

**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 Appropriations Committee on Agriculture, Environment, and General Government

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BILL: CS/SB 808

INTRODUCER: Criminal Justice Committee and Senator DiCeglie and others

SUBJECT: Treatment by a Medical Specialist

DATE: February 12, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 808 amends s. 112.18, F.S., to authorize firefighters, law enforcement officers, correctional officers, and correctional probation officers to receive medical treatment for a compensable presumptive condition by his or her selected medical specialist.

The bill requires written notice of the selection of a medical specialist to be given to his or her workers' compensation carrier, self-insured employer, or third-party administrator before he or she begins treatment, except in emergency situations. The bill creates an exception applicable to the usual provider selection process provided under the workers' compensation law.

The bill requires the workers' compensation carrier, self-insured employer, or third-party administrator to authorize the selected medical specialist or authorize an alternative medical specialist with the same or greater qualifications within five business days after receipt of written notice and schedule the appointment for treatment to be held within 30 days after receipt of written notice. If after five business days, the carrier has not authorized an alternative medical specialist, the selected medical specialist is authorized. The continuing care and treatment must be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension.

Treatment by a medical specialist must be reimbursed at no more than 200 percent of the Medicare rate; and be authorized by the firefighter's or office workers' compensation carrier, self-insured employer, or third-party administrator.

The bill defines “medical specialist” to mean a physician licensed under chs. 458 or 459, F.S., who has board certification in a medical specialty inclusive of care and treatment of tuberculosis, heart disease, or hypertension.

The bill has an indeterminate fiscal impact to local and state government. *See* Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

## II. Present Situation:

### Medical Treatment for Compensable Presumptive Conditions

Section 112.18, F.S., provides that for any condition or impairment of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter,<sup>1</sup> or any law enforcement officer,<sup>2</sup> correctional officer,<sup>3</sup> or correctional probation officer,<sup>4</sup> caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death is to be presumed to have been accidental and to have been suffered in the line of duty unless the contrary can be shown by competent evidence. Any such firefighter or officer must have successfully passed a pre-employment physical exam, which failed to reveal any evidence of any such condition.

Employing fire service providers are required to maintain pre-employment physical examinations for at least five years after the employee’s separation from the employing provider. If the employing fire service provider fails to maintain the records, it is presumed the employee has met the requirements.<sup>5</sup>

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<sup>1</sup> “Firefighter” means an individual employed as a full-time firefighter or full-time, Florida-certified fire investigator within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires; or the investigation of fires and explosives.

Section 112.1816(1)(c), F.S.

<sup>2</sup> “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S. Section 943.10(1), F.S.

<sup>3</sup> “Correctional officer” means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution, not including any secretarial, clerical, or professionally trained personnel. Section 943.10(2), F.S.

<sup>4</sup> “Correctional probation officer” means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. Section 943.10(3), F.S.

<sup>5</sup> Section 112.18(1)(b)2., F.S.

### **Pre-employment Physical Examinations**

A person applying for certification as a firefighter must be in good physical condition as determined by a medical examination.<sup>6</sup> Section 943.13(6), F.S., states a law enforcement officer, correctional officer, or correctional probation officer must have passed a physical examination by a licensed physician, physician assistant, or licensed advanced practice registered nurse. In order to be eligible for the presumption applied in s. 112.18, F.S., the officer must have successfully passed the physical examination which failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

### **Eligibility for Workers' Compensation Presumption**

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment; or
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.<sup>7</sup>

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment or the employing agency.<sup>8</sup>

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-filing deadline that allows a law enforcement officer, correctional officer, or correctional probation officer to file a claim up to 180 days after leaving the employment.

Thus, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.<sup>9</sup>

### **Workers' Compensation**

Florida's Workers' Compensation laws<sup>10</sup> require employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.<sup>11</sup> The Department of Financial Services (DFS) provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and

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<sup>6</sup> Section 633.412(5), F.S.

<sup>7</sup> Section 112.18(1)(b)1., F.S.

<sup>8</sup> Section 112.18(1)(b)4., F.S.

<sup>9</sup> Sections 440.151(6) and 440.185(1), F.S.

<sup>10</sup> Chapter 440, F.S.

<sup>11</sup> Section 440.13(2)(a), F.S.

methodologies to compensate workers' compensation health care providers<sup>12</sup> that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.<sup>13</sup>

In 2023, ch. 2023-144, Laws of Florida, eliminated the authority of the Three-Member Panel (panel) to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.<sup>14</sup> Instead, it mandates the DFS to annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.<sup>15</sup> The DFS incorporates the statewide schedules of the MRAs through rulemaking.

### **Reimbursement for Healthcare Providers**

In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for similar treatment, services, and care;<sup>16</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.<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> Annually the panel must adopt schedules of MRAs for hospital inpatient care, hospital outpatient care, and ambulatory surgical centers which are reimbursed either the agreed-upon contract price or the MRA in the appropriate schedule.<sup>19</sup> Maximum reimbursement allowances are as follows:

- Inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>20</sup>
- Hospital outpatient care is reimbursed at 75 percent of usual and customary charges with exceptions provided in this section.<sup>21</sup>
- Outpatient reimbursement for scheduled surgeries is reimbursed at 60 percent of usual and customary charges.<sup>22</sup>
- For physicians listed under chs. 458 or 459, F.S., the maximum reimbursement must be 110 percent of the reimbursement allowed by Medicare or at the level adopted by the panel, whichever is greater.<sup>23</sup>

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<sup>12</sup> The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under ch. 395, F.S., and any health care institution licensed under chs. 400 or 429, F.S. Section 440.13(1)(g), F.S.

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

<sup>14</sup> Chapter 2023-144, L.O.F.

<sup>15</sup> *Id.*

<sup>16</sup> Section 440.13(12)(i)1., F.S.

<sup>17</sup> Section 440.13(12)(i)2., F.S.

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

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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

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

- For surgical procedures, the maximum reimbursement must be 140 percent of the reimbursement allowed by Medicare or the level adopted by the panel, whichever is greater.<sup>24</sup>
- For prescription medication, the reimbursement must be the average wholesale price plus a \$4.18 dispensing fee.<sup>25</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>26</sup>

Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the schedule of MRAs as determined by the panel or as otherwise provided.<sup>27</sup>

### III. Effect of Proposed Changes:

The bill amends s. 112.18, F.S., to authorize firefighters, law enforcement officers, correctional officers, and correctional probation officers to receive medical treatment for a compensable presumptive condition by his or her selected medical specialist.

The bill defines “medical specialist” as a physician licensed under chs. 458<sup>28</sup> or 459, F.S.,<sup>29</sup> who has board certification in a medical specialty inclusive of care and treatment of tuberculosis, heart disease, or hypertension.

The bill requires written notice of the selection of a medical specialist to be given to his or her workers’ compensation carrier, self-insured employer, or third-party administrator before he or she begins treatment, except in emergency situations. The bill creates an exception applicable to the usual provider selection process provided under the workers’ compensation law.

The bill requires the workers’ compensation carrier, self-insured employer, or third-party administrator to authorize the selected medical specialist or authorize an alternative medical specialist with the same or greater qualifications within five business days after receipt of written notice and schedule the appointment for treatment to be held within 30 days after receipt of written notice. The continuing care and treatment must be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension.

Treatment by a medical specialist must be reimbursed at no more than 200 percent of the Medicare rate.

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

<sup>25</sup> Section 440.13(12)(h), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 440.13(12)(i), F.S.

<sup>28</sup> Section 458.305(4), F.S., defines “physician” as someone who is licensed to diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity, or other physical or mental condition.

<sup>29</sup> Section 459.003(4), F.S., defines “osteopathic physician” as a person who is licensed to diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

The bill is effective October 1, 2024.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires county/municipality governments that employ firefighters, law enforcement officers, correctional officers, or correctional probation officers to fund additional expenses related to such employees accessing specialist care for presumed conditions at a rate higher than currently applicable workers' compensation rates; however, an exception may apply. The bill applies to all similarly situated persons, i.e., every county/municipality government that employs such individuals, in addition to the state, which also employs such individuals.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While providers may have less incentive to offer substantial discounts to carriers, possibly resulting in higher costs to the carriers and which may be passed through to local and state governments, authorized medical specialist providers may receive increased fees for treatment of presumed conditions as provided in the bill.

### C. Government Sector Impact:

The bill has an indeterminate yet potentially negative impact on state revenues and expenses, specifically the Department of Financial Services' State Risk Management Trust Fund.

The state, as well as local governments, may experience an increase in workers' compensation claims costs related to a firefighter, law enforcement officer, correctional officer or correctional probation officer's ability to seek specialist treatment of presumed conditions. In addition, state and local governments may experience escalated expenses due to the increase in the maximum reimbursement rate of no more than 200 percent of the Medicare rate.

The number of firefighters, law enforcement officers, correctional officers or correctional probation officers who may seek specialist treatment for presumed conditions is unknown; however, should such workers' compensation claims be higher than anticipated, it may adversely impact state and local government workload, necessitating the need for additional staff.

The bill does not impact the state employee group health plan managed by the Division of State Group Health Insurance within the Department of Management Services.<sup>30</sup>

### VI. Technical Deficiencies:

Lines 53-55 of the bill requires the treatment by a medical specialist "be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension..." However, the standard in the Workers' Compensation Law, in s. 440.13(2)(a), F.S., requires the following:

Subject to the limitations specified elsewhere in this chapter, the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require, which is in accordance with established practice parameters and protocols of treatment as provided for in this chapter, including medicines, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus. Remedial treatment, care, and attendance, including work-hardening programs or pain-management programs accredited by an accrediting organization whose standards incorporate comparable regulations required by this state or pain-management program affiliated with medical schools, shall be considered covered treatment only when such care is given based on a referral by a physician as defined in this chapter.

For consistency, a reference to this section as to the standard of care, rather than creating a different standard, would clarify the medical's specialist's duty.

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<sup>30</sup> Telephone call from Jake Holmgren, Deputy Director of Legislative Affairs, Department of Management Services, to Niki Davis, Legislative Analyst, Senate Committee on Agriculture, Environment, and General Government (Feb. 1, 2024).

Lines 55-56 relates to specialists providing specified care to a firefighter or officer and provides for compensation at 200 percent of the Medicare rate. The bill does not specifically address whether compensation is specifically applicable to only specialists utilized under authorization by the workers' compensation carrier, self-insured employer, or third party administrator or is applicable to all specialists providing care, including non-authorized specialists.

Lines 59-63 define the term, "medical specialist," and reference a requirement that the specialist have board certification inclusive of care and treatment of specified conditions. However, it does not specify what entity would issue such a certification to a physician licensed under ch. 458 or ch. 459, F.S. A reference to s. 458.33212 and s. 459.0152, F.S., respectively, relating to specialties, would clarify this issue.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 112.18 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.)

**CS by Criminal Justice on January 23, 2024:**

The committee substitute:

- Requires notice of the selected medical specialist to be written.
- Allows a carrier to authorize an alternative medical specialist with the same or greater qualifications as the selected medical specialist.
- Requires the specialist to be authorized within five business days after receipt of written notice.
- Requires an appointment to be held within 30 days after receipt of written notice.
- Authorizes a selected medical specialist within five days if the carrier fails to authorize an alternative medical specialist.
- Allows for continuing care and treatment.
- Clarifies that the bill creates an exception applicable to the usual provider selection process provided under the workers' compensation law.

**B. Amendments:**

None.