

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 161 Payments for Health Care Providers and Surgical Procedures under Workers' Compensation

**SPONSOR(S):** Commerce Committee, Insurance & Banking Subcommittee, Daley and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Herrera	Lloyd
2) State Administration & Technology Appropriations Subcommittee	11 Y, 2 N	Perez	Topp
3) Commerce Committee	19 Y, 0 N, As CS	Herrera	Hamon

### 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 (DFS), Division of Workers' Compensation (DWC), 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.

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or his or her designee and two Governor's appointees sets the maximum reimbursement allowances (MRAs). DWC incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. The panel develops three different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The WC Law manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement, while reimbursement for surgical procedures is limited to 140 percent of Medicare.

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 are limited to a maximum of \$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.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent, to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent, to 150 percent of the reimbursement allowed by Medicare.

The bill has an indeterminate negative impact on state and local government expenditures, and positive and negative impacts on the private sector. See Fiscal Analysis & Economic Impact Statement.

The bill is effective January 1, 2025.

# 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 (DFS), Division of Workers' Compensation (DWC) 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 (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> DWC 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> In 2023, CS/CS/HB 487 eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.<sup>7</sup> Instead, it mandates DWC to annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1<sup>st</sup>, effective the following January 1<sup>st</sup>.<sup>8</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>9</sup>

#### *Reimbursement for Healthcare Providers*

The panel consisting of the Chief Financial Officer (CFO) or their designee and two Governor appointees, set the MRAs.<sup>10</sup> Beginning with rates developed in 2024 and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DWC, instead of being included in the reimbursement manuals through rulemaking.<sup>11</sup> DWC incorporates the panel's statewide schedules of the MRAs through rulemaking. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;<sup>12</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.<sup>13</sup> Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation

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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> Ch. 2023-144, Laws of Fla.

<sup>8</sup> *Id.*

<sup>9</sup> S. 440.13, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Ch. 2023-144, Laws of Fla.

<sup>12</sup> S. 440.13(12)(i)(1), F.S.

<sup>13</sup> S. 440.13(12)(i)(2), F.S.

system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>14</sup>

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>15</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>16</sup> The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>17</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>18</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>19</sup> The ambulatory surgical centers manual, developed by the panel, 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.<sup>20</sup> Repackaged or relabeled prescription 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.<sup>21</sup> Fees may not exceed the schedules adopted under ch. 440, F.S., and department rule.<sup>22</sup>

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

The 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 of \$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 are limited to a maximum of \$200, per day.<sup>23</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.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent to 150 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is higher.

The bill provides an effective date of January 1, 2025.

## **B. SECTION DIRECTORY:**

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

**Section 2.** Providing an effective date of January 1, 2025.

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<sup>14</sup> S. 440.13(12)(i)(3), F.S.

<sup>15</sup> S. 440.13(12)(f), F.S.

<sup>16</sup> S. 440.13(12)(g), F.S.

<sup>17</sup> S. 440.13(12)(d), F.S.

<sup>18</sup> S. 440.13(12)(a), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 440.13(12)(h), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> S. 440.13(12)(f), F.S.

<sup>23</sup> S. 440.13(10), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a negative fiscal impact on the State Risk Management Trust Fund (from which the state's worker compensation costs are paid). The National Council on Compensation Insurance (NCCI) analysis of the bill forecasts a 6.9% increase in workers compensation rates if the bill becomes law.<sup>24</sup>

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. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).<sup>25</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on local government expenditures, potentially resulting in a 6.9 percent increase in workers' compensation rates.<sup>26</sup>

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. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).<sup>27</sup>

### 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 and to physicians for medical services provided to injured workers.

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:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill necessitates local governments to allocate additional funds, particularly for those providing increased workers' compensation reimbursements to physicians, including self-

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<sup>24</sup> NCCI, Analysis of Florida Medical Fee Schedule Changes (2024 Session, HB 161/SB 362) (Feb. 06, 2024).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

insured employers; however, an exception may apply. The bill applies to all similarly situated entities that provide workers' compensation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a line amendment, and reported the bill favorably as a committee substitute. The amendment reduced the proposed increase from 200% of the Medicare allowed amount to a uniform 150%, applicable to both surgical and non-surgical health care provider reimbursements.

On February 22, 2024, the Commerce Committee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment changed the effective date from July 1, 2024 to January 1, 2025 to align the change proposed by the bill with the effective date of the annual Workers' Compensation rates.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.