

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 Banking and Insurance

BILL: SB 1580

INTRODUCER: Senator Hays

SUBJECT: Reimbursement Allowances for Hospital Care

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			HP	
3.			AP	

I. Summary:

SB 1580 revises the hospital reimbursement rates for care received by injured workers pursuant to chapter 440, F.S. Currently, the three-member panel (panel), consisting of the Chief Financial Officer, an employer representative, and an employee representative establishes the maximum reimbursement allowances for specified medical treatment. The bill requires that the maximum reimbursement for inpatient and outpatient hospital care be set at 140 percent of the Medicare hospital inpatient and outpatient prospective system.

Currently, Florida workers' compensation law requires the maximum reimbursement allowances for inpatient hospital care to be based on a schedule of per diem rates approved by the panel. However, if the inpatient charges, excluding the charges for implants, exceed \$51,400, the hospital is reimbursed at 75 percent of charges. Hospital outpatient services are reimbursed at 75 percent of usual and customary charges, except as otherwise provided.

The National Council on Compensation Insurance (NCCI) estimates that implementation of a hospital inpatient and hospital outpatient fee schedule based on 140 percent of Medicare reimbursement rates as provided in SB 1580/HB1351 would result in a preliminary cost impact of -7.0 percent (-\$200 Million)¹ on overall workers compensation system costs in Florida.

¹ NCCI, *Preliminary Cost Impact Analysis, SB 1580/HB 1531* (Mar. 10, 2014) (on file with Senate Committee on Banking and Insurance).

II. Present Situation:

Workers' Compensation Medical Cost Drivers

In Florida, medical benefits comprise the majority of total workers' compensation benefit costs—69 percent for medical benefits and 31 percent for indemnity benefits.² Payments for hospital inpatient services represent 18.6 percent of the total medical payments.³ At the workers' compensation insurance rate hearing on October 1, 2013, NCCI presented testimony to the Office of Insurance Regulation (OIR) regarding the potential savings that could be realized by legislatively addressing certain cost drivers.⁴ The NCCI compared the medical cost distributions for Florida versus all states combined to show that Florida has a higher portion of cost paid for drugs, hospital inpatient, hospital outpatient and ambulatory surgical centers (ASC). Substantial rate reductions would occur if the cost in Florida were consistent with other states for drugs, inpatient hospital, outpatient hospital and ASC reimbursement rates.

According to the Workers' Compensation Research Institute (WCRI),⁵ rapid increases in payments per claim for hospital outpatient and inpatient services were the main driver of the growth in medical payments per claim from 2005-2011.⁶ In a related study, the WCRI noted that hospital outpatient payments for common surgeries (knee and shoulder) in Florida were among the highest of the 20 states studied.⁷

In 2013, the three-member panel made the following recommendations:

- 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

² NCCI, *Florida State Advisory Forum 2013*, (Oct. 3, 2013), available at: https://www.ncci.com/documents/SAF_FL.pdf (last visited Mar. 30, 2014).

³ NCCI *supra* note 1.

⁴ Office of Insurance Regulation, *2013 Workers' Compensation Annual Report*, (2013) (on file with Senate Committee on Banking and Insurance).

⁵ The WCRI is a not-for-profit independent research organization that analyzes workers' compensation systems for states with which it contracts. The WCRI provides information through studies and data collection efforts, and does not take positions on the issues it researches.

⁶ See WCRI, *CompScope Medical Benchmarks for Florida, 14th Edition* (2014), available at the WCRI website: <https://www.wcrinet.org/search.html>. (Last visited: Mar. 30, 2014).

⁷ In this study, Florida's payments were higher than Massachusetts, Oklahoma, Maryland, Pennsylvania, Michigan, California, Tennessee, Texas, Georgia, New Jersey, Connecticut, Iowa, North Carolina, Minnesota, Louisiana, and Indiana. Wisconsin, Virginia, and Illinois had higher payments than Florida. See WCRI study, *Hospital Outpatient Cost Index for Workers' Compensation, 2nd Edition*, (2013), available at <https://www.wcrinet.org/search.html>. (last visited Mar. 30, 2014).

120 percent or 140 percent of Medicare's payments under its Inpatient Prospective Payment System.⁸

Florida's Workers' Compensation Medical Benefits and Fees

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services (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.

The three-member panel (panel) consists of the Chief Financial Officer, or the Chief Financial Officer's 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.

As a condition of eligibility for payment, a health care provider who renders services must receive authorization from the carrier before providing 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, may not exceed the applicable fee schedules adopted by the panel or authorized in this section.⁹

Hospital Inpatient Reimbursement

The Florida workers' compensation law provides that the maximum reimbursement allowances for inpatient hospital care are based on a schedule of per diem rates to be approved by the panel no later than March 1, 1994.¹⁰ In Florida's workers' compensation program, the majority of inpatient hospital services are paid according to the surgical or non-surgical per diem amount established by the panel.¹¹ The current 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.

⁸See The Three-Member Panel 2013 Biennial Report, available at: http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/3MP_Report_2013.pdf. (last visited Mar. 30, 2014).

⁹ However, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

¹⁰ Subsection 440.13(12)(a), F.S.

¹¹ Three-Member Panel 2013 Report, *supra* note 8.

Hospital Outpatient Reimbursement

Hospital outpatient services are reimbursed at 75 percent of “usual and customary charges” except as otherwise provided in Florida’s workers’ compensation statute.¹² The Florida statute does not define the term “usual and customary charge,” and its meaning can vary. This ambiguity in the intended meaning of the term can lead to divergent interpretations and litigation.¹³

III. Effect of Proposed Changes:

Currently, the three-member panel establishes statewide schedules of maximum reimbursement rates for delineated medical treatment for injured workers. The maximum reimbursement allowances for inpatient hospital care is based on a schedule of per diem rates approved by the panel. Outpatient hospital care is reimbursed at 75 percent of usual and customary charges, except as otherwise provided.

The bill provides that the maximum reimbursement allowance for inpatient and outpatient hospital care is 140 percent of the Medicare hospital inpatient and outpatient prospective system. The bill mandates implementation by October 1, 2015, of the change to the hospital inpatient reimbursement rate. The change in reimbursement rate for hospitals is effective July 1, 2014.

The bill is effective July 1, 2014.

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.

¹² Section 440.13(12), F.S.

¹³ For example, in *One Beacon Insurance v. Agency for Health Care Administration*, the First District Court of Appeal ruled against the Agency for Health Care Administration (AHCA) in a medical reimbursement dispute involving an ambulatory surgical center. The court determined that it was the intent of the Legislature 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 ruling is available at Florida’s First District Court of Appeal website: <http://opinions.1dca.org/written/opinions2007/3-28-07/05-5459.pdf> (last visited March 16, 2014).

B. Private Sector Impact:

The National Council on Compensation Insurance (NCCI)¹⁴ estimates that the implementation of a hospital inpatient and hospital outpatient fee schedule based on 140 percent of Medicare reimbursement rates, as provided in SB 1580/HB1351, would result in a preliminary cost impact of -7.0 percent (-\$200 Million) on overall workers compensation system costs in Florida. If enacted, NCCI indicates that the actual cost impact calculated may vary from this preliminary estimate due to updated data and the uncertainty in the interpretation for Category 2 Outpatient Hospital reimbursements included in the bill.

To the extent the costs savings are distributed to private employers through rate reductions, private employers could see rate reductions up to 7 percent. However, hospitals may incur a reduction in revenue due to the decreased reimbursement from workers' compensation carriers.

C. Government Sector Impact:

The Division of Risk Management of the Department of Financial Services (DFS) is responsible for the administration of all workers' compensations claims filed by state employees and volunteers who are injured on the job. The DFS indicates that the implementation of the bill would result in reduced expenditures,¹⁵ as provided below:

Expenditures	FY 2014-2015	FY 2015-2016	FY 2016-2017
Recurring	(\$4,500,000)	(\$6,000,000)	(\$6,000,000)
Non-Recurring	0	0	0

The DFS based their savings on preliminary estimates from the NCCI. The first year estimate assumes that the new maximum reimbursement rate for inpatient hospital services is implemented by January 1, 2015, while outpatient changes are effective July 1, 2014.

The Division of Workers' Compensation of the Department of Financial Services may experience a reduction in the number of reimbursement disputes filed by hospitals because reimbursements would be based upon a percentage of Medicare rates.¹⁶

Local governments may experience a rate reduction of up to 7 percent.

¹⁴ The NCCI is the statistical rating organization for workers' compensation insurers.

¹⁵ Department of Financial Services, Division of Risk Management, *Senate Bill 1580 Fiscal Analysis* (Mar. 12, 2014), (on file with Senate Committee on Banking and Insurance).

¹⁶ Department of Financial Services, Division of Workers' Compensation, *Senate Bill 1580 Fiscal Analysis* (Mar. 10, 2014), (on file with Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

The bill appears to remove the authority of the three-member panel to adopt schedules for maximum reimbursement allowances for hospital inpatient and outpatient care annually. It is unclear how or if the hospital reimbursement rates would be updated. (See lines 47-51)

The bill requires the reimbursement of inpatient and outpatient care at 140 percent of the rate allowed under the Medicare inpatient and outpatient prospective payment system. However, the bill does not delete lines 70-71, which allows reimbursement of scheduled surgeries at 60 percent of charges.

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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.