

STORAGE NAME: h4815.fs

DATE: April 17, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4815 (PCB FS 98-10)

RELATING TO: Workers' Compensation

SPONSOR(S): Committee on Financial Services and Representative Safley & others

COMPANION BILL(S):

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

(1) FINANCIAL SERVICES YEAS 9 NAYS 0

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(3)

(4)

(5)

I. SUMMARY:

PCB FS 98-10, relating to workers' compensation, changes Florida law as follows:

- removes employees of military installations from workers' compensation coverage under chapter 440 because they are covered under another compensation program, the federal Defense Base Act;
- permits individually self-insured employers, including individually self-insured municipalities, to choose whether to provide workers' compensation medical benefits through a managed care arrangement or without a managed care arrangement;
- modifies requirements for the 24-hour health insurance coverage pilot programs; and
- authorizes the DLES to privatize the Special Disability Trust Fund.

This bill has no fiscal impact on state or local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Eligibility for Coverage

Section 440.09(2), F.S., restricts Florida's Worker's Compensation coverage by prohibiting payment when the injured worker is covered under one of several federal laws providing compensation for employment-related injury or death. The Longshoreman's and Harbor Worker's Compensation Act (33 USCS § 901, et. seq.) (LHWCA) is cited as one such federal law. It specifically covers injury or death that occurred upon the navigable waters of the U.S., or in adjoining areas or facilities. The Defense Base Act (42 USCS § 1651, et seq.) is another federal compensation provision, however it is not cited in s. 440.09(2). It makes the coverage and benefits provided under the LHWCA applicable to injury or death of persons employed at military, air, or naval bases outside of the U.S., and to other employees engaged in public works projects outside the continental U.S. Because it is not expressly listed among the federal provisions cited in s. 440.09(2), there is uncertainty as to whether the Florida coverage restrictions apply to situations falling within the Defense Base Act.

Managed Care and the Workers' Compensation System

Managed care is widely defined as a system where patients select or are assigned to a primary care physician who controls and coordinates the use of health care services. The care is coordinated within a network of providers who are contracted to provide care for specified fees.

In response to increasing costs in workers' compensation medical and hospital services, the Florida Legislature incorporated managed care into the workers' compensation system. As of January 1, 1997, all employers in the state must provide medical services through a "workers' compensation managed care arrangement" (MCA). An MCA is defined as an arrangement under which:

- a provider of health care;
- a health care facility;
- a group of providers of health care and health care facilities;
- an insurer that has an exclusive provider organization approved under s. 627.6472, F.S.; or
- a health maintenance organization licensed under part I of chapter 641

enters into a written agreement with an insurer to provide and to manage appropriate remedial treatment, care, and attendance to injured workers. See Section 440.134(1)(g), F.S.

Individually Self-Insured Employers

Under Florida law, an employer may secure workers' compensation coverage either by purchasing insurance or by meeting the requirements to self-insure. Employers that are self-insured are either individually self-insured or are members of a self-insurance fund. Individually self-insured employers include:

- individual employers that demonstrate to the Division of Workers' Compensation the financial ability to provide workers' compensation coverage, and
- individual boards, bureaus, departments, agencies, municipalities, and other political subdivisions of the state.¹

Currently, there are 532 individual self-insureds, 262 of which are municipal governments. These individual self-insureds make up a significant portion of the market in terms of premium (see Table).

| | Approx. Premium % of the Market (\$2.8 Billion total market) |
|--------------------------|---|
| Individual Self Insureds | 26% |

Source: Department of Labor and Employment Security, Division of Workers Compensation

24-Hour Health Insurance Coverage Pilot Project

In s. 440.135, F.S., the Florida Legislature authorized the Department of Insurance, in consultation with the Department of Labor and Employment Security, Division of Workers' Compensation, to administer pilot programs to determine whether 24-hour health insurance coverage, combining both traditional health insurance and workers' compensation, reduces overall costs to the employer. The Department of Insurance is to administer the pilot programs by negotiating contracts with companies to provide 24-hour health insurance coverage to employers and monitoring the results. In administering the 24-hour health insurance coverage pilot programs, the Department of Insurance is required to follow certain guidelines set forth in s. 440.135(1)(f), F.S. The Department of Insurance has not yet launched the pilot program because the Department believes that the current statutory requirements are too restrictive to enable the 24-hour health insurance coverage to be successfully marketed to the companies selling the coverage and the employers purchasing it.

The Special Disability Trust Fund

The Legislature created the SDTF in 1955, as an incentive for employers to hire workers with pre-existing physical impairments. Specifically, the Legislature intended to encourage prospective employers to hire previously injured employees, decrease litigation between insurers on apportionment issues, and protect employers from excess liability. Impairments were thought to make persons less employable due to the likelihood of subsequent injuries which might exacerbate the prior condition or worsen the overall physical condition of the worker, the totality of which the employer was liable

¹ See Sections 440.38(1)(b) and (6), F.S.

for under the workers' compensation statute. The SDTF is established in Chapter 440, F.S., the workers' compensation law. Administrative responsibility for the SDTF is delegated to the Division of Workers' Compensation within the DLES.

The SDTF is funded through annual assessments imposed on workers' compensation insurers which are based upon the pro rata share of premiums written by these insurers. The assessment formula is statutorily set forth in s. 440.49 (9)(b), F.S. The assessment rate had been rising annually.

In the 1997 session, the Florida Legislature terminated the SDTF effective with accidents occurring on or after January 1, 1998. The legislature also capped the assessment rate at 4.52 percent.

The Division of Workers' Compensation contracted with the firm of Milliman & Robertson, Inc., to determine the SDTF's liability. Milliman & Robertson, Inc., estimated the total dollar amount at over \$4 billion.

B. EFFECT OF PROPOSED CHANGES:

Eligibility for Coverage

Employees working in situations covered by the federal Defense Base Act will not be eligible to receive benefits under Florida's worker's compensation law.

Managed Care Option for Individually Self- Insured Employers

Individually self-insured employers will have the option of providing medically necessary remedial treatment, care, and attendance either through managed care arrangements or without managed care arrangements.

24-Hour Health Insurance Coverage Pilot Programs

Permits employee participation in the portion of the premium payment related to non-workers' compensation coverage and clarifies that more than one insurance policy may be issued for 24-hour coverage as long as it is under one plan.

Privatization of the Special Disability Trust Fund

Authorizes the DLES to privatize the Special Disability Trust Fund.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

N/A

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

N/A

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

N/A

b. 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

(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?

N/A

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

N/A

4. Individual Freedom:

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

Yes. The bill permits individually self-insured employers to provide workers' compensation medical benefits through either managed care arrangements or without managed care arrangements.

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

N/A

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?

N/A

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:

Amends ss. 440.09, 440.134, and 440.135, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends subsection (2) of s. 440.09, F.S., to specifically remove the eligibility to Florida worker's compensation benefits for employees working in situations covered by the federal Defense Base Act, which generally includes private employees on military installations.

Section 2. Amends s. 440.134, F.S. Individually self-insured employers do not pay premiums, rather they pay workers' compensation benefits directly to their employees. Employers that individually self-insure are typically very large companies and municipalities. For these individually self-insured employers, employee injuries result in direct costs in terms of payment of both indemnity (wages) and medical benefits to the employee. Before the mandatory managed care requirements of s. 440.134(1)(b), F.S., individually self-insured employers, because of their size, could contract privately to establish their own physician network in order to coordinate benefits. In addition, many individually self-insured employers utilized on-site nurses and benefits coordinators.

This section would change current law by giving individually self-insured employers the choice of providing workers' compensation medical benefits to their employees either through managed care arrangements or without managed care arrangements.

Section 3. Amends s. 440.135, F.S. Presently, s. 440.135(1)(f), F.S., creates certain guidelines for the 24-hour health insurance coverage pilot programs. These include the requirement that the 24-hour coverage be provided through a single insurance policy or self-insured plan. The guidelines also require the employer to pay the entire premium for the 24-hour health insurance policy or self-insured plan. According to the Department of Insurance, it has experienced difficulty in attracting companies to participate in the program because of these guidelines.

This section would provide that more than one insurance policy may be issued for 24-hour coverage as long as it is under one plan and would permit employee participation in the part of the premium related to non-workers' compensation coverage.

Section 4. Amends s. 440.49, F.S., to grant authority to the Department of Labor and Employment Security to privatize the Special Disability Trust Fund.

Section 5. Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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