

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Adkins offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 440.491, Florida Statutes, is amended
6 to read:

7 440.491 Reemployment of injured workers; rehabilitation.-

8 (1) DEFINITIONS.-As used in this section, the term:

9 (a) "Carrier" means group self-insurance funds or
10 individual self-insureds authorized under this chapter and
11 commercial funds or insurance entities authorized to write
12 workers' compensation insurance under chapter 624.

13 (b) "Department" means the Department of Education.

14 (c) "Medical care coordination" includes, but is not
15 limited to, coordinating physical rehabilitation services such
16 as medical, psychiatric, or therapeutic treatment for the

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17 injured employee, providing health training to the employee and
18 family, and monitoring the employee's recovery. The purposes of
19 medical care coordination are to minimize the disability and
20 recovery period without jeopardizing medical stability, to
21 assure that proper medical treatment and other restorative
22 services are timely provided in a logical sequence, and to
23 contain medical costs.

24 (d) ~~"Qualified Rehabilitation provider"~~ means a
25 rehabilitation nurse, rehabilitation counselor, or vocational
26 evaluator providing, rehabilitation facility, or agency approved
27 by the Department of Education as qualified to provide
28 reemployment assessments, medical care coordination,
29 reemployment services, or vocational evaluations under this
30 section, possessing one or more of the following nationally
31 recognized rehabilitation provider credentials:

32 1. Certified Rehabilitation Registered Nurse, C.R.R.N.,
33 certified by the Association of Rehab Professionals.

34 2. Certified Rehabilitation Counselor, C.R.C., certified
35 by the Commission of Rehabilitation Counselor Certifications.

36 3. Certified Case Manager, C.C.M., certified by the
37 Commission for Case Management Certification.

38 4. Certified Disability Management Specialist, C.D.M.S.,
39 certified by the Certified Disability Management Specialist
40 Commission.

41 5. Certified Vocational Evaluator, C.V.E., certified by
42 the Commission of Rehabilitation Counselor Certification.

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43 6. Certified Occupational Health Nurse, C.O.H.N.,
44 certified by the American Board of Occupational Health Nurses
45 chapter.

46 (e) "Reemployment assessment" means a written assessment
47 performed by a ~~qualified~~ rehabilitation provider which provides
48 a comprehensive review of the medical diagnosis, treatment, and
49 prognosis; includes conferences with the employer, physician,
50 and claimant; and recommends a cost-effective physical and
51 vocational rehabilitation plan to assist the employee in
52 returning to suitable gainful employment.

53 (f) "Reemployment services" means services that include,
54 but are not limited to, vocational counseling, job-seeking
55 skills training, ergonomic job analysis, transferable skills
56 analysis, selective job placement, labor market surveys, and
57 arranging other services such as education or training,
58 vocational and on-the-job, which may be needed by the employee
59 to secure suitable gainful employment.

60 (g) "Reemployment status review" means a review to
61 determine whether an injured employee is at risk of not
62 returning to work.

63 (h) "Suitable gainful employment" means employment or
64 self-employment that is reasonably attainable in light of the
65 employee's age, education, work history, transferable skills,
66 previous occupation, and injury, and which offers an opportunity
67 to restore the individual as soon as practicable and as nearly
68 as possible to his or her average weekly earnings at the time of
69 injury.

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70 (i) "Vocational evaluation" means a review of the
71 employee's physical and intellectual capabilities, his or her
72 aptitudes and achievements, and his or her work-related
73 behaviors to identify the most cost-effective means toward the
74 employee's return to suitable gainful employment.

75 (2) INTENT.—It is the intent of this section ~~to implement~~
76 ~~a systematic review by carriers of the factors that are~~
77 ~~predictive of longer-term disability and~~ to encourage the
78 provision of medical care coordination and reemployment services
79 that are necessary to assist the employee in returning to work
80 as soon as is medically feasible.

81 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

82 (a) When an employee who has suffered an injury
83 compensable under this chapter is unemployed 60 days after the
84 date of injury and is receiving benefits for temporary total
85 disability, temporary partial disability, or wage loss, and has
86 not yet been provided medical care coordination and reemployment
87 services voluntarily by the carrier, the carrier must determine
88 whether the employee is likely to return to work and must report
89 its determination to the department and the employee. The report
90 shall include the identification of both the carrier and the
91 employee, and the carrier claim number and any case number
92 assigned by the Office of the Judges of Compensation Claims. The
93 carrier must thereafter determine the reemployment status of the
94 employee at 90-day intervals as long as the employee remains
95 unemployed, is not receiving medical care coordination or
96 reemployment services, and is receiving the benefits specified
97 in this subsection.

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98 (b) If medical care coordination or reemployment services
99 are voluntarily undertaken within 60 days of the date of injury,
100 such services may continue to be provided as agreed by the
101 employee and the carrier.

102 (4) REEMPLOYMENT ASSESSMENTS.—

103 (a) The carrier may require the employee to receive a
104 reemployment assessment as it considers appropriate. However,
105 the carrier is encouraged to obtain a reemployment assessment
106 if:

107 1. The carrier determines that the employee is at risk of
108 remaining unemployed.

109 2. The case involves catastrophic or serious injury.

110 (b) The carrier shall authorize ~~only a qualified~~
111 rehabilitation provider to provide the reemployment assessment.
112 The rehabilitation provider shall conduct its assessment and
113 issue a report to the carrier and, the employee, ~~and the~~
114 ~~department~~ within 30 days after the time such assessment is
115 complete.

116 (c) If the rehabilitation provider recommends that the
117 employee receive medical care coordination or reemployment
118 services, the carrier shall advise the employee of the
119 recommendation and determine whether the employee wishes to
120 receive such services. The employee shall have 15 days after the
121 date of receipt of the recommendation in which to agree to
122 accept such services. If the employee elects to receive
123 services, the carrier may refer the employee to a rehabilitation
124 provider for such coordination or services within 15 days of

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125 receipt of the assessment report or notice of the employee's
126 election, whichever is later.

127 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT SERVICES.-

128 (a) Once the carrier has assigned a case to a qualified
129 rehabilitation provider for medical care coordination or
130 reemployment services, the provider shall develop a reemployment
131 plan and submit the plan to the carrier and the employee for
132 approval.

133 ~~(b) If the rehabilitation provider concludes that training~~
134 ~~and education are necessary to return the employee to suitable~~
135 ~~gainful employment, or if the employee has not returned to~~
136 ~~suitable gainful employment within 180 days after referral for~~
137 ~~reemployment services or receives \$2,500 in reemployment~~
138 ~~services, whichever comes first, the carrier must discontinue~~
139 ~~reemployment services and refer the employee to the department~~
140 ~~for a vocational evaluation. Notwithstanding any provision of~~
141 ~~chapter 289 or chapter 627, the cost of a reemployment~~
142 ~~assessment and the first \$2,500 in reemployment services to an~~
143 ~~injured employee must not be treated as loss adjustment expense~~
144 ~~for workers' compensation ratemaking purposes.~~

145 (c) A carrier may voluntarily provide medical care
146 coordination or reemployment services to the employee at
147 intervals more frequent than those required in this section. ~~For~~
148 ~~the purpose of monitoring reemployment, the carrier or the~~
149 ~~rehabilitation provider shall report to the department, in the~~
150 ~~manner prescribed by the department, the date of reemployment~~
151 ~~and wages of the employee. The carrier shall report its~~
152 ~~voluntary service activity to the department as required by~~

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153 ~~rule.~~ Voluntary services offered by the carrier for any of the
154 following injuries must be considered benefits for purposes of
155 ratemaking: traumatic brain injury; spinal cord injury;
156 amputation, including loss of an eye or eyes; burns of 5 percent
157 or greater of the total body surface.

158 (d) If medical care coordination or reemployment services
159 have not been undertaken as prescribed in paragraph (3) (b), a
160 ~~qualified~~ rehabilitation service provider, facility, or agency
161 that performs a reemployment assessment shall not provide
162 medical care coordination or reemployment services for the
163 employees it assesses.

164 (6) TRAINING AND EDUCATION.—

165 (a) Upon referral of an injured employee by the carrier,
166 or upon the request of an injured employee, the department shall
167 conduct a training and education screening to determine whether
168 the employee is eligible for it should refer the employee for a
169 vocational evaluation and, if appropriate, approve training and
170 education or other vocational services provided by the
171 department for the employee. At the time of such referral, the
172 carrier shall provide the employee a copy of any reemployment
173 assessment or reemployment plan provided to the carrier by a
174 rehabilitation provider. The department may not approve formal
175 training and education programs unless it determines, after
176 consideration of the reemployment assessment, pertinent
177 reemployment status reviews or reports, and such other relevant
178 factors as it prescribes by rule, that the reemployment plan is
179 likely to result in return to suitable gainful employment. The
180 department is authorized to expend moneys from the Workers'

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181 ~~Compensation Administration Trust Fund, established by s.~~
182 ~~440.50, to secure appropriate training and education at a~~
183 ~~Florida public college or at a career center established under~~
184 ~~s. 1001.44, or to secure other vocational services when~~
185 ~~necessary to satisfy the recommendation of a vocational~~
186 ~~evaluator. As used in this paragraph, "appropriate training and~~
187 ~~education" includes securing a general education diploma (GED),~~
188 ~~if necessary. The department shall establish training and~~
189 ~~education standards pertaining to employee eligibility, course~~
190 ~~curricula and duration, and associated costs. For purposes of~~
191 ~~this subsection, training and education services may be secured~~
192 ~~from additional providers if:~~

193 ~~1. The injured employee currently holds an associate~~
194 ~~degree and requests to earn a bachelor's degree not offered by a~~
195 ~~Florida public college located within 50 miles from his or her~~
196 ~~customary residence;~~

197 ~~2. The injured employee's enrollment in an education or~~
198 ~~training program in a Florida public college or career center~~
199 ~~would be significantly delayed; or~~

200 ~~3. The most appropriate training and education program is~~
201 ~~available only through a provider other than a Florida public~~
202 ~~college or career center or at a Florida public college or~~
203 ~~career center located more than 50 miles from the injured~~
204 ~~employee's customary residence.~~

205 (b) When an employee who has attained maximum medical
206 improvement is unable to earn at least 80 percent of the
207 compensation rate and requires training and education to obtain
208 suitable gainful employment, the employer or carrier shall pay
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209 the employee additional training and education temporary total
210 compensation benefits while the employee receives such training
211 and education for a period not to exceed 26 weeks, which period
212 may be extended for an additional 26 weeks or less, if such
213 extended period is determined to be necessary and proper by a
214 judge of compensation claims. The benefits provided under this
215 paragraph shall not be in addition to the 104 weeks as specified
216 in s. 440.15(2). However, a carrier or employer is not precluded
217 from voluntarily paying additional temporary total disability
218 compensation beyond that period. ~~If an employee requires~~
219 ~~temporary residence at or near a facility or an institution~~
220 ~~providing training and education which is located more than 50~~
221 ~~miles away from the employee's customary residence, the~~
222 ~~reasonable cost of board, lodging, or travel must be borne by~~
223 ~~the department from the Workers' Compensation Administration~~
224 ~~Trust Fund established by s. 440.50. An employee who refuses to~~
225 ~~accept training and education that is recommended by the~~
226 ~~vocational evaluator and considered necessary by the department~~
227 ~~will forfeit any additional training and education benefits and~~
228 ~~any additional payment for lost wages under this chapter. The~~
229 ~~department shall adopt rules to implement this section, which~~
230 ~~shall include requirements placed upon the carrier shall to~~
231 notify the injured employee of the availability of training and
232 education benefits as specified in this chapter. The Department
233 of Financial Services shall ~~also~~ include information regarding
234 the eligibility for training and education benefits in
235 informational materials specified in ss. 440.207 and 440.40.

236 ~~(7) PROVIDER QUALIFICATIONS.—~~

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237 ~~(a) The department shall investigate and maintain a~~
238 ~~directory of each qualified public and private rehabilitation~~
239 ~~provider, facility, and agency, and shall establish by rule the~~
240 ~~minimum qualifications, credentials, and requirements that each~~
241 ~~rehabilitation service provider, facility, and agency must~~
242 ~~satisfy to be eligible for listing in the directory. These~~
243 ~~minimum qualifications and credentials must be based on those~~
244 ~~generally accepted within the service specialty for which the~~
245 ~~provider, facility, or agency is approved.~~

246 ~~(b) The department shall impose a biennial application fee~~
247 ~~of \$25 for each listing in the directory, and all such fees must~~
248 ~~be deposited in the Workers' Compensation Administration Trust~~
249 ~~Fund.~~

250 ~~(c) The department shall monitor and evaluate each~~
251 ~~rehabilitation service provider, facility, and agency qualified~~
252 ~~under this subsection to ensure its compliance with the minimum~~
253 ~~qualifications and credentials established by the department.~~
254 ~~The failure of a qualified rehabilitation service provider,~~
255 ~~facility, or agency to provide the department with information~~
256 ~~requested or access necessary for the department to satisfy its~~
257 ~~responsibilities under this subsection is grounds for~~
258 ~~disqualifying the provider, facility, or agency from further~~
259 ~~referrals.~~

260 ~~(d) A qualified rehabilitation service provider, facility,~~
261 ~~or agency may not be authorized by an employer, a carrier, or~~
262 ~~the department to provide any services, including expert~~
263 ~~testimony, under this section in this state unless the provider,~~
264 ~~facility, or agency is listed or has been approved for listing~~

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265 ~~in the directory. This restriction does not apply to services~~
266 ~~provided outside this state under this section.~~

267 ~~(c) The department, after consultation with~~
268 ~~representatives of employees, employers, carriers,~~
269 ~~rehabilitation providers, and qualified training and education~~
270 ~~providers, shall adopt rules governing professional practices~~
271 ~~and standards.~~

272 ~~(8) CARRIER PRACTICES. The department shall monitor the~~
273 ~~selection of providers and the provision of services by carriers~~
274 ~~under this section for consistency with legislative intent set~~
275 ~~forth in subsection (2).~~

276 ~~(7)(9) PERMANENT DISABILITY.~~—The judge of compensation
277 claims may not adjudicate an injured employee as permanently and
278 totally disabled until or unless the carrier is given the
279 opportunity to provide a reemployment assessment.

280 Section 2. This act shall take effect July 1, 2011.

281

282

T I T L E A M E N D M E N T

283 Remove the entire title and insert:

284 A bill to be entitled

285 An act relating to reemployment services; amending s.
286 440.491, F.S.; revising the definition of the terms
287 "qualified rehabilitation provider" and "reemployment
288 assessment"; revising intent; revising and providing
289 certain carrier reporting requirements; revising
290 rehabilitation provider reporting requirements; revising
291 provisions relating to medical care coordination and
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293 reemployment services; revising procedures for the
294 approval of certain formal training and education
295 programs; repealing authorization to use Workers
296 Compensation Trust Funds for certain purposes; repealing
297 rehabilitation provider qualifications; eliminating
298 certain responsibilities of the Department of Education
299 with respect to monitoring rehabilitation providers and
300 services; providing an effective date.