SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 10, 1998 Revised: ________ ________ ________ ________

Subject: AHCA/Rulemaking (RAB)

	Analyst	Staff Director	Reference	Action
1.	Carter	Wilson	HC	Favorable
2.				
3.				
4.				
5.				

I. Summary:

Senate Bill 1348 delegates to the Agency for Health Care Administration specify rulemaking authority relating to administering, implementing, and enforcing workers' compensation managed-care arrangements. The bill amends the workers' compensation law to require the agency to adopt rules that specify requirements and procedures relating to the agency's oversight of workers' compensation managed-care arrangements, including: authorization and examination of managed-care arrangements; provider networks, including exceptions from accessibility of services; case management, utilization management, and peer review; quality assurance and medical records; dispute resolution; employee and provider education; and data reporting pertaining to grievances, return-to-work outcomes, and provider networks.

This bill amends section 440.134, Florida Statutes.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

A new standard is provided in the revised APA in s. 120.536, F.S., which effectively overturns this line of cases and imposes a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must *implement, interpret, or make specific* the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary, but not enough by itself, for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the delegated rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the *Florida Administrative Code* (FAC). However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

> The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 [F.S.] to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions of rules which the agency deems necessary, but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to JAPC, there are 3500-3600 grants of rulemaking authority in the *Florida Statutes* falling roughly into two categories: (1) specific grants and (2) general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority delegate rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is not apparent in the statute. The "character" of the referenced rules are of a degree of specificity that is too narrow to be an

articulation of the general agency mission or the purpose of the enabling legislation so as to fall within the Legislature's grant of general rulemaking authority.

The Agency for Health Care Administration, since April 1, 1994, has been responsible for determining which insurers have the ability to provide quality of care consistent with the prevailing professional standards of care for workers' compensation managed-care arrangements and which insurers meet the requirements of s. 440.134, F.S., providing statutory guidelines for such arrangements. An insurer is required to apply for authorization to offer or utilize a workers' compensation managed-care arrangement by submitting an application and a $1,000 application fee. Such authorization, unless sooner suspended or revoked, expires 2 years after the date of issuance unless it is renewed. An insurer must demonstrate through a proposed managed care plan of operation that all covered services are available and accessible, as specified in law. Prior to implementing changes in its plan of operation, an insurer is required to file any proposed changes with AHCA, except for changes to the list of providers. An updated list of providers must be filed with AHCA at least semiannually. Insurers are required to make certain *full and fair disclosure in writing of the provisions, restrictions, and limitations of the workers' compensation managed care arrangement to affected workers*. Insurers authorized to offer or utilize a workers' compensation managed-care arrangement under s. 440.134, F.S., must have and use procedures for hearing complaints and resolving written grievances from injured workers and health care providers. An authorization may be suspended or revoked. However, AHCA may impose a fine ranging from $2,500 to $10,000 for nonwillful violations, arising out of the same action, of requirements under s. 440.134, F.S., and ranging from $20,000 to $100,000 for knowing and willful violation of a *lawful order or rule or a provision of this section* instead of suspending or revoking an insurer's authorization.

III. Effect of Proposed Changes:

The bill delegates to AHCA authority necessary for the effective administration and implementation of state oversight of workers' compensation managed-care arrangements. It specifies requirements and procedures relating to such arrangements for which AHCA is required to adopt rules which include: AHCA's authorization and examination of workers' compensation managed-care arrangements; provider networks, including exceptions from accessibility of services; case management, utilization management, and peer review; quality assurance and medical records; dispute resolution; employee and provider education; and data reporting pertaining to grievances, return-to-work outcomes, and provider networks.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.