

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1060

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Legislative Ratification

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 amends s. 120.80, F.S., to exempt all rules adopting maximum reimbursement allowances and manuals for workers' compensation medical treatment and care approved by the three-member panel from the ratification requirement in s. 120.541(3), F.S.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

Rulemaking authority is delegated by the Legislature¹ through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"² a rule. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.³ Agencies do not have discretion to engage in rulemaking.⁴ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking and such grant of rulemaking authority itself need not be detailed.⁵ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the

¹ *Southwest Fla. Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000).

² Section 120.52(17), F.S.

³ Section 120.52(16), F.S.; *Fla. Dep't of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1st DCA 2007).

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.; *Save the Manatee Club, Inc.*, *supra* at 599.

administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process by filing a notice of the proposed rule,⁷ which is published by the Department of State in the Florida Administrative Register.⁸ The notice must provide certain information, including the text of the proposed rule, and a summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.⁹

The economic analysis, mandated for each SERC, must analyze a rule's potential impact over the 5-year period after the rule goes into effect. The analysis must include whether the rule directly or indirectly is likely to:

- Have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.
- Have an adverse impact on business competitiveness,¹⁰ productivity, or innovation; and
- Increase regulatory costs, including any transactional costs.¹¹

If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5-year period, the rule cannot go into effect until ratified by the Legislature.¹² Currently this requirement does not apply to the adoption of federal standards, and triennial updates to the Florida Building Code or to the Florida Fire Prevention Code.¹³

Workers' Compensation Medical Benefits

For work-related injuries sustained by employees, workers' compensation provides medically necessary remedial treatment, care, and attendance for such a period that the injury or the process of recovery may require and includes medicine, medical supplies, durable medical equipment, and prosthetics.¹⁴ The Division of Workers' Compensation (division) of the Department of Financial Services administers the regulation of the workers' compensation system pursuant to ch. 440, F.S. The division does not establish the reimbursement formulas and methodologies for the compensation of providers and facilities that deliver medical services.

⁶ *Sloban v. Fla. Bd. of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Tr. of the Internal Improvement Trust Fund v. Day Cruise Ass'n, Inc.*, 794 So.2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b)1., F.S.

⁹ Section 120.541(2), F.S.

¹⁰ This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹¹ Section 120.541(2)(a), F.S.

¹² Section 120.541(3), F.S.

¹³ Section 120.541(4), F.S.

¹⁴ Section 440.13(2)(a), F.S.

Schedules of Maximum Reimbursement Allowances

The three-member panel (panel) determines and annually adopts the schedules of maximum reimbursement allowances (MRA) for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program must be reimbursed either by the agreed-upon contract price or the MRA in the appropriate schedule.¹⁵

The panel consists of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members appointed by the Governor, subject to confirmation by the Senate.¹⁶ One member appointed by the Governor is a representative of employers and the other is a representative of employees.¹⁷

The division presents recommendations to the panel on reimbursement and policy changes to the Health Care Provider Reimbursement Manual, Hospital Reimbursement Manual, and the Ambulatory Surgical Center Reimbursement Manual. The panel receives public comment on the proposed changes and either adopts the recommendations, amends the recommendations, or does not accept them. The panel's recommendations are implemented within each respective reimbursement manual.¹⁸ The division then undertakes rulemaking pursuant to ch. 120, F.S., in order to adopt each reimbursement manual.¹⁹

Three-Member Panel Biennial Report, 2015 Edition

The division has taken the position that the rules incorporating the reimbursement manuals are subject to legislative ratification despite the statutory authority given to the panel to determine MRAs and despite the explicit provisions that dictate the amount of reimbursement payable to various health care providers contained in s. 440.13(12), F.S.²⁰ This is because the division annually updates the reimbursement manuals by rule and Florida law requires a proposed rule to be ratified by the Legislature if it is likely to increase regulatory costs, including any transactional costs, over \$1 million in the aggregate within a 5-year period.²¹

Rule ratification can result in delays in the implementation of the schedules, causing them to become outdated and not representative of the marketplace. Currently, health care providers are

¹⁵ Section 440.13(12), F.S.

¹⁶ Section 440.13(12)(a), F.S.

¹⁷ *Id.*

¹⁸ Department of Financial Services Analysis of Senate Bill 1060 (March 5, 2015) (on file with the Senate Banking and Insurance Committee).

¹⁹ The division publishes the uniform schedules of MRAs within the reimbursement manuals incorporated by reference into the rules. Rules 69L-7.020, 69L-7.100, and 69L-7.501, F.A.C.

²⁰ Department of Financial Services Analysis of Senate Bill 1060 (March 5, 2015) (on file with the Senate Banking and Insurance Committee).

²¹ Three-Member Panel Biennial Report, 2015 Edition, p. 4, available at http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/3MP_Report_2015.pdf (last visited on Mar. 24, 2015).

being reimbursed based upon outdated Medicare rates, rather than the most recently adopted rates.²²

According to the division, requests for rule ratifications of the Health Care Provider Reimbursement Manual, were submitted to the Legislature in 2012, 2013, and 2014. In 2013, House Bill 1165 was filed to ratify the manual; however, it failed to become law.²³

Therefore, the panel recommended that the reimbursement manuals should be exempt from the legislative ratification requirements of ch. 120, F.S.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 120.80, F.S., to exempt the panel-approved MRAs and manuals adopted by rule by the Department of Financial Services from legislative ratification.

Section 2 provides the bill will take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the fee schedules and manuals are exempt from rule ratification, this could result in reimbursement rates for providers being adopted in a timelier manner and such fees being more representative of the market place.

²² *Id.*

²³ Department of Financial Services Analysis of Senate Bill 1060 (March 5, 2015) (on file with the Senate Banking and Insurance Committee).

²⁴ *Supra* note 21 at 5.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 120.80 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 10, 2015:

The bill clarifies that all rules adopting MRAs and manuals, which are approved by the three-member panel, are exempt from ratification.

- B. Amendments:

None.