

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1299 Payments for Workers' Compensation Expert Witnesses

**SPONSOR(S):** Insurance & Banking Subcommittee, Daley

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Lloyd	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

**SUMMARY ANALYSIS**

Florida's Workers' Compensation Law (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services, Division of Workers' Compensation (DFS), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers.

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum \$200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they limited to a maximum \$200, per day.

The bill increases the maximum hourly amount allowed expert witnesses from \$200, per hour, to \$300, per hour. For those expert witnesses subject to the daily rate, the maximum amount allowed is increased from \$200, per day, to \$300, per day.

The bill has no impact on state or local government revenue. It has a negative, but likely insignificant, impact on state and local government expenditures and has a positive and negative impacts on the private sector.

The bill is effective July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Division of Workers' Compensation**

Florida's Workers' Compensation Law<sup>1</sup> (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.<sup>2</sup> The Department of Financial Services, Division of Workers' Compensation (DFS), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers<sup>3</sup> that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.<sup>4</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>5</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>6</sup>

#### **Medical Services**

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.<sup>7</sup>

#### **Expert Witness Fees for Health Care Providers**

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum \$200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they limited to a maximum \$200, per day.<sup>8</sup>

#### **Effect of the Bill**

The bill increases the maximum hourly amount allowed expert witnesses from \$200, per hour, to \$300, per hour. For those expert witnesses subject to the daily rate, the maximum amount allowed is increased from \$200, per day, to \$300, per day.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations

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<sup>1</sup> Ch. 440, F.S.

<sup>2</sup> S. 440.13(2)(a), F.S.

<sup>3</sup> The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.

<sup>4</sup> S. 440.13(12), F.S.

<sup>5</sup> Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.

<sup>6</sup> Ch. 120, F.S.

<sup>7</sup> S. 440.13, F.S.

<sup>8</sup> S. 440.13(10), F.S.

**Section 2.** Providing an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, likely insignificant, impact on expenditures for litigated state employee workers' compensation claims to the extent the state elects to increase expert witness fees, as allowed by the bill.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, likely insignificant, impact on self-insured local government expenditures for litigated public employee workers' compensation claims to the extent they elect to increase expert witness fees, as allowed by the bill.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may increase payments to medical providers who appear as expert witnesses in litigated workers' compensation claim.

The bill may increase worker's compensation claim costs in litigated cases. If this is significant enough to impact workers' compensation rates, it may increase workers' compensation premiums paid by employers.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

None provide by the bill.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2023, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute removed the portion of the bill that proposed an increase in medical reimbursements to physicians and surgical procedures.

The bill analysis is drafted to the bill approved by the Insurance & Banking Subcommittee.