

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 404

INTRODUCER: Senator Simmons

SUBJECT: Legislative Ratification

DATE: March 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 404 exempts the adoption of workers' compensation maximum reimbursement allowances and manuals approved by a three-member panel from the legislative ratification requirement of s. 120.541(3), F.S.

**II. Present Situation:**

**Rulemaking Authority and Legislative Ratification**

A rule is an "agency statement of general applicability that implements, interprets, or prescribes law or policy."<sup>1</sup> 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.<sup>2</sup> An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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

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<sup>1</sup> Section 120.52(16), F.S.

<sup>2</sup> Section 120.52(17), F.S.

<sup>3</sup> See ss. 120.52(8) and 120.536, F.S.

<sup>4</sup> 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).

<sup>5</sup> See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared.<sup>6</sup>

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.<sup>7</sup>

### ***SERC Requirements***

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.<sup>8</sup>

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.<sup>9</sup>

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 five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>10</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>11</sup>

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within five years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.<sup>12</sup>

### **Workers' Compensation Maximum Reimbursement Allowances**

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law 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).

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<sup>6</sup> Section 120.54(3)(a)1., F.S.

<sup>7</sup> See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

<sup>8</sup> Section 120.541(1)(a), F.S.

<sup>9</sup> 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.

<sup>10</sup> Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>11</sup> Section 120.541(2)(a), F.S.

<sup>12</sup> 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.

A three-member panel (panel) consisting of the CFO or CFO's designee and two Governor's appointees sets the MRAs.<sup>13</sup> The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;<sup>14</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;<sup>15</sup> the financial impact of the MRAs on healthcare providers and facilities;<sup>16</sup> and the Health Care Board's most recent maximum allowable rate of increase for hospitals.<sup>17</sup> Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>18</sup>

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>19</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>20</sup> The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>21</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>22</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>23</sup> The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.<sup>24</sup> Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.<sup>25</sup> Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.<sup>26</sup>

The 2016 Legislature ratified Rule 69L-7.020, F.A.C., which incorporates by reference the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition, (manual) providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. According to the Statement of Estimated Regulatory Costs (SERC), the

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<sup>13</sup> Section 440.13(12)(a), F.S.

<sup>14</sup> Section 440.13(12)(d)1., F.S.

<sup>15</sup> Section 440.13(12)(d)2., F.S.

<sup>16</sup> Section 440.13(12)(d)3., F.S.

<sup>17</sup> Section 440.13(12)(d)4., F.S.

<sup>18</sup> Section 440.13(12)(d)3., F.S.

<sup>19</sup> Section 440.13(12)(b)4., F.S.

<sup>20</sup> Section 440.13(12)(b)5., F.S.

<sup>21</sup> Section 440.13(12)(b)3., F.S.

<sup>22</sup> Section 440.13(12)(a), F.S.

<sup>23</sup> Section 440.13(12)(a), F.S.

<sup>24</sup> Section 440.13(12)(c), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.

revisions to MRAs in the updated manual were projected to result in increased costs to the overall compensation system of \$272 million over the next five years.<sup>27</sup>

The DFS has subsequently adopted amended versions of Rule 69L-7.501, F.A.C., incorporating by reference the 2016 Edition of the Manual for Hospitals and Rule 69L-7.100, incorporating by reference the 2016 Edition of the Manual for Ambulatory Surgical Centers. The rules also update incorporating references to other materials used for provider reimbursement together with the manual. The National Council on Compensation Insurance, Inc. (NCCI) estimates that the 2016 hospital manual will increase workers' compensation system costs by 2.2 percent (\$80 million) and that the 2016 ambulatory surgical center manual will increase workers' compensation system costs by 0.6 percent (\$22 million). Because the SERC for these rules exceeds \$1 million within five years of adoption, Legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

### **III. Effect of Proposed Changes:**

The bill exempts the adoption of workers' compensation maximum reimbursement allowances and manuals approved by a three-member panel from the legislative ratification requirement of s. 120.541(3), F.S.

The effective date is July 1, 2017.

### **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.

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<sup>27</sup> 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 Banking and Insurance).

**B. Private Sector Impact:**

The NCCI estimates that implementing the 2016 Edition of the Manual for the Ambulatory Surgical Center Reimbursement will increase workers' compensation costs by \$22 million.<sup>28</sup> The NCCI also estimates that implementing the 2016 Edition of the Reimbursement Manual for Hospitals will increase overall workers' compensation costs by \$80 million.<sup>29</sup>

**C. Government Sector Impact:**

The Department of Financial Services estimates that adoption of the hospital reimbursement manual and the ambulatory surgical center reimbursement manual will have the following financial impact on the workers' compensation expenses of the Department of Risk Management:<sup>30</sup>

- Hospital reimbursement manual:
  - Fiscal year 2017-18 = \$2,356,502
  - Fiscal year 2018-19 = \$2,437,902
  - Fiscal year 2019-20 = \$2,517,102
- Ambulatory surgical center reimbursement manual:
  - Fiscal year 2017-18 = \$642,682
  - Fiscal year 2018-19 = \$664,882
  - Fiscal year 2019-20 = \$686,482

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 120.80 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.

<sup>28</sup> National Council on Compensation Insurance, Inc., *Analysis of Proposed Changes to the Florida ASC Maximum Reimbursements Proposed to be Effective July 1, 2017*, April 13, 2016 (on file with the Senate Committee on Banking and Insurance).

<sup>29</sup> National Council on Compensation Insurance, Inc., *Analysis of Proposed Changes to the Florida Reimbursement Manual for Hospitals Proposed to be Effective July 1, 2017*, April 14, 2016 (on file with the Senate Committee on Banking and Insurance).

<sup>30</sup> Florida Department of Financial Services, *Analysis of SB 404 to the Senate Budget Committee*, February 7, 2017 (on file with the Senate Committee on Banking and Insurance).

B. Amendments:

None.

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

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