

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 637 Treatment by a Medical Specialist

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

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Herrera	Lloyd
2) Appropriations Committee	27 Y, 0 N	Perez	Pridgeon
3) Commerce Committee	18 Y, 0 N, As CS	Herrera	Hamon

### SUMMARY ANALYSIS

Florida's Workers' Compensation 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. The law specifies certain reimbursement formulas and methodologies to compensate Workers' Compensation health care providers that provide medical services to injured employees.

If a firefighter, law enforcement officer, correctional officer, or correctional probation officer becomes disabled by tuberculosis, heart disease, or hypertension, Florida law presumes that the disease has been contracted in the line of duty, subject to certain limitations, and is therefore compensable under workers compensation law, unless the contrary can be shown by competent evidence.

To be eligible for this legal presumption, the officer or firefighter must have taken a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill permits firefighters, law enforcement officers, correctional officers, or correctional probation officers in need of medical treatment for a compensable, presumptive condition to file a written notice with their employer/carrier to obtain authorization of treatment from the selected medical specialist. The employer/carrier may approve the selected medical specialist or authorize an alternative specialist with equal or greater qualifications. The authorization must be resolved within 5 business days and the appointment date must be within 30 business days of the written notice. If the authorization is not timely, the firefighter's or officer's selected medical specialist is automatically authorized.

Also, the bill allows a maximum reimbursement to selected medical specialists to 200 percent of the reimbursement allowed by Medicare, rather than 110 percent (non-surgeons) and 140 percent (surgeons).

The bill will likely have an indeterminate, but significant fiscal impact on the State Risk Management Trust Fund. Local governments may experience increased costs. See *Fiscal Analysis*.

The bill has an effective date of October 1, 2024.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### *Qualifications for Employment as a Firefighter, Law Enforcement, Correctional, or Probation Officer*

Florida law sets forth the minimum requirements for any person to be employed or appointed in a full- or part-time capacity, or in an auxiliary capacity, as a law enforcement officer, correctional officer, or correctional probation officer; or to be appointed as an auxiliary correctional officer by a private entity contracting with the Department of Corrections.

To become a law enforcement, correctional, or correctional probation officer, an applicant must satisfy age, education, and citizenship requirements; complete a training course; pass a certification exam; pass a criminal background check; and pass a physical examination.<sup>1</sup>

The physical examination requires screening for evidence of tuberculosis, heart disease, or hypertension.<sup>2</sup>

In addition to law enforcement, correctional, and correctional probation officers, the presumption applies to firefighters working for any unit of Florida government.<sup>3</sup>

##### *Workers' Compensation Presumption*

A legal presumption makes it easier for an employee to obtain Workers' Compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.<sup>4</sup>

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.<sup>5</sup>

Florida law includes a presumption that treats tuberculosis, heart disease, or hypertension as an occupational disease associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.<sup>6</sup>

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the officer passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.<sup>7</sup>

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<sup>1</sup> S. 943.13, F.S.

<sup>2</sup> S. 943.13(6), F.S.

<sup>3</sup> Ss. 112.18(1)(a) and 175.231, F.S.

<sup>4</sup> *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438, (Fla. 1979).

<sup>5</sup> S. 440.151(2), F.S.

<sup>6</sup> Ss. 112.18(1)(a) and 175.231, F.S.

<sup>7</sup> S. 112.18(1)(a), F.S.

If the employee's pre-employment physical failed to reveal any evidence of disease, the employee must demonstrate that he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.<sup>8</sup>

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.<sup>9</sup>

### *Pre-Employment Physicals*

To be employed as a law enforcement, correctional, or correctional probation officer, an applicant must pass a physical exam.<sup>10</sup> The law that establishes minimum employment standards states that such officers are eligible for the presumption of s. 112.18, F.S., only if the physical exam fails to reveal any evidence of tuberculosis, heart disease, or hypertension.<sup>11</sup>

To enroll in firefighting training courses and be certified as a firefighter, an applicant must be in good physical condition, as determined by a doctor or nurse practitioner.<sup>12</sup> The law does not mention specific screening for tuberculosis, heart disease, or hypertension. The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.<sup>13</sup>

### *Division of Workers' Compensation*

Florida's Workers' Compensation Law<sup>14</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>15</sup> The Department of Financial Services (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>16</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>17</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>18</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>19</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>20</sup> Instead, it mandates DFS 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>21</sup>

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<sup>8</sup> *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State, DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).

<sup>9</sup> *Butler v. City of Jacksonville*, 980 So. 2d 1250 (Fla. 1st DCA 2008).

<sup>10</sup> S. 943.13(6), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> S. 633.412(5), F.S.

<sup>13</sup> Rule 69A-37.037 and Form DFS-K3-1022.

<sup>14</sup> Ch. 440, F.S.

<sup>15</sup> S. 440.13(2)(a), F.S.

<sup>16</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>17</sup> S. 440.13(12), F.S.

<sup>18</sup> Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.

<sup>19</sup> Ch. 120, F.S.

<sup>20</sup> Ch. 2023-144, Laws of Fla.

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

## *Medical Services*

The Division of Workers' Compensation (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>22</sup>

### *Eligibility for the Workers' Compensation Presumption*

In a disputed Workers' Compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment; or
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.<sup>23</sup>

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment or the employing agency.<sup>24</sup>

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-filing deadline that lets a law enforcement officer, correctional officer or correctional probation officer file a claim up to 180 days after leaving the employment.

Thus, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.<sup>25</sup>

### *Reimbursement for Healthcare Providers*

A three-member panel (panel), consisting of the Chief Financial Officer (CFO) or their designee and two Governor appointees, sets the MRAs.<sup>26</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 DFS, instead of being included in the reimbursement manuals.<sup>27</sup> DFS incorporates the 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>28</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>29</sup> 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.<sup>30</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

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<sup>22</sup> S. 440.13, F.S.

<sup>23</sup> S. 112.18(1)(b)(1), F.S.

<sup>24</sup> S. 112.18(1)(b)(4), F.S.

<sup>25</sup> S. 440.151(6) and 440.185(1), F.S.

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

<sup>27</sup> Ch. 2023-144, Laws of Fla.

<sup>28</sup> S. 440.13(12)(i)(1), F.S.

<sup>29</sup> S. 440.13(12)(i)(2), F.S.

<sup>30</sup> S. 440.13(12)(i)(3), F.S.

maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>31</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>32</sup> The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>33</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>34</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>35</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>36</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>37</sup> Fees may not exceed the schedules adopted under ch. 440, F.S., and department rule.<sup>38</sup>

## Effect of the Bill

The bill permits firefighters, law enforcement officers, correctional officers, or correctional probation officers in need of medical treatment for a compensable, presumptive condition to file a written notice with their employer/carrier to obtain authorization of treatment from the selected medical specialist. The employer/carrier may approve the selected medical specialist or authorize an alternative specialist with equal or greater qualifications. The employer/carrier must authorize the selected medical specialist within 5 business days of receiving the written notice. The appointment date with the authorized medical specialist must be within 30 days of the written notice.

In the event that the employer/carrier fails to provide timely authorization, the firefighter's or officer's selected medical specialist is automatically authorized. This notice and authorization process is an express exception to the standard employer-directed provider selection process under the Workers' Compensation law, wherein the employer/carrier selects the specialist.

The bill also increases the maximum reimbursement for selected medical specialists licensed under ch. 458 or ch. 459, F.S. The maximum reimbursement is raised from 110 percent (non-surgeons) and 140 percent (surgeons) to 200 percent of the Medicare allowance for both non-surgeons and surgeons.

This bill provides an effective date as of October 1, 2024.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 112.18, F.S., relating to firefighters and law enforcement or correctional officers; special provisions relative to disability.

**Section 2.** Providing an effective date of October 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>31</sup> S. 440.13(12)(f), F.S.

<sup>32</sup> S. 440.13(12)(g), F.S.

<sup>33</sup> S. 440.13(12)(d), F.S.

<sup>34</sup> S. 440.13(12)(a), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 440.13(12)(h), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 440.13(12)(f), F.S.

The bill will likely have an indeterminate, but significant impact on the State Risk Management Trust Fund. The state may experience an increase in claims costs related to the increase in the maximum reimbursement, and to claimants selecting providers of their choice.<sup>39</sup> The estimated total impact to the State Risk Management Trust Fund is approximately \$2 million per year, provided by DFS.<sup>40</sup>

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

1. Revenues:

None.

2. Expenditures:

Local government may experience increased expenses associated with specialist treatment of presumed conditions under the bill due to the increased fee allowed.

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

Specialist workers' compensation medical providers may receive increased fees for treatment of presumed conditions as provided for by the bill.

**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 requires county/municipality governments that employ firefighters, law enforcement officers, correctional officers, or correctional probation officers to fund additional expenses related to those employees accessing specialist care for presumed conditions at a rate higher than currently applicable Workers' Compensation rates; however, an exception may apply. The bill applies to all similarly situated persons, i.e., every county/municipality government that employs such individuals, in addition to the state, which also employs such individuals.

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 18, 2024, the Insurance & Banking Subcommittee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes:

- Required written notice of the medical specialist permitted by the bill.

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<sup>39</sup> Email from Chase Mitchell, Director of Legislative Affairs and Policy, Department of Financial Services, RE: HB 637 – Treatment by a Medical Specialist (Jan. 24, 2024).

<sup>40</sup> Email from Molly Merry, Director of the Division of Risk Management, Department of Financial Services, HB 637 Fiscal Impact to the Risk Management Trust Fund (Jan. 29, 2024).

- Allowed the employer/carrier to authorize an alternative specialist with equal or greater qualifications.
- Required authorization of treatment within 5 business days of receiving the notice and scheduling of an appointment within 30 days.
- Clarified that the bill creates an exception applicable to the usual provider selection process provided under the Workers' Compensation law.

On February 22, 2024, the Commerce Committee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment clarified that the proposed reimbursement rate applies to the selected medical specialist.

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