

STORAGE NAME: h1455s1.cfe

DATE: March 19, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children and Family Empowerment
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1455

RELATING TO: Prison Inmates

SPONSOR(S): Committee on Children and Family Empowerment and Representative Harrington

COMPANION BILL(S): SB 730 [Similar]

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Children and Family Empowerment [6 YEAS 0 NAYS]
 - (2) Corrections
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under current state law, injured employees may not receive workers' compensation benefit payments while incarcerated in a public institution, unless they have persons dependent upon them for support. In that case, compensation may be paid to the dependents supported by the inmate for the period of time incarcerated, and payments are calculated as if the employee were deceased.

House Bill 1455 would allow the state to be reimbursed from workers' compensation benefits provided to an inmate for medical treatment related to an injury received prior to the inmate's incarceration.

The bill exempts inmates that participate in correctional work programs from losing any portion of workers' compensation benefits.

The bill also prohibits an inmate from receiving temporary cash assistance, food stamp, Medicaid, WAGES, or optional state supplementation program.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Workers' Compensation

Florida law requires most employers to provide workers' compensation coverage for their employees. Employers typically secure workers' compensation coverage from insurance companies, self-insurance funds, or are self insured. Workers' compensation insurance typically offers reimbursement to workers injured on the job for medical expenses and a portion of lost wages. Workers' compensation coverage is required for the following:

- Nonagricultural, nonconstruction employers with four or more employees;
- Construction employers with at least one employee; and
- Farmers under specified circumstances.

When workers suffer a work-related injury or illness, workers' compensation pays for the following:

- Reasonable and necessary medical treatment;
- Replacement of a portion of lost wages;
- Reemployment assistance;
- A scheduled amount for permanent loss of function of a body part;
- Dependency benefits in the event of death; and
- Lifetime weekly benefits for workers judged to be permanently disabled.

Section 440.15(9), F.S., prohibits an inmate of a public institution from receiving workers' compensation payments during the period of incarceration unless the inmate has dependents. If an inmate has dependents, payment is made to the dependents. This section, states "dependency shall be determined as if the employee were deceased and to whom compensation would be paid in case of death." "Dependent" is not defined in the Workers' Compensation Act. The courts, however, provide some direction. In *General Electric vs. DeCubas*, 504 So.2nd. 1276 (Fla. 1st DCA 1986), the district court of appeal held the burden of proof of dependency lies with the claimant. The court stated the claimant must meet three requirements: (1) the claimant was dependent upon the deceased for support, (2) the claimant received substantial support from the deceased, and (3) the deceased provided such support regularly with the reasonable expectation that the deceased would have provided it in the future. *NOTE: 440.15 (9), F.S., inaccurately specifies the definition of dependency is defined "elsewhere in this chapter."*

No formal mechanism exists to notify the Department of Corrections (DOC) of the status of incoming inmates with respect to their receipt of workers' compensation benefits. The DOC relies on the statements of inmates themselves. Neither the DOC nor the Department of Labor and Employment Security (DLES) is required to verify whether inmates are receiving workers' compensation benefits. In addition to statements of the inmates, the DOC also discovers the existence of payments to inmates by receiving checks in the mail. All mail addressed to inmates is inspected by the staff at the public institution. State inmates are not allowed to receive cash or checks. Any checks that are found by the mail room staff are mailed back to issuing institution with a note stating the correctional institution cannot receive checks for inmates.

Eleven of the largest workers' compensation insurance carriers were identified by the DLES and contacted by the Committee on Children and Family Empowerment. Based on the information provided, it appears that neither the DLES nor the insurance companies have a reliable method of identifying if an injured employee becomes incarcerated. The following methods were mentioned by insurance companies:

- (1) The injured employee told them about the incarceration.
- (2) A family member of the injured employee told them about the incarceration.
- (3) The attorney of the injured employee told them about the incarceration.
- (4) The company received a returned check from the correctional facility.
- (5) Long term disability cases are periodically reviewed by some insurance companies. The review may involve a record's check and/or surveillance of the employee by an investigator.
- (6) Insurance companies may become aware of the incarceration of an employee as a result of workers' compensation checks not being cashed.
- (7) Division of Workers' Compensation form 19 is mailed monthly to all recipients receiving temporary benefits requesting information regarding earnings. If this form is not returned or looks suspicious the insurance company may decide to do an investigation.
- (8) The doctor of the injured worker told them about the incarceration.
- (9) They saw an article in the newspaper.

All of the insurance companies stated they stop payments when they become aware of an injured employee receiving benefits while incarcerated, provided the employee has no dependents. The process of transferring payments to dependents is not clear. In some cases, the insurance company continues payments to the claimant but mails the payment to a different address. Others may mail the check to the employee's attorney. In all instances the companies reported occurrences of workers' compensation payment to inmates as rare.

Federal Law and Regulations concerning eligibility for public assistance

"Public assistance" generally refers to benefits paid on the basis of the temporary cash assistance, food stamp, Medicaid, WAGES, or optional state supplementation program [see, for example, s.414.0252(8), F.S].

In general, eligibility for public assistance is determined by federal law on a household basis, individual or a family. Eligibility is primarily determined by the applicant's income, adjusted for assets and such costs as shelter and utilities. Individuals that receive public assistance are required to report changes in conditions that could affect eligibility. Federal law and regulations required states to establish a performance reporting system to monitor public assistance programs, including a quality control review process to help ensure that benefits are issued only to qualifying households and individuals and that the benefit amounts and payments are correct. State agencies are responsible for imposing penalties for violations of program requirements and for recovering overpayments.

Federal regulations prohibit the use of federal funds for service provided to an inmate in a public institution using federal Medicaid funds [42 CFR Chapter IV, §435.1008 AND §435.1009].

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42 U.S.C. 1382(e) provides that no person shall be an eligible individual or eligible spouse for purposes of SSI, with respect to any month, if throughout such month he is an inmate of a public institution.

Title I SEC. 115. [Temporary Assistance for Needy Families] of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibits an individual convicted (under federal or state law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance from assistance under any state program funded under part A of title IV of the Social Security Act, or benefits under the food stamp program or any state program carried out under the Food Stamp Act of 1977.

Stop Inmate Fraud Program

While Florida has had no state law specifically prohibiting the participation of inmates in public assistance programs, s. 414.40, F.S., directs the Division of Public Assistance Fraud of the Office of the Auditor General to implement the Stop Inmate Fraud program. The purpose of the program is to establish procedures for sharing public records not exempt from the public records law among social services agencies regarding the identities of persons incarcerated in state correctional institutions, as defined in s. 944.02(6), F.S., or in county, municipal, or regional jails or other detention facilities of local governments under ch. 950 or ch. 951 who are wrongfully receiving public assistance benefits or entitlement benefits. Data base searches are conducted of inmate populations and a list of "hits" is furnished to the Department of Children and Families' district staff to make determinations if the inmate is receiving public assistance benefits.

Definition of inmate

The term "inmate" is not defined in s. 440.15(9), F.S., or in any other section of ch. 440, F.S. However, it is defined in other sections of statute. In those contexts, "inmate" generally refers to persons committed to the custody of the Department of Corrections (DOC) [see, for example, s. 945.42(6), F.S.]. This definition appears to exclude persons detained in county jails as a result of being charged with or convicted of a felony, or misdemeanor, who are defined in s. 951.23, F.S., as "county prisoners."

Definition of public benefit

The term "public benefits" is not defined in s. 440.15(9), F.S., or in any other section of statute. However, the term "public assistance" is defined in several sections of statute. In those contexts, "public assistance" generally refers to benefits paid on the basis of the temporary cash assistance, food stamp, Medicaid, WAGES, or optional state supplementation program [see, for example, s.414.0252(8), F.S.].

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B. EFFECT OF PROPOSED CHANGES:

The changes allow the state to be reimbursed from workers' compensation benefits provide to an inmate for medical treatment relate to an injury received prior to the inmate's incarceration. It exempts inmates that participate in correctional work programs from losing workers compensation benefits. The bill also prohibits an inmate from receiving temporary cash assistance, food stamp, Medicaid, WAGES, or optional state supplementation program.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

a. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

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(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

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- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The changes could result in a reduced payment of workers' compensation benefits to be paid to an inmate's dependents while the inmate is incarcerated in a public institution.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

Yes. The bill could reduce an inmate's ability to provide support to the inmate's dependents through workers' compensation payments.

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c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 440.15(9), 414.905, 414.32, 409.903, 409.904 F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates paragraph (a) and (b) of subsection (9) of s. 440.15, F.S. Paragraph (a) allows the state to receive reimbursement from workers' compensation benefits provide to an inmate for medical treatment relate to an injury received prior to the inmate's incarceration. Paragraph (b) exempts inmates that participate in correctional work programs from losing workers' compensation benefits as delineated in subsection (9).

Section 2. Creates paragraph (j) of subsection (15) of section 414.095, Florida Statutes, to prohibit an inmate from receiving temporary cash assistance and services through the WAGES program.

Section 3. Creates subsection (6) of section 414.32, Florida Statutes, to prohibit an inmate from receiving food stamp benefits.

Section 4. Creates subsection (9) of section 409.903, Florida Statutes, to prohibit an inmate from receiving payments for medical assistance and related services under Medicaid.

Section 5. Creates subsection (6) of section 409.904, Florida Statutes, to prohibit an inmate from receiving optional payments and related services under Medicaid.

Section 6. Provides that the bill is effective upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Dependents receiving a reduced benefit as a result of reimbursement to the state for medical treatment provided to an inmate may look to other state public assistance program for services.

Preventing an inmate from receiving public assistance should reduce the cost to the state of operating public assistance programs.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The CS/HB 1455 differs from the original bill [HB 1455] in the following manner:

- ▶ Removes provision that prohibited payment of workers' compensation benefits to be paid to an inmate's dependents while the inmate is incarcerated in a public institution.

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- ▶ Adds provision that allows the state to receive reimbursement from workers' compensation benefits provide to an inmate for medical treatment relate to an injury received prior to the inmate's incarceration.
- ▶ Adds provision that exempts inmates that participate in correctional work programs from losing workers' compensation benefits.
- ▶ Clarified a provision that required all "public benefits" provided to a person be terminated immediately when that person becomes an inmate in any prison or other correctional institution.

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios