

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 Banking and Insurance

BILL: SB 1274

INTRODUCER: Senator Broxson

SUBJECT: Ratification of Rules of the Department of Financial Services

DATE: January 19, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|------------|------------------|
| 1. | <u>Arnold</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | _____ | _____ | <u>AEG</u> | _____ |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 1274 ratifies rule 69L-7.020, F.A.C.

The Department of Financial Services (DFS) has adopted an amendment to Rule 69L-7.020, F.A.C., incorporating by reference the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual (Manual). The Manual contains reimbursement policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished under the Workers' Compensation statutes. The Manual also contains reimbursement policies and payment methodologies for pharmacists and medical suppliers.

The National Council on Compensation Insurance, Inc. (NCCI) estimates that the implementation of the Manual will increase workers' compensation system costs by 0.2 percent (\$8 million). Because the Statement of Estimated Regulatory Costs (SERC) for this rule exceeds \$1 million within 5 years of adoption, Legislative ratification is required for this rule to become effective, pursuant to s. 120.541(3), F.S.

This bill is effective July 1, 2022.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an "agency statement of general applicability that implements, interprets, or prescribes law or policy."¹ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared.⁶

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁷

SERC Requirements

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.⁸

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁹

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,¹⁰ productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹¹

³ See ss. 120.52(8) and 120.536, F.S.

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁵ See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁸ Section 120.541(1)(a), F.S.

⁹ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

¹⁰ Business competitiveness 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.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.¹²

Workers' Compensation Maximum Reimbursement Allowances

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law provides for medically necessary treatment and care of injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or CFO's designee and two Governor's appointees sets the MRAs.¹³ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;¹⁴ the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;¹⁵ and the financial impact of the MRAs on healthcare providers and facilities;¹⁶ Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.¹⁷

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,¹⁸ while reimbursement for surgical procedures is limited to 140 percent of Medicare.¹⁹ The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,²⁰ while other outpatient services are limited to 75 percent of usual and customary charges.²¹ Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.²² The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.²³ Repackaged or relabeled prescription

¹² Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See s. 120.541(4), F.S.*

¹³ Section 440.13(12)(a), F.S.

¹⁴ Section 440.13(12)(d)1., F.S.

¹⁵ Section 440.13(12)(d)2., F.S.

¹⁷ Section 440.13(12)(d)3., F.S.

¹⁷ Section 440.13(12)(d)3., F.S.

¹⁸ Section 440.13(12)(b)4., F.S.

¹⁹ Section 440.13(12)(b)5., F.S.

²⁰ Section 440.13(12)(b)3., F.S.

²¹ Section 440.13(12)(a), F.S.

²² Section 440.13(12)(a), F.S.

²³ Section 440.13(12)(c), F.S.

medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.²⁴ Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.²⁵

The Legislature previously ratified Rule 69L-7.020, F.A.C., which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual, providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. The DFS has subsequently adopted amended versions of the rule, incorporating by referenced the Manual. NCCI estimates that the Manual will increase workers' compensation system costs by 0.2 percent (\$8 million).²⁶ According to the SERC, the revisions to the MRAs in the updated manual are projected to result in increased costs to the overall compensation system of \$8 million over the next five years.²⁷

Because the SERC for these rules exceeds \$1 million within five years of adoption, Legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-7.020, F.A.C., allowing the rules to go into effect. The bill solely meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rules. The bill provides that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

The effective date is July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ *Id.*

²⁵ Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.

²⁶ National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021*, November 16, 2020 (on file with the Senate Committee on Banking and Insurance).

²⁷ Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (November 2021)(on file with the Senate Committee on Banking and Insurance).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The NCCI estimates the implementing the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will increase workers' compensation system costs by \$8 million.²⁸

C. Government Sector Impact:

The Department of Financial Services estimates that adoption of the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will have the following financial impact on the workers' compensation expenses of the Division of Risk Management:²⁹

- Fiscal Year 2022-23: \$232,400
- Fiscal Year 2023-24: 235,000
- Fiscal Year 2024-25: \$235,800

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

²⁸ See note 27.

²⁹ Florida Department of Financial Services, *SB 404 Bill Analysis*, January 4, 2022 (on file with the Senate Committee on Banking and Insurance).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
