

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB RRS 11-03 Reemployment Services

**SPONSOR(S):** Rulemaking & Regulation Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation Subcommittee	14 Y, 0 N	Rubottom	Rubottom

### SUMMARY ANALYSIS

Section 440.491, F. S. provides for reemployment and rehabilitation services to injured workers receiving workers compensation benefits. The law makes the Department of Education a regulator and monitor in the private provision of these services. Under current law, significant reporting burdens are placed on private providers of services.

The PCB would curtail some of the monitoring responsibilities and limit the rulemaking power of the Department under s. 440.491, F. S. The bill also eliminates number of reporting requirements and narrows the monitoring role and rulemaking authority of the Department.

The bill also provides for immediate repeal of reporting rules adopted under the section, and adds strict legislative supervision of rulemaking under the section for a two year period. During that period, new rules under the section will require legislative ratification prior to becoming effective. If no rules are adopted in that time period, rulemaking authority under the section will be nullified and stand repealed.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Present situation:***

Section 440.491, F. S., provides for reemployment screening and rehabilitation services for injured workers who may require such services to return to work after receiving workers compensation benefits.

The law directs the Department of Education to monitor the activities of insurance carriers, including self-insurance funds and individual self-insureds, and reemployment/rehabilitation service providers under the section. It also authorizes the Department to "investigate" service providers and "establish by rule the minimum qualifications, credential, and requirements that each rehabilitation service provider, facility, and agency must satisfy to be eligible" to provide services. Eligible providers are listed by the Department in a directory maintained by the Department. The law also requires the Department to monitor and evaluate providers to ensure compliance with the Department's standards.

Subsection (8) of s. 440.491 also requires the Department to monitor insurance carriers' selection of providers and provision of services for consistency with the legislative intent set forth in subsection (2). Subsection (2) provides:

It is the intent of this section to implement a systematic review by carriers of the factors that are predictive of longer-term disability and to encourage the provision of medical care coordination and reemployment services that are necessary to assist the employee in returning to work as soon as is medically feasible.

The program organized by this section has existed since 1993.

Recently, the Department adopted new rules requiring each service visit by a client to be entered into the Department's database through a web-based application. Previously, providers sent copies of a form used for invoicing to the Department which used state full-time or OPS employees to input the same data. At a Rulemaking & Regulation Subcommittee on March 17, 2011, the Subcommittee heard testimony from service providers and Department personnel regarding the practicality of the data entry requirement. In the process of this discussion, it became apparent that the data collected may not be put to any useful purpose.

##### ***Change proposed by the PCB:***

The PCB would curtail some of the monitoring responsibilities and limit the rulemaking power of the Department under s. 440.491, F. S. Specifically, the bill narrows the legislative intent language quoted above, by striking the following language:

"to implement a systematic review by carriers of the factors that are predictive of longer-term disability and".

This will leave the intent to encourage provision of medical care coordination and reemployment services. If 17+ years of "systematic review" of the relevant factors has not informed the judgment of carriers and policy makers sufficient to guide the utilization of reemployment and rehabilitation services for injured workers, it is difficult to determine how a continuation of such review would further contribute to the public good.

The bill also eliminates a requirement in subsection (5)(c) of the statute, that: "[t]he carrier shall report its voluntary service activity to the department as required by rule." It also eliminates statutory mandates on what information the Department must consider prior to approving training and education programs, found in subsection (6)(a) of the present statute. The bill limits rulemaking authority in subsection (6)(b) to apply only to implementation subsection (6), rather than to the entire section 440.491, F. S.

The bill adds limiting language in subsection (7)(b) to narrow the monitoring responsibilities of the Department with respect to provider qualifications and oversight. It also adds clarifying language in subsection (7)(d) to the effect that the Department may not require routine reporting of information about the provision of services except as reasonably required to conduct an investigation required under the subsection.

Finally, the bill eliminates the substance of subsection (8), quoted above. In its place, the bill provides for immediate repeal of reporting rules, and adds strict legislative supervision of rulemaking under the section for a two year period. During that period, new rules under the section will require legislative ratification prior to becoming effective. If no rules are adopted in that time period, rulemaking authority under the section will be nullified and stand repealed.

**B. SECTION DIRECTORY:**

Section 1 makes the changes noted above to s. 440.491, F. S.

Section 2 provides for an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

No revenue impact is anticipated

2. Expenditures:

The changes may impose a short term cost for the Department as it changes its monitoring role. But the reduction in monitoring and information collection authority should result in reduced personnel costs in the Department.

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

1. Revenues:

No local revenue impact is anticipated.

2. Expenditures:

No local expenditure impact is anticipated.

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

The bill should save significant costs of compliance with data collection requirements under the present law and the rules that would be repealed by the bill.

**D. FISCAL COMMENTS:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

No application.

2. Other:

**B. RULE-MAKING AUTHORITY:**

The bill curtails rulemaking authority that appears to have been used to collect unnecessary information at significant expense to both public and private entities.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**