

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 rehabilitation provider reporting requirements; revising
8 provisions relating to medical care coordination and
9 reemployment services; revising procedures for the
10 approval of certain formal training and education
11 programs; repealing authorization to use Workers
12 Compensation Trust Funds for certain purposes; repealing
13 rehabilitation provider qualifications; eliminating
14 certain responsibilities of the Department of Education
15 with respect to monitoring rehabilitation providers and
16 services; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 440.491, Florida Statutes, is amended
21 to read:

22 440.491 Reemployment of injured workers; rehabilitation.—

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

24 (a) "Carrier" means group self-insurance funds or
25 individual self-insureds authorized under this chapter and
26 commercial funds or insurance entities authorized to write
27 workers' compensation insurance under chapter 624.

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

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

39 (d) ~~"Qualified Rehabilitation provider"~~ means a
40 rehabilitation nurse, rehabilitation counselor, or vocational
41 evaluator providing, rehabilitation facility, or agency approved
42 ~~by the Department of Education as qualified to provide~~
43 reemployment assessments, medical care coordination,
44 reemployment services, or vocational evaluations under this
45 section, possessing one or more of the following nationally
46 recognized rehabilitation provider credentials:

47 1. Certified Rehabilitation Registered Nurse, C.R.R.N.,
48 certified by the Association of Rehab Professionals.

49 2. Certified Rehabilitation Counselor, C.R.C., certified
50 by the Commission of Rehabilitation Counselor Certifications.

51 3. Certified Case Manager, C.C.M., certified by the
52 Commission for Case Management Certification.

53 4. Certified Disability Management Specialist, C.D.M.S.,
54 certified by the Certified Disability Management Specialist
55 Commission.

56 5. Certified Vocational Evaluator, C.V.E., certified by

57 the Commission of Rehabilitation Counselor Certification.

58 6. Certified Occupational Health Nurse, C.O.H.N.,
59 certified by the American Board of Occupational Health Nurses
60 chapter.

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

68 (f) "Reemployment services" means services that include,
69 but are not limited to, vocational counseling, job-seeking
70 skills training, ergonomic job analysis, transferable skills
71 analysis, selective job placement, labor market surveys, and
72 arranging other services such as education or training,
73 vocational and on-the-job, which may be needed by the employee
74 to secure suitable gainful employment.

75 (g) "Reemployment status review" means a review to
76 determine whether an injured employee is at risk of not
77 returning to work.

78 (h) "Suitable gainful employment" means employment or
79 self-employment that is reasonably attainable in light of the
80 employee's age, education, work history, transferable skills,
81 previous occupation, and injury, and which offers an opportunity
82 to restore the individual as soon as practicable and as nearly
83 as possible to his or her average weekly earnings at the time of
84 injury.

85 (i) "Vocational evaluation" means a review of the
86 employee's physical and intellectual capabilities, his or her
87 aptitudes and achievements, and his or her work-related
88 behaviors to identify the most cost-effective means toward the
89 employee's return to suitable gainful employment.

90 (2) INTENT.—It is the intent of this section ~~to implement~~
91 ~~a systematic review by carriers of the factors that are~~
92 ~~predictive of longer-term disability and~~ to encourage the
93 provision of medical care coordination and reemployment services
94 that are necessary to assist the employee in returning to work
95 as soon as is medically feasible.

96 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

97 (a) When an employee who has suffered an injury
98 compensable under this chapter is unemployed 60 days after the
99 date of injury and is receiving benefits for temporary total
100 disability, temporary partial disability, or wage loss, and has
101 not yet been provided medical care coordination and reemployment
102 services voluntarily by the carrier, the carrier must determine
103 whether the employee is likely to return to work and must report
104 its determination to the department and the employee. The report
105 shall include the identification of both the carrier and the
106 employee, and the carrier claim number and any case number
107 assigned by the Office of the Judges of Compensation Claims. The
108 carrier must thereafter determine the reemployment status of the
109 employee at 90-day intervals as long as the employee remains
110 unemployed, is not receiving medical care coordination or
111 reemployment services, and is receiving the benefits specified
112 in this subsection.

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

117 (4) REEMPLOYMENT ASSESSMENTS.—

118 (a) The carrier may require the employee to receive a
119 reemployment assessment as it considers appropriate. However,
120 the carrier is encouraged to obtain a reemployment assessment
121 if:

122 1. The carrier determines that the employee is at risk of
123 remaining unemployed.

124 2. The case involves catastrophic or serious injury.

125 (b) The carrier shall authorize ~~only a qualified~~
126 rehabilitation provider to provide the reemployment assessment.
127 The rehabilitation provider shall conduct its assessment and
128 issue a report to the carrier and, the employee, ~~and the~~
129 ~~department~~ within 30 days after the time such assessment is
130 complete.

131 (c) If the rehabilitation provider recommends that the
132 employee receive medical care coordination or reemployment
133 services, the carrier shall advise the employee of the
134 recommendation and determine whether the employee wishes to
135 receive such services. The employee shall have 15 days after the
136 date of receipt of the recommendation in which to agree to
137 accept such services. If the employee elects to receive
138 services, the carrier may refer the employee to a rehabilitation
139 provider for such coordination or services within 15 days of
140 receipt of the assessment report or notice of the employee's

election, whichever is later.

(5) MEDICAL CARE COORDINATION AND REEMPLOYMENT SERVICES.—

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

(b) ~~If the rehabilitation provider concludes that training and education are necessary to return the employee to suitable gainful employment, or if the employee has not returned to suitable gainful employment within 180 days after referral for reemployment services or receives \$2,500 in reemployment services, whichever comes first, the carrier must discontinue reemployment services and refer the employee to the department for a vocational evaluation.~~ Notwithstanding any provision of chapter 289 or chapter 627, the cost of a reemployment assessment and the first \$2,500 in reemployment services to an injured employee must not be treated as loss adjustment expense for workers' compensation ratemaking purposes.

(c) A carrier may voluntarily provide medical care coordination or reemployment services to the employee at intervals more frequent than those required in this section. ~~For the purpose of monitoring reemployment, the carrier or the rehabilitation provider shall report to the department, in the manner prescribed by the department, the date of reemployment and wages of the employee. The carrier shall report its voluntary service activity to the department as required by rule.~~ Voluntary services offered by the carrier for any of the

169 following injuries must be considered benefits for purposes of
170 ratemaking: traumatic brain injury; spinal cord injury;
171 amputation, including loss of an eye or eyes; burns of 5 percent
172 or greater of the total body surface.

173 (d) If medical care coordination or reemployment services
174 have not been undertaken as prescribed in paragraph (3) (b), a
175 ~~qualified~~ rehabilitation service provider, facility, or agency
176 that performs a reemployment assessment shall not provide
177 medical care coordination or reemployment services for the
178 employees it assesses.

179 (6) TRAINING AND EDUCATION.—

180 (a) Upon referral of an injured employee by the carrier,
181 or upon the request of an injured employee, the department shall
182 conduct a training and education screening to determine whether
183 the employee is eligible for it should refer the employee for a
184 vocational evaluation and, if appropriate, approve training and
185 education or other vocational services provided by the
186 department for the employee. At the time of such referral, the
187 carrier shall provide the employee a copy of any reemployment
188 assessment or reemployment plan provided to the carrier by a
189 rehabilitation provider. The department may not approve formal
190 training and education programs unless it determines, after
191 consideration of the reemployment assessment, pertinent
192 reemployment status reviews or reports, and such other relevant
193 factors as it prescribes by rule, that the reemployment plan is
194 likely to result in return to suitable gainful employment. The
195 department is authorized to expend moneys from the Workers'
196 Compensation Administration Trust Fund, established by s.

197 ~~440.50, to secure appropriate training and education at a~~
198 ~~Florida public college or at a career center established under~~
199 ~~s. 1001.44, or to secure other vocational services when~~
200 ~~necessary to satisfy the recommendation of a vocational~~
201 ~~evaluator. As used in this paragraph, "appropriate training and~~
202 ~~education" includes securing a general education diploma (GED),~~
203 ~~if necessary. The department shall establish training and~~
204 ~~education standards pertaining to employee eligibility, course~~
205 ~~curricula and duration, and associated costs. For purposes of~~
206 ~~this subsection, training and education services may be secured~~
207 ~~from additional providers if:~~

208 ~~1. The injured employee currently holds an associate~~
209 ~~degree and requests to earn a bachelor's degree not offered by a~~
210 ~~Florida public college located within 50 miles from his or her~~
211 ~~customary residence;~~

212 ~~2. The injured employee's enrollment in an education or~~
213 ~~training program in a Florida public college or career center~~
214 ~~would be significantly delayed; or~~

215 ~~3. The most appropriate training and education program is~~
216 ~~available only through a provider other than a Florida public~~
217 ~~college or career center or at a Florida public college or~~
218 ~~career center located more than 50 miles from the injured~~
219 ~~employee's customary residence.~~

220 (b) When an employee who has attained maximum medical
221 improvement is unable to earn at least 80 percent of the
222 compensation rate and requires training and education to obtain
223 suitable gainful employment, the employer or carrier shall pay
224 the employee additional training and education temporary total

225 compensation benefits while the employee receives such training
226 and education for a period not to exceed 26 weeks, which period
227 may be extended for an additional 26 weeks or less, if such
228 extended period is determined to be necessary and proper by a
229 judge of compensation claims. The benefits provided under this
230 paragraph shall not be in addition to the 104 weeks as specified
231 in s. 440.15(2). However, a carrier or employer is not precluded
232 from voluntarily paying additional temporary total disability
233 compensation beyond that period. ~~If an employee requires~~
234 ~~temporary residence at or near a facility or an institution~~
235 ~~providing training and education which is located more than 50~~
236 ~~miles away from the employee's customary residence, the~~
237 ~~reasonable cost of board, lodging, or travel must be borne by~~
238 ~~the department from the Workers' Compensation Administration~~
239 ~~Trust Fund established by s. 440.50. An employee who refuses to~~
240 ~~accept training and education that is recommended by the~~
241 ~~vocational evaluator and considered necessary by the department~~
242 ~~will forfeit any additional training and education benefits and~~
243 ~~any additional payment for lost wages under this chapter. The~~
244 ~~department shall adopt rules to implement this section, which~~
245 ~~shall include requirements placed upon the carrier shall to~~
246 notify the injured employee of the availability of training and
247 education benefits as specified in this chapter. The Department
248 of Financial Services shall ~~also~~ include information regarding
249 the eligibility for training and education benefits in
250 informational materials specified in ss. 440.207 and 440.40.

251 ~~(7) PROVIDER QUALIFICATIONS.—~~

252 ~~(a) The department shall investigate and maintain a~~

253 ~~directory of each qualified public and private rehabilitation~~
254 ~~provider, facility, and agency, and shall establish by rule the~~
255 ~~minimum qualifications, credentials, and requirements that each~~
256 ~~rehabilitation service provider, facility, and agency must~~
257 ~~satisfy to be eligible for listing in the directory. These~~
258 ~~minimum qualifications and credentials must be based on those~~
259 ~~generally accepted within the service specialty for which the~~
260 ~~provider, facility, or agency is approved.~~

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

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

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

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281 ~~provided outside this state under this section.~~

282 ~~(c) The department, after consultation with~~
283 ~~representatives of employees, employers, carriers,~~
284 ~~rehabilitation providers, and qualified training and education~~
285 ~~providers, shall adopt rules governing professional practices~~
286 ~~and standards.~~

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

291 ~~(7)(9)~~ PERMANENT DISABILITY.—The judge of compensation
292 claims may not adjudicate an injured employee as permanently and
293 totally disabled until or unless the carrier is given the
294 opportunity to provide a reemployment assessment.

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