



OFFICE OF INSURANCE REGULATION

January 12, 2023

FINANCIAL SERVICES
COMMISSION

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

WILTON SIMPSON
COMMISSIONER OF
AGRICULTURE

The Honorable Kathleen Passidomo
President, The Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear President Passidomo:

Section 440.13(12)(e)4, Florida Statutes, requires the Three-Member Panel to submit recommendations to the President of the Senate and the Speaker of the House on methods to improve the workers' compensation health care delivery system. I appreciate the opportunity to provide you with the 2023 Three-Member Panel Biennial Report.

This report contains recommendations relating to legislative ratification of the statutory maximum reimbursement allowances and an update to language referencing an outdated federal clearinghouse of practice parameters and protocols. Both issues have been mentioned or presented in previous editions of Biennial Reports and continue to warrant legislative review.

If you have any questions regarding this report, please call me.

Sincerely,

Alexis Bakofsky
Chief of Staff, Office of Insurance Regulation
Three-Member Panel Chairman, CFO Patronis Designee

Cc: Ms. Tamela Perdue, Panel Member
Mr. Jason Robbins, Panel Member

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The Honorable Paul Renner
Speaker, House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Dear Speaker Renner:

Section 440.13(12)(e)4, Florida Statutes, requires the Three-Member Panel to submit recommendations to the President of the Senate and the Speaker of the House on methods to improve the workers' compensation health care delivery system. I appreciate the opportunity to provide you with the 2023 Three-Member Panel Biennial Report.

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Biennial Report

Presented January 5, 2023

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INTRODUCTION

Section 440.015, F.S., states the legislative intent of Florida's Workers' Compensation Law. Numerous directives are contained in this section:

- The law is to be interpreted to ensure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful employment at a reasonable cost to the employer.
- An efficient and self-executing system, which is not an economic nor an administrative burden, must be created.
- The department shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of benefits.

The Legislature enacted Senate Bill 108 in 2002 and included a charge to the Three-Member Panel, in subsection 440.13(12)(e), F.S., to assess the adequacy of medical reimbursement, access to care, and other aspects of the health care delivery in Florida's workers' compensation system. The Three-Member Panel is a statutorily created panel that includes the Chief Financial Officer, or his or her designee and two other members. The additional two members are appointed by the Governor, who by employment or affiliation represent employer and employee interests, respectively. Presently, the Insurance Commissioner serves as the Chief Financial Officer's designee.

Beginning in 2003 and biennially thereafter, the Three-Member Panel has presented to the Speaker of the House of Representatives and to the President of the Senate, a report on ways to improve the Florida workers' compensation health care delivery system. Over the years, the reports have offered recommendations in a number of areas where regulatory efficiencies might be realized and where impediments to cost containment and access to care could be abated or eliminated. Each of those reports can be accessed via the Division of Workers' Compensation website at www.myfloridacfo.com/Division/wc.

The 2023 Biennial Report contains sections on emerging issues identified by the Division of Workers' Compensation or by the stakeholders themselves. Subject areas in this section include:

- Exemption of the Reimbursement Manuals from Legislative Ratification
- Treatment Guidelines per subsection 440.13(14), F.S.

LEGISLATIVE RATIFICATION OF THE REIMBURSEMENT MANUALS

CURRENT SITUATION:

Under the provisions contained in subsection 440.13(12), F.S., the Division of Workers' Compensation is tasked with presenting draft recommendations to the Three-Member Panel regarding maximum reimbursement allowances within the Health Care Provider Reimbursement Manual, the Hospital Reimbursement Manual, and the Ambulatory Surgical Center Reimbursement Manual.

The Three-Member Panel then receives public comments on the suggested maximum reimbursement allowances. After the Three-Member Panel has received the public comments, they will either adopt the recommendations, amend the recommendations, or elect not to adopt them. The adopted recommendations from the Three-Member Panel will then be incorporated within the appropriate reimbursement manuals.

The Three-Member Panel does not fall under the definition of "agency", as defined in section 120.52, F.S., and therefore is not subject to the ratification requirements provided in section 120.541(3)(a), F.S. However, in order to take effect, the reimbursement manuals containing the adopted maximum reimbursement allowances must be codified in rule by the Division of Workers' Compensation, and the Division *is* an "agency", which is subject to the ratification requirements of section 120.541, F.S. While the legislative ratification process is an opportunity for stakeholders to provide feedback outside of a rule hearing, the Three-Member Panel meets in the sunshine, and the reimbursement manual adoption process provides ample opportunities for system stakeholders to provide comments associated with the proposed rules incorporating the reimbursement manuals. Opportunities for stakeholder feedback continue through-out the Division's rulemaking process.

Medical costs continue to represent the majority of the total workers' compensation costs in Florida. Currently, these medical costs comprise 70% of the total claim benefits paid. Any update to the proposed reimbursement policy or fee schedules contained in the updated reimbursement manuals might prompt the requirement for legislative ratification unless the changes to the reimbursement values result in cost savings to employers.

The following charts reflect the historical timeline associated with the ratification attempts for each of the reimbursement manuals.

Health Care Provider Reimbursement Manual, 69L-7.020, F.A.C.

Ratification Year	Edition	Effective Date	Notes	Overall Cost Impact
2013	2011	Not ratified	2009 edition remains in effect	+0.7%, \$18 M
2014	2013	Not ratified	2009 edition remains in effect	+2.1%, \$60 M
2015	2014	Not ratified	2009 edition remains in effect	+1.9%, \$54 M
2016	2015	7/1/2016	Ratified	+1.8%, \$64 M
2017	2016	7/1/2017	Ratification not required	-0.1%, -\$4 M
2018	2017	Not ratified	2016 edition remains in effect	+0.1%, \$4 M
2019	2018	Not ratified	2016 edition remains in effect	+0.1%, \$4 M
2020	-----	-----	2016 edition re-adopted by 3MP	-----
2021	2020	-----	2016 edition remains in effect	-----
2022	2020	Not ratified	“ ”	+0.2%, \$8 M

Ambulatory Surgical Centers Reimbursement Manual, 69L-7.100, F.A.C.

Ratification Year	Edition	Effective Date	Notes	Overall Cost Impact
2016	2015	1/1/2016	Ratification not required	-0.1%, -\$3 M
2017	2016	Not ratified	2015 edition remains in effect	+0.6%, \$22 M
2018	2017	Not ratified	2015 edition remains in effect	+1.1%, \$40 M
2019	2018	Not ratified	2015 edition remains in effect	+1.5%, \$66 M
2020	-----	-----	2015 edition re-adopted by 3MP	-----
2021	-----	-----	2015 edition remains in effect	-----
2022	2020	-----	Currently in rulemaking	-----

Hospital Reimbursement Manual, 69L-7.501, F.A.C.

Ratification Year	Edition	Effective Date	Notes	Overall Cost Impact
2015	2014	1/1/2015	Ratification not required	-1.0%, -\$29 M
2017	2016	Not ratified	2014 edition remains in effect	+2.2%, \$80 M
2018	2017	Not ratified	2014 edition remains in effect	+2.2%, \$80 M
2019	2018	-----	2014 edition remains in effect	+1.6%, \$70 M
2020	-----	-----	2014 edition re-adopted by 3MP	-----
2021	-----	-----	2014 edition remains in effect	-----
2022	2020	-----	Currently in rulemaking	-----

The limitations within Chapter 120, F.S., related to the requirements of ratification, restricts the Division's ability to annually update the adopted schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, and ambulatory surgical centers.

POLICY RECOMMENDATION:

To promote the self-execution of the workers' compensation system, the Legislature should exempt the reimbursement manuals from legislative ratification.

MEDICAL TREATMENT GUIDELINES

CURRENT SITUATION:

Subsection 440.13(14), F.S., established practice parameters and protocols regarding the treatment of workers' compensation patients by pointing to the treatment guidelines adopted by the United States Agency for Healthcare Research and Quality (AHRQ) which went into effect on January 1, 2003. Practice guidelines are established to ensure that injured workers are provided quality medical care based on evidence-based medicine. Additionally, established guidelines ensure better medical utilization, reduction in medical treatment disputes, and expedites authorization of medically necessary treatment.

These AHRQ practice parameters and protocols are no longer available, as of August 2018.

Subsequently, all the references to practice parameters and protocols contained in section 440.13, F.S., are no longer relevant. Two of the most recognized evidence-based treatment guidelines used in workers' compensation systems are the Official Disabilities Guidelines (ODG) and the American College of Occupational and Environmental Medicine (ACOEM). Each of these publications offer comprehensive evidence-based treatment guidelines of which many are in use by system stakeholders currently.

POLICY RECOMMENDATION:

The Legislature should consider updating subsection 440.13(14), F.S., and all the references to practice parameters and protocols contained in section 440.13, F.S.

Updating this portion of the statute to include specific treatment guidelines will add clarification and remove excess administrative burden on both the payor and provider communities. It may also reduce litigation (petitions for benefits) requesting authorization for medical procedures, services, and medicine.