

**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.)

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

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BILL: SB 362

INTRODUCER: Senator Bradley

SUBJECT: Medical Treatment Under the Workers' Compensation Law

DATE: January 22, 2024

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Johnson</u> | <u>Knudson</u> | <u>BI</u> | <b>Favorable</b>   |
| 2. | <u>Morgan</u>  | <u>Brown</u>   | <u>HP</u> | <b>Pre-meeting</b> |
| 3. | _____          | _____          | <u>FP</u> | _____              |

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**I. Summary:**

SB 362 increases the maximum medical reimbursements for physicians and surgical procedures and the maximum fees for expert witnesses under ch. 440, F.S., “Workers Compensation Law” (law). The 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 bill increases the maximum reimbursement allowances (MRA) for physicians and surgical procedures to 200 percent of Medicare. Currently, the maximum reimbursement allowance for a physician licensed under ch. 458, F.S., or ch. 459, F.S., is 110 percent of Medicare and the maximum reimbursement allowance for surgical procedures is 140 percent of Medicare.

In regards to expert medical witnesses, the law currently limits the amount health care providers can be paid for expert testimony during depositions on a workers’ compensation claim to \$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, in which case they are limited to a maximum of \$200 per day. The bill increases the maximum hourly amount allowed expert witnesses to \$300 per hour. For those expert witnesses subject to the daily rate, the maximum amount allowed is increased to \$300 per day.

Implementation of the bill is estimated to result in a 7.3 percent increase (or \$286 million) in overall workers’ compensation system costs. The estimated impact on state and local governments is indeterminate.

The bill provides an effective date of July 1, 2024.

## II. Present Situation:

### Florida Workers' Compensation System

Florida's Workers' Compensation Law<sup>1</sup> 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 Division of Workers' Compensation within the Department of Financial Services (DFS), provides regulatory oversight of the workers' compensation system in Florida, including the health care delivery system.

### *Reimbursement for Health Care Providers*

Health care providers must receive authorization from the insurer before providing treatment, and submit treatment reports to the insurer.<sup>3</sup> Insurers must reimburse an individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program at either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.<sup>4</sup> DFS mediates utilization and reimbursement disputes.<sup>5</sup>

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or his or her designee and two Governor's appointees sets the MRAs.<sup>6</sup> 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; 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>7</sup> Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's health care cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>8</sup>

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The health care provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>9</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>10</sup> The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of charges,<sup>11</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>12</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem

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

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

<sup>3</sup> Section 440.13, F.S.

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

<sup>5</sup> Section 440.13, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 440.13(12)(i), F.S.

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

<sup>9</sup> Section 440.13(12)(f), F.S.

<sup>10</sup> Section 440.13(12)(g), F.S.

<sup>11</sup> Section 440.13(12)(d), F.S.

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

rates approved by the panel.<sup>13</sup> 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.<sup>14</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>15</sup> Fees may not exceed the schedules adopted under Ch. 440, F.S., and DFS rule.<sup>16</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>17</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>18</sup>

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

Chapter 440.13, F.S., 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. An expert witness who only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute is limited to a maximum witness fee of \$200 per day.<sup>19</sup>

### **III. Effect of Proposed Changes:**

Section 1 amends s. 440.13, F.S. Subsection (10) is amended to increase the maximum amount a health care provider can be paid for expert testimony during a deposition on a workers' compensation claim from \$200 to \$300 per hour. A health care provider that only provides an expert medical opinion following a medical record review or provides direct personal services unrelated to the case in dispute, is limited to a maximum witness fee of \$300 rather than \$200 per day.

Subsection (12) is amended to increase the maximum reimbursement for a physician licensed under ch. 458, F.S., or ch. 459, F.S., from 110 percent to 200 percent of Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater. The maximum reimbursement for surgical procedures is increased from 140 percent to 200 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

Section 2 provides an effective date of July 1, 2024.

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<sup>13</sup> *Id.*

<sup>14</sup> Section 440.13(12)(h), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 440.13(13)(b), F.S. DFS also has rulemaking authority under s. 440.591, F.S.

<sup>17</sup> Sections 440.13(12) and 440.13(13), F.S., and Ch. 69L-7, F.A.C.

<sup>18</sup> Ch. 120, F.S.

<sup>19</sup> S. 440.13(10), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## 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 bill increases the maximum payments to medical providers who appear as expert medical witnesses in litigated workers' compensation claims.

The bill increases payments to physicians and for surgical procedures (including all scheduled, non-emergency clinical laboratory and radiology services; and outpatient physical, occupational, and speech therapy services). Implementation of the bill would result in an estimated 7.3 percent increase (or \$286 million) in overall workers' compensation system costs, as described below.

**The National Council on Compensation Insurance, Inc., Analysis of SB 1344<sup>20</sup>**

The National Council on Compensation Insurance, Inc., (NCCI) provided the following analysis of the impact of changing maximum reimbursement allowances (MRAs) in the 2016 edition of the Health Care Provider Reimbursement Manual (HCPRM). The Division of Workers' Compensation of DFS asked NCCI, the licensed rating and

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<sup>20</sup> NCCI, Analysis of Florida Medical Fee Schedule Changes (2023 Session, HB 1299/SB 1344) (Mar. 28, 2023). On file with Senate Banking and Insurance Committee. For the 2024 Session, SB 362 was filed, which is identical to last year's SB 1344. An updated analysis by NCCI to incorporate the 2024 changes in the Medicare fee schedules is expected to be available in late January or early February.

statistical organization for the Florida workers’ compensation system, to analyze an additional four scenarios.

The current state multiplier for surgical is 140 percent and the current state multiplier for all others is 110 percent. The state-specific multipliers for HB 1299/SB1344 (scenario 3 increases both multipliers to 200 percent), as well as four additional scenarios are summarized below:

| Type of Service | Proposed Multiplier by Scenario |             |             |             |             |
|-----------------|---------------------------------|-------------|-------------|-------------|-------------|
|                 | 1                               | 2           | 3           | 4           | 5           |
| Surgical        | 150 percent                     | 175 percent | 200 percent | 225 percent | 250 percent |
| All Other       | 150 percent                     | 175 percent | 200 percent | 225 percent | 250 percent |

NCCI estimates that the changes to the MRAs, proposed to be effective July 1, 2023, would result in the following estimated impacts on overall Florida workers compensation system costs under each of the proposed scenarios, where Scenario 3 is the estimated impact of HB 1299/SB 1344:

| Scenario | Estimated Percentage Impact | Estimated Impact on Overall Costs <sup>21</sup> |
|----------|-----------------------------|---|
| 1        | +3.1                        | +\$122 million                                  |
| 2        | +5.2                        | +\$204 million                                  |
| 3        | +7.3                        | +\$286 million                                  |
| 4        | +9.4                        | +\$369 million                                  |
| 5        | +11.5                       | +\$451 million                                  |

In addition to physician services, the proposed changes would also impact MRAs for the following hospital outpatient services contained in the Florida Workers’ Compensation Reimbursement Manual for Hospitals:

- All scheduled, non-emergency clinical laboratory and radiology services; and
- Outpatient physical, occupational, and speech therapy services.

The changes to the HCPRM also impact certain hospital outpatient services. In Florida, payments for hospital outpatient services represent 18.4 percent of medical costs, and hospital outpatient services subject to the HCPRM MRAs represent 3.3 percent of total hospital outpatient costs.

<sup>21</sup> Overall system costs are based on 2021 net written premium for insurance companies including an estimate of self-insured premium as provided by the Florida Division of Workers’ Compensation. For each scenario, the estimated dollar impact is displayed for illustrative purposes only and calculated as the respective percentage impact multiplied by \$3,921 million. These figures do not include the policyholder retained portion of deductible policies, or adjustments for subsequent changes in premium levels. The use of premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs.

**Expert Medical Witness Fees**

Currently, the reimbursement for an expert medical witness cannot exceed \$200/hour. HB 1299/SB 1344 seek to increase the maximum reimbursement amount to \$300/hour, an increase of 50 percent ( $= \$300 / \$200 - 1$ ). Comprehensive data on expert medical witness payments by employers/insurers is not readily available to NCCI. While the magnitude of the increase in workers compensation system costs resulting from the proposed change in the hourly rate for expert medical witness depositions is uncertain, NCCI anticipates that any such potential increase would be minimal. Minimal is defined in this context to be an impact on overall system costs of less than plus 0.2 percent.

**C. Government Sector Impact:**

See above, in Private Sector Impact. Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 440.13 of the Florida Statutes.

**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.