

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers' Compensation

RULE NOS.:RULE TITLES:

69L-7.730 Health Care Provider Medical Billing and Reporting Responsibilities

69L-7.740 Insurer Authorization and Medical Bill Review Responsibilities

PURPOSE AND EFFECT: The proposed rulemaking will clarify the medical reimbursement and utilization review requirements regarding physician dispensed medication. Previous Informational Bulletin DWC-01-2020 was rescinded retroactively to the date it was published. This rulemaking adopts billing, notification, and payment processing requirements for workers' compensation insurance carriers and participating physicians.

SUMMARY: The rules update procedural requirements regarding physician dispensed medication.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

A summary of the SERC follows:

- The rule is likely to directly or indirectly have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.
- The rule is not likely to directly or indirectly have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.
- The rule is likely to directly or indirectly increase regulatory costs, including any transaction costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rules.
- The number of individuals and entities likely to be required to comply with the rule is approximately 891 administrators including 407 insurers, 385 self-insurers and 99 third-party administrators.
- The Department will not incur costs for implementing or enforcing the proposed rule.
- The cost to any other state and local government entities of implementing the proposed rule and the anticipated effect on state and local revenues is anticipated to be none.
- The total estimated transactional costs to the individuals and entities that are required to comply with the rule is \$8,600,000.00 per year.
- The rules are not anticipated to financially impact small businesses, small counties, or small cities.

The Agency has determined that the proposed rule is expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department conducted a SERC analysis of the proposed rule utilizing a cost analysis of estimated regulatory costs. The cost analysis of proposed Rules 69L-7.730 & 7.740, F.A.C., indicates that the proposed rule will result in an estimated overall increase in Florida workers' compensation system costs of \$8,600,000.00 per year.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 440.13(4), 440.15(3)(b), (d), 440.185(5), 440.525(2), 440.591, 440.593(5) FS.

LAW IMPLEMENTED: 440.09, 440.13(2)(a), (3), (4), (6), (11), (12), (14), (16), 440.15(3)(b), (d), (5), 440.185(5), (9), 440.20(6), 440.525(2), 440.593 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Brittany O'Neil, Assistant Director, Division of Workers' Compensation, Department of Financial Services, Brittany.oneil@myfloridacfo.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

69L-7.730 Health Care Provider Medical Billing and Reporting Responsibilities.

(1) No change.

(2) Special Billing Requirements.

(a) through (k) No change.

(l) Pharmaceutical(s), Durable Medical Equipment and Home Medical Equipment or Supplies.

1. When dispensing commercially available medicinal drugs commonly known as legend or prescription drugs:

a. No Change.

b. Physicians (including oral surgeons), physician assistants, ARNPs, and any other recognized practitioners registered to dispense medications pursuant to section 465.0276, F.S., may dispense medications to the injured worker. Medication is treatment and must be authorized prior to dispensing, pursuant to section 440.13(3)(a), F.S., and must be medically necessary to treat the compensable injury. Dispensing such medication may not be denied, absent a contrary contractual provision, and reimbursement may not be disallowed or adjusted for the sole reason that the injured worker has chosen to receive such medication from a practitioner registered to dispense medications under Chapter 465, F.S. All requests for authorization of medications to be dispensed must specify drug name, dosage, and strength, must be documented in the injured worker's file, and must be sent in a manner prescribed by the carrier pursuant to section 440.13(3)(e), F.S. A carrier's failure to timely respond to a written request for authorization shall be governed by section 440.13(3)(d), F.S.

b. through d. renumbered c. through e. No change.

2. through 8. No change.

(m) through (p) No change.

(3) No change.

Rulemaking Authority 440.13(4), 440.15(3)(b), (d), 440.185(5), 440.525(2), 440.591, 440.593(5) FS. Law Implemented 440.09, 440.13(2)(a), (3), (4), (6), (11), (12), (14), (16), 440.15(3)(b), (d), (5), 440.185(5), (9), 440.20(6), 440.525(2), 440.593 FS.

History—New 2-18-16. Amended _____.

Editorial Note: Formerly 69L-7.710(4).

69L-7.740 Insurer Authorization and Medical Bill Review Responsibilities

(1) No change.

(2)(a) through (b) No change.

(c) Medication is treatment. When physicians (including oral surgeons), physician assistants, ARNPs, and any other recognized practitioners registered to dispense medications pursuant to section 465.0276, F.S., submit a medical bill for reimbursement of dispensed medication, the insurer, claim administrator, or entity acting on behalf of the insurer may disallow payment for dispensed medication if the medication is not authorized prior to dispensing, pursuant to section 440.13(3)(a), F.S., and is not medically necessary to treat the compensable injury. Dispensing such medications may not be denied, absent a contrary contractual provision, and reimbursement may not be disallowed or adjusted for the sole reason that the injured worker chooses to receive such medications from a practitioner registered to dispense medications under chapter 465, F.S. Any response to a request for authorization must be communicated electronically or by telephone to the health care provider and must be documented in the claims administration system. Failure to timely respond to the written request for authorization shall be governed by section 440.13(3)(d), F.S.

(3) through (15) No change.

Rulemaking Authority 440.13(4), 440.15(3)(b), (d), 440.185(5), 440.525(2), 440.591, 440.593(5) FS. Law Implemented 440.09, 440.13(2)(a), (3), (4), (6), (11), (12), (14), (16), 440.15(3)(b), (d), (5), 440.185(5), (9), 440.20(6), 440.525(2), 440.593 FS.

History—New 2-18-16. Amended _____.

Editorial Note: Formerly 69L-7.710(5).

NAME OF PERSON ORIGINATING PROPOSED RULE: Brittany O'Neil, Assistant Director, Division of Workers' Compensation, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jimmy Patronis, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 28, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 12, 2022