By Senator Hays

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A bill to be entitled

An act relating to workers' compensation; amending s. 440.09, F.S.; clarifying factors to be considered in determining major contributing cause; authorizing the collection and testing of blood and urine samples upon employer or carrier request; providing for payment of resulting medical bills regardless of test results; amending s. 440.102, F.S.; providing for post-accident drug testing; authorizing use of drug test results by an employer who complies with material provisions of drug-free workplace requirements; amending s. 440.13, F.S.; revising the period within which a carrier must authorize an alternative physician; revising requirements related to treatment reassessment when certain controlled substances are prescribed; amending s. 440.15, F.S.; providing that permanent total disability benefits shall not be awarded if an employee is capable of performing light-duty work; providing that all preexisting conditions and injuries are subject to apportionment; amending s. 440.20, F.S.; authorizing the advance payment of compensation only for compensable injuries; providing a methodology for the repayment of advances made by self-insured employers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) and paragraph (a) of subsection (7) of section 440.09, Florida Statutes, are

amended to read:

440.09 Coverage.—

(1) The employer must pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment. The injury, its occupational cause, and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries. For purposes of this section, "major contributing cause" means the cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence. Pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable. For purposes of this section, "objective relevant medical findings" are those objective findings that correlate to the subjective complaints of the injured employee and are confirmed by physical examination findings or diagnostic testing. Establishment of the causal relationship between a compensable accident and injuries for conditions that are not readily observable must be by medical evidence only, as demonstrated by physical examination findings or diagnostic testing. Major contributing cause must be demonstrated by medical evidence only.

(b) If an injury arising out of and in the course of

employment combines with a preexisting disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this chapter only to the extent that the injury arising out of and in the course of employment is and remains more than 50 percent responsible for the injury as compared to all other causes combined and thereafter remains the major contributing cause of the disability or need for treatment. Major contributing cause must be demonstrated by medical evidence only. A preexisting disease or condition is not limited to work-related injuries and conditions, and all preexisting diseases and conditions may be considered in the determination of major contributing cause.

(7)(a) To ensure that the workplace is a drug-free environment and to deter the use of drugs and alcohol at the workplace, if the employer has reason to suspect that the injury was occasioned primarily by the intoxication of the employee or by the use of any drug, as defined in this chapter, which affected the employee to the extent that the employee's normal faculties were impaired, and the employer has not implemented a drug-free workplace pursuant to ss. 440.101 and 440.102, the employer may require the employee to submit to a test for the presence of any or all drugs or alcohol in his or her system. Upon request of the employer or carrier, a hospital, medical clinic, physician, or other medical provider licensed and authorized to collect bodily samples, including blood or urine, shall collect blood or urine samples, retain all samples, follow chain-of-custody requirements, retain laboratory reports, and release the samples to a licensed laboratory for subsequent testing following all work-related injuries. The cost of

collecting and testing the samples and related medical costs must be paid by the employer or carrier, regardless of the test results, in accordance with the provisions of this chapter governing the payment of medical bills.

Section 2. Paragraph (a) of subsection (4) of section 440.102, Florida Statutes, is amended, subsections (13) through (15) of that section are renumbered as subsections (14) through (16), respectively, and a new subsection (13) is added to that section, to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(4) TYPES OF TESTING.—

(a) An employer is required to conduct the following types of drug tests:

1. Job applicant drug testing.—An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant.

2. Reasonable-suspicion drug testing.—An employer must require an employee to submit to reasonable-suspicion drug testing.

3. Routine fitness-for-duty drug testing.—An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

4. Followup drug testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require followup testing. If followup testing is required, it must be conducted at least once a year for a 2-year period after completion of the program. Advance notice of a followup testing date must not be given to the employee to be tested.

5. *Post-accident drug testing.*—An employee who sustains or reports a work-related injury shall submit to drug testing immediately after receiving initial treatment for the injury. If the injured employee refuses to submit to testing, it shall be presumed, in the absence of clear and convincing evidence to the contrary, that the injury was occasioned primarily by the influence of drugs. This presumption may be rebutted only by evidence that there is no reasonable hypothesis that the drug influence contributed to the injury.

(13) COMPLIANCE WITH MATERIAL PROVISIONS.—An employer who is in compliance with the material provisions of this section but is not in compliance with every nonmaterial provision may not be precluded from using positive test results to deny benefits unless the noncompliance affects the validity of the test results obtained.

Section 3. Paragraph (f) of subsection (2) and paragraph (c) of subsection (15) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for

violations; limitations.—

(2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

(f) Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident. Upon the granting of a change of physician, the originally authorized physician in the same specialty as the changed physician shall become deauthorized upon written notification by the employer or carrier. The carrier shall authorize an alternative physician who shall not be professionally affiliated with the previous physician within 5 business days after receipt of the request. If the carrier fails to provide a change of physician as requested by the employee, the employee may select the physician and such physician shall be considered authorized if the treatment being provided is compensable and medically necessary.

Failure of the carrier to timely comply with this subsection shall be a violation of this chapter and the carrier shall be subject to penalties as provided for in s. 440.525.

(15) STANDARDS OF CARE.—The following standards of care shall be followed in providing medical care under this chapter:

(c) Reasonable necessary medical care of injured employees shall in all situations:

1. Utilize a high intensity, short duration treatment approach that focuses on early activation and restoration of function whenever possible.

2. Include reassessment of the treatment plans, regimes, therapies, prescriptions, and functional limitations or

restrictions prescribed by the provider every 30 days. If a controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 is prescribed, the employer or carrier may require the prescribing physician to meet with and evaluate the injured worker at medically reasonable intervals to determine the level of each controlled substance in the injured worker's system. Such evaluation may include testing of blood or urine.

3. Be focused on treatment of the individual employee's specific clinical dysfunction or status and shall not be based upon nondescript diagnostic labels.

All treatment shall be inherently scientifically logical, and the evaluation or treatment procedure must match the documented physiologic and clinical problem. Treatment shall match the type, intensity, and duration of service required by the problem identified.

Section 4. Paragraphs (a) and (b) of subsection (1) and paragraph (b) of subsection (5) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. ~~No~~ Compensation is not ~~shall be~~ payable under this section if the employee is engaged in, or is physically capable

of engaging in, at least sedentary employment. Permanent total disability benefits shall not be awarded if, in the opinion of the authorized physicians, the employee is able to perform light-duty work. However, an employee is not precluded from contesting her or his release to light-duty work.

(b) In the following cases, an injured employee is presumed to be permanently and totally disabled unless the employer or carrier establishes that the employee is physically capable of engaging in at least sedentary employment within a 50-mile radius of the employee's residence:

1. Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

2. Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

3. Severe brain or closed-head injury as evidenced by:

a. Severe sensory or motor disturbances;

b. Severe communication disturbances;

c. Severe complex integrated disturbances of cerebral function;

d. Severe episodic neurological disorders; or

e. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in sub-subparagraphs a.-d.;

4. Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands; or

5. Total or industrial blindness.

In all other cases, in order to obtain permanent total

disability benefits, the employee must establish that he or she is not able to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to his or her physical limitation. Permanent total disability benefits shall not be awarded if, in the opinion of the authorized physicians, the employee is able to perform light-duty work. However, an employee is not precluded from contesting her or his release to light-duty work. Entitlement to such benefits shall cease when the employee reaches age 75, unless the employee is not eligible for social security benefits under 42 U.S.C. s. 402 or s. 423 because the employee's compensable injury has prevented the employee from working sufficient quarters to be eligible for such benefits, notwithstanding any age limits. If the accident occurred on or after the employee reaches age 70, benefits shall be payable during the continuance of permanent total disability, not to exceed 5 years following the determination of permanent total disability. Only claimants with catastrophic injuries or claimants who are incapable of engaging in employment, as described in this paragraph, are eligible for permanent total benefits. In no other case may permanent total disability be awarded.

(5) SUBSEQUENT INJURY.—

(b) If a compensable injury, disability, or need for medical care, or any portion thereof, is a result of aggravation or acceleration of a preexisting condition, or is the result of merger with a preexisting condition, only the disabilities and medical treatment associated with such compensable injury shall be payable under this chapter, excluding the degree of disability or medical conditions existing at the time of the

impairment rating or at the time of the accident, regardless of whether the preexisting condition was disabling at the time of the accident or at the time of the impairment rating and without considering whether the preexisting condition would be disabling without the compensable accident. All preexisting conditions and injuries, whether work related or not work related, are subject to apportionment. The degree of permanent impairment or disability attributable to the accident or injury shall be compensated in accordance with this section, apportioning out the preexisting condition based on the anatomical impairment rating attributable to the preexisting condition. Medical benefits shall be paid apportioning out the percentage of the need for such care attributable to the preexisting condition. As used in this paragraph, "merger" means the combining of a preexisting permanent impairment or disability with a subsequent compensable permanent impairment or disability which, when the effects of both are considered together, result in a permanent impairment or disability rating which is greater than the sum of the two permanent impairment or disability ratings when each impairment or disability is considered individually.

Section 5. Paragraph (c) of subsection (12) and subsection (13) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(12)

(c) If ~~In the event~~ the claimant has sustained a compensable injury and has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a

physical impairment, actual or apparent:

1. An advance payment of compensation not in excess of $2,000 may be approved informally by letter, without hearing, by any judge of compensation claims or the Chief Judge.

2. An advance payment of compensation not in excess of $2,000 may be ordered by any judge of compensation claims after giving the interested parties an opportunity for a hearing thereon pursuant to not less than 10 days' notice by mail, unless such notice is waived, and after giving due consideration to the interests of the person entitled thereto. When the parties have stipulated to an advance payment of compensation not in excess of $2,000, such advance may be approved by an order of a judge of compensation claims, with or without hearing, or informally by letter by any such judge of compensation claims, if such advance is found to be for the best interests of the person entitled thereto.

3. When the parties have stipulated to an advance payment in excess of $2,000, such payment may be approved by a judge of compensation claims by order if the judge finds that such advance payment is for the best interests of the person entitled thereto and is reasonable under the circumstances of the particular case. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary concerning the stipulation and, in her or his discretion, may have an investigation of the matter made. The stipulation and the report of any investigation shall be deemed a part of the record of the proceedings.

4. An advance payment of compensation shall not be issued or ordered if compensability has been denied by the employer or

carrier.

(13) If the employer has made advance payments of compensation, she or he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. If an advance payment of compensation is made by a self-insured employer, the employer may deduct 20 percent of the claimant's wages until the entire amount of the advance is repaid.

Section 6. This act shall take effect July 1, 2014.