

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1013 Legislative Ratification/Workers' Compensation Law

SPONSOR(S): Hager

TIED BILLS: **IDEN./SIM. BILLS:** SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N	Stranburg	Rubottom
2) Insurance & Banking Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Department of Financial Services adopts rules establishing maximum allowable provider reimbursement rates applicable to medical care provided under Florida's Workers' Compensation laws. The maximum allowable reimbursements must be recommended by a three-member panel composed of the Chief Financial Officer of the State of Florida (CFO) or a designee and a representative of employers and a representative of employees each appointed by the Governor. Typically, the three-member panel adopts by reference a manual of policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished by health care providers under the Workers' Compensation statutes. The manual also states the reimbursement policies and payment methodologies for pharmacists and medical suppliers pertaining to Workers' Compensation.

The Florida Administrative Procedure Act (APA) requires state agencies to assess whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the incorporation by reference of the Florida Workers' Compensation Health Care Provider Reimbursement Manual. The preparation of a SERC is required if a proposed rule will have an adverse impact on small business, or if it is likely to directly or indirectly increase regulatory costs by more than \$200,000 within one year of implementation. If the SERC analysis indicates the rule is likely to have a specific economic impact exceeding \$1 million aggregated in the first five years from implementation, then the rule must be ratified by the Legislature before going into effect. The APA requires that the rule be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

In 2011, the Department adopted a rule adopting Health Care Provider reimbursement policies, approving approximately \$60,000,000 in increases in maximum reimbursement rates. The rule was submitted to the Legislature for ratification and has not been ratified to date. An update to that maximum reimbursement rule is now pending and may be filed for adoption and submitted for ratification in during the 2015 Regular Session. Reimbursement manuals for ambulatory Surgical centers and hospitals have been adopted in 2011 and 2015 respectively without resort to ratification. Due to the volume of Workers Compensation cases in Florida, when maximum allowable reimbursement rates increase, the implementing rule will typically requires ratification, and will, when ratified, result in a Workers Compensation rate increase sufficient to support the higher medical payments.

The bill exempts from ratification under s. 120.541(3) all rules adopting maximum reimbursement allowances and manuals approved by the three-member panel.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's workers' compensation law¹ provides medically necessary treatment and care for injured employees, including medications. The Department of Financial Services, Division of Workers' Compensation, (DFS) provides regulatory oversight of Florida's workers' compensation system. The law provides for reimbursement formulas and methodologies to compensate providers of health services to compensation claimants, subject to maximum reimbursement allowances (MRAs).² DFS incorporates the uniform schedules MRAs by rule in reimbursement manuals.³

Maximum Allowable Reimbursement Rates Rulemaking under Chapter 440, Workers Compensation

The Florida Department of Financial Services (DFS) from time to time adopts rules implementing maximum allowable reimbursement rates determined by a three-member panel established by law. The panel includes the CFO or a designee, as well as a representative each of employers and employees, appointed by the Governor and confirmed by the Florida Senate.⁴ DFS periodically updates the Florida Workers' Compensation Health Care Provider Reimbursement Manual, the Reimbursement Manual for Ambulatory Surgical Centers, and the Reimbursement Manual for Hospitals ("the Manuals").⁵ The Manuals contain reimbursement policies, guidelines, codes, and the Maximum Reimbursement Allowances (MRAs) for health care services, equipment and supplies.⁶

In 2011, the Department adopted Rule 69L-7.020, adopting Health Care Provider reimbursement policies, approving approximately \$60,000,000 in increases in maximum reimbursement rates. In 2013, HB 1165 was filed, seeking to ratify the rule. The ratification bill was not considered. The 2013 Legislature did pass CS/SB 662, which altered the amount of reimbursement for repackaged or relabeled prescription drugs. This action left the pending rule inconsistent with the law governing reimbursement amounts under Workers' Compensation. No ratification legislation was considered during the 2014 Legislative Session.

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.⁷ Rulemaking authority is delegated by the Legislature⁸ through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"⁹ a rule. Agencies do not have discretion whether to engage in rulemaking.¹⁰ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.¹¹ The grant of rulemaking authority itself need not be detailed.¹² The specific statute being interpreted or implemented through rulemaking must provide

¹ Chapter 440, F.S.

² Section 440.13(12), F.S..

³ Section 440.13(12), (14)(b), F.S. Chapter 69L-7, F.A.C.

⁴ Section 440.13(14), F.S.

⁵ Rules 69L-7.020, 69L-7.100, 69L-7.501, F.A.C.

⁶ Section 440.13(12), F.S.

⁷ Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

⁸ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁹ Section 120.52(17).

¹⁰ Section 120.54(1)(a), F.S.

¹¹ Section 120.52(8) & s. 120.536(1), F.S.

¹² *Save the Manatee Club, Inc.*, supra at 599.

specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹³

An agency begins the formal rulemaking process by filing a notice of the proposed rule.¹⁴ The notice is published by the Department of State in the Florida Administrative Weekly¹⁵ and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.¹⁶

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.¹⁷ Next is the likely adverse impact on business competitiveness,¹⁸ productivity, or innovation.¹⁹ Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.²⁰ If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."²¹ A rule must be filed for adoption before it may go into effect²² and cannot be filed for adoption until completion of the rulemaking process.²³ A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years²⁴ must be ratified by the Legislature before going into effect.²⁵ As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Effect of Proposed Changes

The bill amends s. 120.80, F.S., to include a provision exempting DFS's promulgation of rules adopting maximum reimbursement allowances and manuals from the legislative ratification requirement of s. 120.541(3), F.S. As a result, maximum reimbursement allowances and manuals promulgated by DFS in the future would not require legislative ratification before taking effect, even if the associated regulatory costs exceed the one million dollar threshold.

B. SECTION DIRECTORY:

Section 1: Amending s. 120.80, F.S., providing that administrative rules adopted by the Department of Financial Services to adopt maximum reimbursement allowances and manuals approved by a three-member panel pursuant to s. 440.13(12), F.S., are not subject to the legislative ratification requirement.

Section 2: Provides an effective date of July 1, 2015.

¹³ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹⁴ Section 120.54(3)(a)1, F.S..

¹⁵ Section 120.55(1)(b)2, F.S.

¹⁶ Section 120.541(2)(a), F.S.

¹⁷ Section 120.541(2)(a)1., F.S.

¹⁸ Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹⁹ Section 120.541(2)(a) 2., F.S.

²⁰ Section 120.541(2)(a) 3., F.S.

²¹ Section 120.54(3)(e)6. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State .

²² Section 120.54(3)(e)6, F.S.

²³ Section 120.54(3)(e), F.S.

²⁴ Section 120.541(2)(a), F.S.

²⁵ Section 120.541(3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

State government entities will bear implementation costs to the extent they provide workers' compensation coverage for their employees and operate as workers' compensation claims administrators.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local government entities will bear implementation costs to the extent they are required to secure workers' compensation coverage for their employees and that they operate as workers' compensation claims administrators.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The exemption could allow some maximum reimbursement rates to increase sooner than they might if ratification is required. The economic impact of more consistently maintaining reimbursement rates current in the health care market may contribute a benefit of exempting the rules from ratification.

The pending rule adopting the Health Care Provider Reimbursement Manual has an impact of approximately \$ 61.0 million per year on health care costs and corresponding Workers' Compensation rates, impacts that would be allowed if the pending rule is exempted from present ratification requirements.

Additionally, Workers' Compensation claim administrators will bear implementation costs between \$2.1 and 3.2 million to update their claim administration programs to implement the updated rates. These implementation costs would be a one-time, first year cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill removes the oversight of legislative ratification from a narrow class of rules adopted by DFS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES