

1                                   A bill to be entitled  
 2           An act relating to reemployment services; amending s.  
 3           440.491, F. S., eliminating monitoring provisions,  
 4           restricting rulemaking; providing an effective date.

5  
 6   Be It Enacted by the Legislature of the State of Florida:

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 8           Section 1.   Section 440.491, Florida Statutes, is amended  
 9   to read:

10           440.491 Reemployment of injured workers; rehabilitation.-

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

12           (a)   "Carrier" means group self-insurance funds or  
 13   individual self-insureds authorized under this chapter and  
 14   commercial funds or insurance entities authorized to write  
 15   workers' compensation insurance under chapter 624.

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

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

27           (d)   "Qualified rehabilitation provider" means a  
 28   rehabilitation nurse, rehabilitation counselor, vocational

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29 | evaluator, rehabilitation facility, or agency approved by the  
30 | Department of Education as qualified to provide reemployment  
31 | assessments, medical care coordination, reemployment services,  
32 | or vocational evaluations under this chapter.

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

40 |       (f) "Reemployment services" means services that include,  
41 | but are not limited to, vocational counseling, job-seeking  
42 | skills training, ergonomic job analysis, transferable skills  
43 | analysis, selective job placement, labor market surveys, and  
44 | arranging other services such as education or training,  
45 | vocational and on-the-job, which may be needed by the employee  
46 | to secure suitable gainful employment.

47 |       (g) "Reemployment status review" means a review to  
48 | determine whether an injured employee is at risk of not  
49 | returning to work.

50 |       (h) "Suitable gainful employment" means employment or  
51 | self-employment that is reasonably attainable in light of the  
52 | employee's age, education, work history, transferable skills,  
53 | previous occupation, and injury, and which offers an opportunity  
54 | to restore the individual as soon as practicable and as nearly  
55 | as possible to his or her average weekly earnings at the time of  
56 | injury.

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57 (i) "Vocational evaluation" means a review of the  
58 employee's physical and intellectual capabilities, his or her  
59 aptitudes and achievements, and his or her work-related  
60 behaviors to identify the most cost-effective means toward the  
61 employee's return to suitable gainful employment.

62 (2) INTENT.—It is the intent of this section ~~to implement~~  
63 ~~a systematic review by carriers of the factors that are~~  
64 ~~predictive of longer-term disability and~~ to encourage the  
65 provision of medical care coordination and reemployment services  
66 that are necessary to assist the employee in returning to work  
67 as soon as is medically feasible.

68 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

69 (a) When an employee who has suffered an injury  
70 compensable under this chapter is unemployed 60 days after the  
71 date of injury and is receiving benefits for temporary total  
72 disability, temporary partial disability, or wage loss, and has  
73 not yet been provided medical care coordination and reemployment  
74 services voluntarily by the carrier, the carrier must determine  
75 whether the employee is likely to return to work and must report  
76 its determination to the department. The carrier must thereafter  
77 determine the reemployment status of the employee at 90-day  
78 intervals as long as the employee remains unemployed, is not  
79 receiving medical care coordination or reemployment services,  
80 and is receiving the benefits specified in this subsection.

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

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85 (4) REEMPLOYMENT ASSESSMENTS.—

86 (a) The carrier may require the employee to receive a  
87 reemployment assessment as it considers appropriate. However,  
88 the carrier is encouraged to obtain a reemployment assessment  
89 if:

90 1. The carrier determines that the employee is at risk of  
91 remaining unemployed.

92 2. The case involves catastrophic or serious injury.

93 (b) The carrier shall authorize only a qualified  
94 rehabilitation provider to provide the reemployment assessment.  
95 The rehabilitation provider shall conduct its assessment and  
96 issue a report to the carrier, the employee, and the department  
97 within 30 days after the time such assessment is complete.

98 (c) If the rehabilitation provider recommends that the  
99 employee receive medical care coordination or reemployment  
100 services, the carrier shall advise the employee of the  
101 recommendation and determine whether the employee wishes to  
102 receive such services. The employee shall have 15 days after the  
103 date of receipt of the recommendation in which to agree to  
104 accept such services. If the employee elects to receive  
105 services, the carrier may refer the employee to a rehabilitation  
106 provider for such coordination or services within 15 days of  
107 receipt of the assessment report or notice of the employee's  
108 election, whichever is later.

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

110 (a) Once the carrier has assigned a case to a qualified  
111 rehabilitation provider for medical care coordination or  
112 reemployment services, the provider shall develop a reemployment

113 plan and submit the plan to the carrier and the employee for  
 114 approval.

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

127 (c) A carrier may voluntarily provide medical care  
 128 coordination or reemployment services to the employee at  
 129 intervals more frequent than those required in this section. For  
 130 the purpose of monitoring reemployment, the carrier or the  
 131 rehabilitation provider shall report to the department, in the  
 132 manner prescribed by the department, the date of reemployment  
 133 and wages of the employee. ~~The carrier shall report its~~  
 134 ~~voluntary service activity to the department as required by~~  
 135 ~~rule.~~ Voluntary services offered by the carrier for any of the  
 136 following injuries must be considered benefits for purposes of  
 137 ratemaking: traumatic brain injury; spinal cord injury;  
 138 amputation, including loss of an eye or eyes; burns of 5 percent  
 139 or greater of the total body surface.

140 (d) If medical care coordination or reemployment services

141 have not been undertaken as prescribed in paragraph (3) (b), a  
 142 qualified rehabilitation service provider, facility, or agency  
 143 that performs a reemployment assessment shall not provide  
 144 medical care coordination or reemployment services for the  
 145 employees it assesses.

146 (6) TRAINING AND EDUCATION.—

147 (a) Upon referral of an injured employee by the carrier,  
 148 or upon the request of an injured employee, the department shall  
 149 conduct a training and education screening to determine whether  
 150 it should refer the employee for a vocational evaluation and, if  
 151 appropriate, approve training and education or other vocational  
 152 services for the employee. The department may not approve formal  
 153 training and education programs unless it determines, ~~after~~  
 154 ~~consideration of the reemployment assessment, pertinent~~  
 155 ~~reemployment status reviews or reports, and such other relevant~~  
 156 ~~factors as it prescribes by rule,~~ that the reemployment plan is  
 157 likely to result in return to suitable gainful employment. The  
 158 department is authorized to expend moneys from the Workers'  
 159 Compensation Administration Trust Fund, established by s.  
 160 440.50, to secure appropriate training and education at a  
 161 Florida public college or at a career center established under  
 162 s. 1001.44, or to secure other vocational services when  
 163 necessary to satisfy the recommendation of a vocational  
 164 evaluator. As used in this paragraph, "appropriate training and  
 165 education" includes securing a general education diploma (GED),  
 166 if necessary. The department shall establish training and  
 167 education standards pertaining to employee eligibility, course  
 168 curricula and duration, and associated costs. For purposes of

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169 | this subsection, training and education services may be secured  
 170 | from additional providers if:

171 |       1. The injured employee currently holds an associate  
 172 | degree and requests to earn a bachelor's degree not offered by a  
 173 | Florida public college located within 50 miles from his or her  
 174 | customary residence;

175 |       2. The injured employee's enrollment in an education or  
 176 | training program in a Florida public college or career center  
 177 | would be significantly delayed; or

178 |       3. The most appropriate training and education program is  
 179 | available only through a provider other than a Florida public  
 180 | college or career center or at a Florida public college or  
 181 | career center located more than 50 miles from the injured  
 182 | employee's customary residence.

183 |       (b) When an employee who has attained maximum medical  
 184 | improvement is unable to earn at least 80 percent of the  
 185 | compensation rate and requires training and education to obtain  
 186 | suitable gainful employment, the employer or carrier shall pay  
 187 | the employee additional training and education temporary total  
 188 | compensation benefits while the employee receives such training  
 189 | and education for a period not to exceed 26 weeks, which period  
 190 | may be extended for an additional 26 weeks or less, if such  
 191 | extended period is determined to be necessary and proper by a  
 192 | judge of compensation claims. The benefits provided under this  
 193 | paragraph shall not be in addition to the 104 weeks as specified  
 194 | in s. 440.15(2). However, a carrier or employer is not precluded  
 195 | from voluntarily paying additional temporary total disability  
 196 | compensation beyond that period. If an employee requires

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197 temporary residence at or near a facility or an institution  
198 providing training and education which is located more than 50  
199 miles away from the employee's customary residence, the  
200 reasonable cost of board, lodging, or travel must be borne by  
201 the department from the Workers' Compensation Administration  
202 Trust Fund established by s. 440.50. An employee who refuses to  
203 accept training and education that is recommended by the  
204 vocational evaluator and considered necessary by the department  
205 will forfeit any additional training and education benefits and  
206 any additional payment for lost wages under this chapter. The  
207 department shall adopt rules to implement this subsection, which  
208 shall include requirements placed upon the carrier to notify the  
209 injured employee of the availability of training and education  
210 benefits as specified in this chapter. The department shall also  
211 include information regarding the eligibility for training and  
212 education benefits in informational materials specified in ss.  
213 440.207 and 440.40.

214 (7) PROVIDER QUALIFICATIONS.—

215 (a) The department shall investigate and maintain a  
216 directory of each qualified public and private rehabilitation  
217 provider, facility, and agency, and shall establish by rule the  
218 minimum qualifications, credentials, and requirements that each  
219 rehabilitation service provider, facility, and agency must  
220 satisfy to be eligible for listing in the directory. These  
221 minimum qualifications and credentials must be based on those  
222 generally accepted within the service specialty for which the  
223 provider, facility, or agency is approved.

224 (b) The department shall impose a biennial application fee



225 of \$25 for each listing in the directory, and all such fees must  
 226 be deposited in the Workers' Compensation Administration Trust  
 227 Fund.

228 (c) The department shall monitor and evaluate each  
 229 rehabilitation service provider, facility, and agency qualified  
 230 under this subsection only to the extent necessary to ensure its  
 231 compliance with the minimum qualifications and credentials  
 232 established by the department. The failure of a qualified  
 233 rehabilitation service provider, facility, or agency to provide  
 234 the department with information requested and necessary or  
 235 access necessary for the department to satisfy its limited  
 236 responsibilities under this subsection is grounds for  
 237 disqualifying the provider, facility, or agency from further  
 238 referrals.

239 (d) A qualified rehabilitation service provider, facility,  
 240 or agency may not be authorized by an employer, a carrier, or  
 241 the department to provide any services, including expert  
 242 testimony, under this section in this state unless the provider,  
 243 facility, or agency is listed or has been approved for listing  
 244 in the directory. This restriction does not apply to services  
 245 provided outside this state under this section.

246 (e) The department, after consultation with  
 247 representatives of employees, employers, carriers,  
 248 rehabilitation providers, and qualified training and education  
 249 providers, shall adopt rules governing professional practices  
 250 and standards. Such rules may not require routine reporting to  
 251 the department of information about the provision of services by  
 252 carriers except upon reasonable specific inquiry related to the

253 department's investigative responsibilities under this  
 254 subsection.

255 ~~(8) — CARRIER PRACTICES.—The department shall monitor the~~  
 256 ~~selection of providers and~~ RULES REPEALED; RULES TO BE  
 257 RATIFIED.—All rules requiring reporting to the department of  
 258 information about the provision of services by carriers under  
 259 this section which are in effect on the effective date of this  
 260 act are hereby nullified and repealed. Any rules adopted between  
 261 April 1, 2011, and February 1, 2013, to implement any portion of  
 262 this section shall not be effective unless ratified by the  
 263 Legislature. Such rules shall be submitted to the President of  
 264 the Senate and the Speaker of the House immediately upon  
 265 adoption. If no rules are adopted in such period, the authority  
 266 for rulemaking under this section shall be nullified and stand  
 267 repealed. This subsection may not be construed to authorize  
 268 additional rules or to exempt rulemaking from other provisions  
 269 of law. ~~for consistency with legislative intent set forth in~~  
 270 ~~subsection (2).~~

271 (9) PERMANENT DISABILITY.—The judge of compensation claims  
 272 may not adjudicate an injured employee as permanently and  
 273 totally disabled until or unless the carrier is given the  
 274 opportunity to provide a reemployment assessment.

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