the House of Representatives.
- One member who represents a rural hospital, appointed by the President of the Senate.
- Five members appointed by the President of the Senate and five members appointed by the Speaker of the House of Representatives, which must each include:
 - A member of the Legislature;
 - An owner or representative of a hospital system that has over 2,000 beds and provides services to a significant number of workers' compensation claims;
 - An owner or representative of a business that employs more than 500 employees;
 - An owner or representative of a business that employs less than 25 employees; and
 - A representative from an insurer that provides workers' compensation insurance.

The purpose of the task force is to analyze workers' compensation costs. The task force will review and analyze the recommendations of the *Three-Member Panel 2013 Biennial Report* in the context of reducing workers' compensation costs. The task force is required to develop a report that includes its findings and legislative recommendations regarding a new payment methodology for hospital inpatient and outpatient reimbursements in workers' compensation cases, which will reward efficiency, quality, and outcomes. The task force must address other factors related to workers' compensation costs, including, but not limited to: the volume of inpatient and outpatient services; the number of accidents and workers' compensation claims; fraud; the cost per claim and treatment; and, tort costs related to workers' compensation care. The task force is required to submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

Members of the task force will serve without compensation. However, they are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The bill also directs the OIR, in consultation with the task force, to prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The report must examine the use of such provisions in neighboring and competitive states, including the potential for savings or inequities to Florida's employers due to the lack of such provisions in this state, including for employers that have exposure in more than one state at varying premium levels.

The report on retrospective rating plans is due to the task force for approval by September 1, 2014, and the approved report must be delivered to the President of the Senate and the Speaker of the House of Representatives by November 1, 2014.

The bill repeals this subsection with the task force and report requirements on June 30, 2015.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 1580 requires the DFS to provide administrative and staff support services for the task force. Members of the task force are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S. The task force is required to organize by July 1, 2014, and submit a report by January 1, 2015. The DFS estimates the following costs of the task force, based on a similar task force:⁷

Item	Amount
Travel	\$18,331.80
Court Reporter	12,828.26
Meeting Room	7,029.25
Florida Administrative Weekly Notice	131.67
Total Expenditures	\$38,320.98

The bill also requires the OIR to produce a report on retrospective rating plans. The OIR does not currently collect the information required under the bill and would need to seek

⁷ E-mail from L. MaFaddin, Director of Legislative Affairs, Department of Financial Services (April 2, 2014) (on file with Senate Committee on Banking and Insurance).

the data from other sources. The data collection costs will either be absorbed by the OIR if the information is available from NCCI or other similar resources or by the affected companies if a market investigation must be conducted.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 440.13 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on April 8, 2014:

The CS reduced the size of the Workers' Compensation Cost Task Force to 17 members and modified its composition to remove representatives from the Florida Chamber of Commerce, Associated Industries of Florida, and the Florida Hospital Association. An attorney who practices workers' compensation law, the Insurance Consumer Advocate and the employee member of the three-member panel were named to the task force.

The CS requires the OIR, in consultation with the task force, to prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The OIR must consider such provisions in neighboring and competitive states and the impact the lack of such authority has in this state on employers, including those with exposure in more than one state at varying premium levels. The report is due to the task force by September 1, 2014. A task force approved report must be delivered to the President of the Senate and the Speaker of the House of Representatives by November 1, 2014.

CS by Banking and Insurance on April 1, 2014:

The CS eliminates provisions which would have revised the workers' compensation reimbursement allowances for hospital care.

The CS creates the Workers' Compensation Cost Task Force, which is composed of 18 members. The DFS will provide administrative and staff support services for the task force. The purpose of the task force is to analyze workers' compensation costs and to

⁸ Telephone conversation with Rebecca Matthews, Office of Insurance Regulation (OIR) (April 9, 2014).

submit a report containing findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
