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1 A bill to be entitled
2 An act relating to reemployment services; amending s.
3 440.491, F.S.; revising the definition of the terms
4 "qualified rehabilitation provider" and "reemployment
5 assessment"; revising intent; revising and providing
6 certain carrier reporting requirements; revising
7 procedures for the approval of certain formal training and
8 education programs; authorizing the Department of
9 Education and certain agencies to enter into interagency
10 agreements for the purpose of providing reemployment
11 services to injured employees; providing referral
12 procedures; authorizing the department to expend moneys
13 from the Workers' Compensation Administration Trust Fund
14 for certain purposes; repealing qualified rehabilitation
15 provider qualifications; eliminating certain
16 responsibilities of the Department of Education with
17 respect to monitoring rehabilitation providers and
18 services; providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Section 440.491, Florida Statutes, is amended
23 to read:

24 440.491 Reemployment of injured workers; rehabilitation.—

25 (1) DEFINITIONS.—As used in this section, the term:

26 (a) "Carrier" means group self-insurance funds or
27 individual self-insureds authorized under this chapter and
28 commercial funds or insurance entities authorized to write

workers' compensation insurance under chapter 624.

(b) "Department" means the Department of Education.

(c) "Medical care coordination" includes, but is not limited to, coordinating physical rehabilitation services such as medical, psychiatric, or therapeutic treatment for the injured employee, providing health training to the employee and family, and monitoring the employee's recovery. The purposes of medical care coordination are to minimize the disability and recovery period without jeopardizing medical stability, to assure that proper medical treatment and other restorative services are timely provided in a logical sequence, and to contain medical costs.

(d) "~~Qualified~~ Rehabilitation provider" means a rehabilitation nurse, rehabilitation counselor, vocational evaluator, or rehabilitation facility providing, ~~or agency approved by the Department of Education as qualified to provide~~ reemployment assessments, medical care coordination, reemployment services, or vocational evaluations under this section ~~chapter~~.

(e) "Reemployment assessment" means a written assessment performed by a ~~qualified~~ rehabilitation provider which provides a comprehensive review of the medical diagnosis, treatment, and prognosis; includes conferences with the employer, physician, and claimant; and recommends a cost-effective physical and vocational rehabilitation plan to assist the employee in returning to suitable gainful employment.

(f) "Reemployment services" means services that include, but are not limited to, vocational counseling, job-seeking

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57 skills training, ergonomic job analysis, transferable skills
58 analysis, selective job placement, labor market surveys, and
59 arranging other services such as education or training,
60 vocational and on-the-job, which may be needed by the employee
61 to secure suitable gainful employment.

62 (g) "Reemployment status review" means a review to
63 determine whether an injured employee is at risk of not
64 returning to work.

65 (h) "Suitable gainful employment" means employment or
66 self-employment that is reasonably attainable in light of the
67 employee's age, education, work history, transferable skills,
68 previous occupation, and injury, and which offers an opportunity
69 to restore the individual as soon as practicable and as nearly
70 as possible to his or her average weekly earnings at the time of
71 injury.

72 (i) "Vocational evaluation" means a review of the
73 employee's physical and intellectual capabilities, his or her
74 aptitudes and achievements, and his or her work-related
75 behaviors to identify the most cost-effective means toward the
76 employee's return to suitable gainful employment.

77 (2) INTENT.—It is the intent of this section ~~to implement~~
78 ~~a systematic review by carriers of the factors that are~~
79 ~~predictive of longer term disability and~~ to encourage the
80 provision of medical care coordination and reemployment services
81 that are necessary to assist the employee in returning to work
82 as soon as is medically feasible.

83 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

84 (a) When an employee who has suffered an injury

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85 compensable under this chapter is unemployed 60 days after the
86 date of injury and is receiving benefits for temporary total
87 disability, temporary partial disability, or wage loss, and has
88 not yet been provided medical care coordination and reemployment
89 services voluntarily by the carrier, the carrier must determine
90 whether the employee is likely to return to work and must report
91 its determination to the department and the employee. The report
92 shall include the identification of both the carrier and the
93 employee, and the carrier claim number and any case number
94 assigned by the Office of the Judges of Compensation Claims. The
95 carrier must thereafter determine the reemployment status of the
96 employee at 90-day intervals as long as the employee remains
97 unemployed, is not receiving medical care coordination or
98 reemployment services, and is receiving the benefits specified
99 in this subsection.

100 (b) If medical care coordination or reemployment services
101 are voluntarily undertaken within 60 days of the date of injury,
102 such services may continue to be provided as agreed by the
103 employee and the carrier.

104 (4) REEMPLOYMENT ASSESSMENTS.—

105 (a) The carrier may require the employee to receive a
106 reemployment assessment as it considers appropriate. However,
107 the carrier is encouraged to obtain a reemployment assessment
108 if:

109 1. The carrier determines that the employee is at risk of
110 remaining unemployed.

111 2. The case involves catastrophic or serious injury.

112 (b) The carrier shall authorize ~~only a qualified~~

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113 rehabilitation provider to provide the reemployment assessment.
114 The rehabilitation provider shall conduct its assessment and
115 issue a report to the carrier and, the employee, ~~and the~~
116 ~~department~~ within 30 days after the time such assessment is
117 complete.

118 (c) If the rehabilitation provider recommends that the
119 employee receive medical care coordination or reemployment
120 services, the carrier shall advise the employee of the
121 recommendation and determine whether the employee wishes to
122 receive such services. The employee shall have 15 days after the
123 date of receipt of the recommendation in which to agree to
124 accept such services. If the employee elects to receive
125 services, the carrier may refer the employee to a rehabilitation
126 provider for such coordination or services within 15 days of
127 receipt of the assessment report or notice of the employee's
128 election, whichever is later.

129 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT SERVICES.—

130 (a) Once the carrier has assigned a case to a ~~qualified~~
131 rehabilitation provider for medical care coordination or
132 reemployment services, the provider shall develop a reemployment
133 plan and submit the plan to the carrier and the employee for
134 approval.

135 (b) If the rehabilitation provider concludes that training
136 and education are necessary to return the employee to suitable
137 gainful employment, or if the employee has not returned to
138 suitable gainful employment within 180 days after referral for
139 reemployment services or receives \$2,500 in reemployment
140 services, whichever comes first, the carrier must discontinue

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141 reemployment services and refer the employee to the department
142 for a vocational evaluation. Notwithstanding any provision of
143 chapter 289 or chapter 627, the cost of a reemployment
144 assessment and the first \$2,500 in reemployment services to an
145 injured employee must not be treated as loss adjustment expense
146 for workers' compensation ratemaking purposes.

147 (c) A carrier may voluntarily provide medical care
148 coordination or reemployment services to the employee at
149 intervals more frequent than those required in this section. ~~For~~
150 ~~the purpose of monitoring reemployment, the carrier or the~~
151 ~~rehabilitation provider shall report to the department, in the~~
152 ~~manner prescribed by the department, the date of reemployment~~
153 ~~and wages of the employee. The carrier shall report its~~
154 ~~voluntary service activity to the department as required by~~
155 ~~rule.~~ Voluntary services offered by the carrier for any of the
156 following injuries must be considered benefits for purposes of
157 ratemaking: traumatic brain injury; spinal cord injury;
158 amputation, including loss of an eye or eyes; burns of 5 percent
159 or greater of the total body surface.

160 (d) If medical care coordination or reemployment services
161 have not been undertaken as prescribed in paragraph (3) (b), a
162 ~~qualified~~ rehabilitation service provider, facility, or agency
163 that performs a reemployment assessment shall not provide
164 medical care coordination or reemployment services for the
165 employees it assesses.

166 (6) TRAINING AND EDUCATION.—

167 (a) Upon referral of an injured employee by the carrier,
168 or upon the request of an injured employee, the department shall

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169 conduct a training and education screening to determine whether
170 it should refer the employee for a vocational evaluation and, if
171 appropriate, approve training and education or other vocational
172 services for the employee. At the time of such referral, the
173 carrier shall provide the department a copy of any reemployment
174 assessment or reemployment plan provided to the carrier by a
175 rehabilitation provider. The department may not approve formal
176 training and education programs unless it determines, after
177 consideration of the reemployment assessment, ~~pertinent~~
178 ~~reemployment status reviews or reports, and such other relevant~~
179 ~~factors as it prescribes by rule,~~ that the reemployment plan is
180 likely to result in return to suitable gainful employment. The
181 department is authorized to expend moneys from the Workers'
182 Compensation Administration Trust Fund, established by s.
183 440.50, to secure appropriate training and education at a
184 Florida public college or at a career center established under
185 s. 1001.44, or to secure other vocational services when
186 necessary to satisfy the recommendation of a vocational
187 evaluator. As used in this paragraph, "appropriate training and
188 education" includes securing a general education diploma (GED),
189 if necessary. The department shall establish by rule training
190 and education standards pertaining to employee eligibility,
191 course curricula and duration, and associated costs. For
192 purposes of this subsection, training and education services may
193 be secured from additional providers if:

194 1. The injured employee currently holds an associate
195 degree and requests to earn a bachelor's degree not offered by a
196 Florida public college located within 50 miles from his or her

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197 customary residence;

198 2. The injured employee's enrollment in an education or
199 training program in a Florida public college or career center
200 would be significantly delayed; or

201 3. The most appropriate training and education program is
202 available only through a provider other than a Florida public
203 college or career center or at a Florida public college or
204 career center located more than 50 miles from the injured
205 employee's customary residence.

206 (b) When an employee who has attained maximum medical
207 improvement is unable to earn at least 80 percent of the
208 compensation rate and requires training and education to obtain
209 suitable gainful employment, the employer or carrier shall pay
210 the employee additional training and education temporary total
211 compensation benefits while the employee receives such training
212 and education for a period not to exceed 26 weeks, which period
213 may be extended for an additional 26 weeks or less, if such
214 extended period is determined to be necessary and proper by a
215 judge of compensation claims. The benefits provided under this
216 paragraph shall not be in addition to the 104 weeks as specified
217 in s. 440.15(2). However, a carrier or employer is not precluded
218 from voluntarily paying additional temporary total disability
219 compensation beyond that period. If an employee requires
220 temporary residence at or near a facility or an institution
221 providing training and education which is located more than 50
222 miles away from the employee's customary residence, the
223 reasonable cost of board, lodging, or travel must be borne by
224 the department from the Workers' Compensation Administration

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Trust Fund established by s. 440.50. An employee who refuses to accept training and education that is recommended by the vocational evaluator and considered necessary by the department will forfeit any additional training and education benefits and any additional payment for lost wages under this chapter. The ~~department shall adopt rules to implement this section, which shall include requirements placed upon the carrier~~ shall to notify the injured employee of the availability of training and education benefits as specified in this chapter. The Department of Financial Services shall ~~also~~ include information regarding the eligibility for training and education benefits in informational materials specified in ss. 440.207 and 440.40.

(c) The department and the Agency for Workforce Innovation or any successor agency are authorized to enter into an interagency agreement for providing reemployment services to injured employees. The department shall refer the employee to such agency for such services, other than education and training, deemed necessary by the department. The department is authorized to expend moneys from the Workers' Compensation Administration Trust Fund, established by s. 440.50, to reimburse the cost of services provided pursuant to the interagency agreement.

~~(7) PROVIDER QUALIFICATIONS.—~~

~~(a) The department shall investigate and maintain a directory of each qualified public and private rehabilitation provider, facility, and agency, and shall establish by rule the minimum qualifications, credentials, and requirements that each rehabilitation service provider, facility, and agency must~~

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253 ~~satisfy to be eligible for listing in the directory. These~~
254 ~~minimum qualifications and credentials must be based on those~~
255 ~~generally accepted within the service specialty for which the~~
256 ~~provider, facility, or agency is approved.~~

257 ~~(b) The department shall impose a biennial application fee~~
258 ~~of \$25 for each listing in the directory, and all such fees must~~
259 ~~be deposited in the Workers' Compensation Administration Trust~~
260 ~~Fund.~~

261 ~~(c) The department shall monitor and evaluate each~~
262 ~~rehabilitation service provider, facility, and agency qualified~~
263 ~~under this subsection to ensure its compliance with the minimum~~
264 ~~qualifications and credentials established by the department.~~
265 ~~The failure of a qualified rehabilitation service provider,~~
266 ~~facility, or agency to provide the department with information~~
267 ~~requested or access necessary for the department to satisfy its~~
268 ~~responsibilities under this subsection is grounds for~~
269 ~~disqualifying the provider, facility, or agency from further~~
270 ~~referrals.~~

271 ~~(d) A qualified rehabilitation service provider, facility,~~
272 ~~or agency may not be authorized by an employer, a carrier, or~~
273 ~~the department to provide any services, including expert~~
274 ~~testimony, under this section in this state unless the provider,~~
275 ~~facility, or agency is listed or has been approved for listing~~
276 ~~in the directory. This restriction does not apply to services~~
277 ~~provided outside this state under this section.~~

278 ~~(e) The department, after consultation with~~
279 ~~representatives of employees, employers, carriers,~~
280 ~~rehabilitation providers, and qualified training and education~~

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281 ~~providers, shall adopt rules governing professional practices~~
282 ~~and standards.~~

283 ~~(8) CARRIER PRACTICES. The department shall monitor the~~
284 ~~selection of providers and the provision of services by carriers~~
285 ~~under this section for consistency with legislative intent set~~
286 ~~forth in subsection (2).~~

287 (7) ~~(9)~~ PERMANENT DISABILITY.—The judge of compensation
288 claims may not adjudicate an injured employee as permanently and
289 totally disabled until or unless the carrier is given the
290 opportunity to provide a reemployment assessment.

291 Section 2. This act shall take effect July 1, 2011.