

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 Fiscal Policy

BILL: SB 1402

INTRODUCER: Senator Simmons

SUBJECT: Ratification of Department of Financial Services Rules

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

I. Summary:

Florida's Workers' Compensation law requires that the provider reimbursement manuals setting the maximum reimbursement rates for medical services to be updated every 3 years.

The *Florida Workers' Compensation Health Care Provider Reimbursement Manual* (manual), *2015 Edition*, sets out the policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished by health care providers under the Workers' Compensation statutes. The manual provides the reimbursement policies and payment methodologies for pharmacists and medical suppliers pertaining to Workers' Compensation. The current manual adopted by Rule 67-7.020, F.A.C., dates from 2008. The Legislature has not ratified any rules providing updates since 2008.

The Statement of Estimated Regulatory Costs shows Rule 69L-7.020, F.A.C., *Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition*, would have a specific, adverse economic effect, or would increase regulatory costs, exceeding \$1 million over the first 5 years the rule is in effect. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The rule was adopted on July 16, 2015, and submitted for ratification on November 3, 2015. The bill authorizes the rule to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

State government and local governments that are self-insured may see an increase in workers' compensation costs. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law¹ provides medically necessary treatment and care for injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).² A three-member panel (panel) consisting of the CFO or CFO designee and two Governor appointees sets the MRAs.³ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals.⁴

Currently, the reimbursement schedules for individual licensed providers are contained in the Florida Workers' Compensation Health Care Provider Reimbursement Manual (manual), 2008 Edition. On January 22, 2015, the panel approved a revised uniform schedule of MRAs for physicians and other recognized practitioners. On July 16, 2015, the DFS adopted the amended version of Rule 69L-7.020, F.A.C., incorporating by reference the 2015 Edition of the manual and updating incorporating references to other materials used for provider reimbursement together with the manual. According to the Statement of Estimated Regulatory Costs (SERC), the revisions to MRAs in the updated manual will result in increased costs to the overall compensation system of \$272 million over the next 5 years.⁵

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.⁶ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.⁷ An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.⁸ The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁹

¹ Chapter 440, F.S.

² Section 440.13(12), F.S. The MRAs are schedules for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The MRAs for inpatient hospital care are based on a schedule of per diem rates approved by the three-member panel no later than March 1, 1994, and are to be used in conjunction with a precertification manual as determined by the DFS, including maximum hours in which an outpatient may remain in observation status, which cannot exceed 23 hours.

³ Section 440.13(12), F.S.

⁴ Sections 440.13(12), F.S., and ch. 69L-7, F.A.C. Currently there are three manuals, the: Florida Workers' Compensation Health Care Provider Reimbursement Manual (Rule 69L-7.020, F.A.C.), Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers (Rule 69L-7.100, F.A.C.), and Florida Workers' Compensation Reimbursement Manual for Hospitals (Rule 69L-7.501, F.A.C.). Each manual is adopted by reference in the indicated rule.

⁵ Department of Financial Services Statement of Estimated Regulatory Costs, Workers' Compensation, *Rule 69L-7.020, F.A.C., Florida's Workers' Compensation Health Care Provider Reimbursement Manual* (on file with the Senate Committee on Fiscal Policy).

⁶ Section 120.52(16), F.S.

⁷ Section 120.52(17), F.S.

⁸ See ss. 120.52(8) and 120.536(1), F.S.

⁹ See *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2000).

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register.¹⁰ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's SERC, if one is prepared.¹¹

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.¹²

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within 1 year after implementation of the rule.¹³

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.¹⁴

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,¹⁵ productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹⁶

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹⁷

¹⁰ See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

¹¹ Section 120.54(3)(a)1., F.S.

¹² See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

¹³ Section 120.541(1)(a), F.S.

¹⁴ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

¹⁵ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹⁶ Section 120.541(2)(a), F.S.

¹⁷ Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. See s. 120.541(4), F.S.

Impact of Rule 69L-7.020, F.A.C.

Rule 69L-7.020, F.A.C., incorporates by reference the *Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition*, (manual) providing for reimbursement of health care providers under the increased MRAs approved by the panel. The SERC shows Rule 69L-7.020, F.A.C., would have a specific, adverse economic effect, or would increase regulatory costs, exceeding \$1 million over the first 5 years the rule is in effect. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-7.020, F.A.C., allowing the rule to go into effect.

Section 1 ratifies Rule 69L-7.020, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rules. The bill provides that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

To the extent the bill requires a local government to expend funds, provisions of art. VII, s. 18(a) of the Florida Constitution, may apply. If those provisions do apply, for the law to be binding upon the cities and counties, the Legislature must find that it fulfills an important state interest and one of the exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Both state and local governments who are self-insured may see an increase in workers' compensation costs.

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:

The bill itself does not directly impact the private sector. Private employers responsible for paying workers' compensation claims or obtaining workers' compensation insurance will incur increased costs due to the increase in maximum reimbursements for providers.

C. Government Sector Impact:

The DFS Division of Risk Management estimates that the Rule 69L-7.020, F.A.C., will increase workers' compensation non-operating expenses by:

- \$2,071,658 million for Fiscal Year 2016-2017;
- \$2,136,258 million for Fiscal Year 2017-2018; and
- \$2,202,758 million for Fiscal Year 2018-2019.¹⁸

The Revenue Estimating Conference (REC) determines the non-operating costs for the DFS Division of Risk Management. If the REC reviews the non-operating costs for the DFS Division of Risk Management related to the medical treatment of a workers' compensation injury, it may increase the division's non-operating costs.

Local governments who are self-insured may see an increase of 1.9% in workers' compensation costs.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

¹⁸ Department of Financial Services, *Bill Analysis for SB 7073*, (January 26, 2016) (on file with the Senate Committee on Fiscal Policy). The estimates were calculated by multiplying the estimated workers' compensation expenses for Fiscal Years 2016-2017 through 2018-2019 (based on the Revenue Estimating Conference on December 21, 2015), minus the pharmacy costs paid under the Division of Risk Management's vendor, multiplied by 1.9% (the estimated increase as a result of the bill).

¹⁹ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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