

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7157 PCB RRS 11-03 Reemployment Services

SPONSOR(S): Appropriations Committee, Rulemaking & Regulation Subcommittee, Adkins

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation Subcommittee	14 Y, 0 N	Rubottom	Rubottom
1) Appropriations Committee	23 Y, 0 N, As CS	Heflin	Leznoff

SUMMARY ANALYSIS

Section 440.491, F. S. provides for reemployment and rehabilitation services to injured workers receiving workers compensation benefits. The law makes the Department of Education a regulator and monitor in the private provision of these services. Under current law, significant reporting burdens are placed on private providers of services.

The bill would eliminate the regulatory responsibilities and reduce the rulemaking power of the Department under s. 440.491, F. S. The bill eliminates a number of reporting requirements imposed on private service providers, carriers, and employers.

The bill would allow for interagency agreements between the Department of Education and the Agency for Workforce Innovation or any successor agency for the provision of reemployment services. This allows for the referral of employees to such agencies for reemployment services that do not require education or training deemed necessary by the Department. It also allows the Department to expend moneys from the Workers' Compensation Administration Trust Fund to reimburse the cost of services provided pursuant to the interagency agreement.

The bill repeals subsections 7 and 8 of section 440.491, F.S.

The bill provides an effective date of July 1, 2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation:

Section 440.491, F. S., provides for reemployment screening and rehabilitation services for injured workers who may require such services to return to work after receiving workers compensation benefits.

The law directs the Department of Education to monitor the activities of insurance carriers, including self-insurance funds and individual self-insureds, and reemployment/rehabilitation service providers under the section.

Subsection (7) of s. 440.491, F.S. authorizes the Department to "investigate" service providers and "establish by rule the minimum qualifications, credential, and requirements that each rehabilitation service provider, facility, and agency must satisfy to be eligible" to provide services. Eligible providers are listed by the Department in a directory maintained by the Department. The law also requires the Department to monitor and evaluate providers to ensure compliance with the Department's standards.

Subsection (8) of s. 440.491, F.S. also requires the Department to monitor insurance carriers' selection of providers and provision of services for consistency with the legislative intent set forth in subsection (2). Subsection (2) provides:

It is the intent of this section to implement a systematic review by carriers of the factors that are predictive of longer-term disability and to encourage the provision of medical care coordination and reemployment services that are necessary to assist the employee in returning to work as soon as is medically feasible.

The program organized by this section has existed since 1993.

Recently, the Department adopted new rules requiring each service visit by a client to be entered into the Department's database through a web-based application. Previously, providers sent copies of a form used for invoicing to the Department which used state full-time or OPS employees to input the same data. At a Rulemaking & Regulation Subcommittee on March 17, 2011, the Subcommittee heard testimony from service providers and Department personnel regarding the practicality of the data entry requirement. In the process of this discussion, it became apparent that the data collected may not be put to any useful purpose.

Change proposed by the Bill:

The bill as amended by the Appropriations Committee eliminates the term "qualified" in the definition of "rehabilitation provider". The bill also eliminates the regulatory role of the Department under s. 440.491, F. S. with respect to the services provided by rehabilitation providers, leaving those providers subject to the regulation of the market place through the purchasing decisions of the workers compensation carriers and self-insured employers.

Specifically, the bill narrows the legislative intent language quoted above, by striking the following language:

"to implement a systematic review by carriers of the factors that are predictive of longer-term disability and".

This will leave the intent to encourage provision of medical care coordination and reemployment services. If 17+ years of "systematic review" of the relevant factors has not informed the judgment of carriers and policy makers sufficient to guide the utilization of reemployment and rehabilitation services for injured workers, it is difficult to determine how a continuation of such review would further contribute to the public good.

The bill requires that carriers report their determination of whether the employee is likely to return to work to both the Department and the employee. The report shall include the identification of the carrier and employee as well as a claim and/or case number assigned by the Office of Judges of Compensations Claims.

The bill eliminates requirements in subsection (5)(c) of the statute, that: "For the purpose of monitoring reemployment, the carrier or the rehabilitation provider shall report to the department, in the manner prescribed by the department, the date of reemployment and wages of the employee. The carrier shall report its voluntary service activity to the department as required by rule."

The bill requires that at the time of referral, the carrier shall provide the Department a copy of any reemployment assessment or plan provided to the carrier by a rehabilitation provider. It also eliminates statutory mandates on what information the Department must consider prior to approving training and education programs, found in subsection (6)(a) of the present statute. The bill limits rulemaking authority in subsection (6)(b) to apply only to implementation of subsection (6), rather than to the entire section 440.491, F. S.

The bill adds subsection (6)(c) to allow the Department and the Agency for Workforce Innovation or any successor agency to enter into interagency agreements for the provision to injured employees of reemployment services. This allows for the Department to refer employees to such agency for such services, other than education and training, deemed necessary by the department. The Department is also authorized to expend moneys from the Workers' Compensation Administration Trust Fund to reimburse the cost of services provided pursuant to the interagency agreement.

Finally, the bill repeals subsections (7) and (8) of section 440.491, F.S. which eliminates the following;

- 440.491(7), F.S. –
 - The Department shall investigate and maintain a directory of each qualified public and private rehabilitation provider, facility, and agency as well as establish by rule the minimum qualifications, credential, and requirements that an agency must satisfy to be eligible for listing in the directory.
 - The Department shall impose a biennial application fee of \$25 for each listing in the directory; all such fees are to be deposited in the Workers' Compensation Administration Trust Fund.
 - The Department shall monitor and evaluate providers to ensure compliance with the Department's standards.
 - Qualified rehabilitation service providers, facilities, or agencies may not be authorized by an employer, carrier, or the Department to provide services unless they are listed or have been approved for listing within the directory.
 - The department shall adopt rules governing professional practices and standards.
- 440.491(8), F.S. –
 - The Department shall monitor insurance carriers' selection of providers and provision of services for consistency with the legislative intent set forth in subsection (2).

B. SECTION DIRECTORY:

Section 1 makes the changes noted above to s. 440.491, F. S.

Section 2 provides for an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There would be an insignificant, yet indeterminate cost for the Department as it changes how the program is monitored.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should save significant costs of compliance with data collection requirements under the present law and the rules that would be repealed by the bill.

D. FISCAL COMMENTS:

The changes could impose a short term cost for the Department as it changes its monitoring role. However, the reduction in monitoring and information collection authority should result in reduced personnel costs within the Department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill curtails rulemaking authority that appears to have been used to collect unnecessary information at significant expense to both public and private entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 15, 2011, the Appropriations Committee reported the bill favorably with one amendment.

- Amendment 1 is a strike all that revises intent; eliminates regulatory and monitoring responsibilities of the Department of Education with respect to rehabilitation providers and services; authorizes referral of an injured employee to the Department of Education for vocational evaluation and referral

to the Agency for Workforce Innovation or any successor agency for reemployment services; authorizes interagency agreements between the Department of Education and an agency providing reemployment services; authorizes the expenditure of funds from the Workers Compensation Trust Fund for reemployment services; repeals subsections 7 and 8 of section 440.491, F.S.