Department of Financial Services
Office of the General Counsel

DEPARTMENT OF FINANCIAL SERVICES
STATEMENT OF ESTIMATED REGULATORY COSTS

Rule Nos.:	Rule Titles:
69L-31.002	Definitions
69L-31.003	Petition for Resolution of Reimbursement Dispute Form and Requirements
69L-31.004	Carrier Response to Petition for Resolution of Reimbursement Dispute Form and Requirements
69L-31.005	Written Determinations
69L-31.006	Consolidation of Petitions
69L-31.007	Service of Petition on Carrier and All Affected Parties
69L-31.008	Computation of Time
69L-31.009	Carrier Response Requirements
69L-31.010	Effect of Non-Response by Carrier
69L-31.011	Complete Record
69L-31.012	Joint Stipulation of the Parties
69L-31.013	Petition Withdrawal
69L-31.014	Overutilization Issues Raised in Reimbursement Dispute Resolution

A. Based on the economic analysis presented below, answer whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation* of the rule?

Economic growth: Yes _____ No __x___
Private-sector job creation or employment: Yes _____ No __x___
Private-sector investment: Yes _____ No _x____

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after the implementation* of the rule?

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets):

* This includes adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of the provision. (Section 120.541(5), F.S.)

Yes _____ No __x___
Productivity: Yes _____ No __x___
Innovation: Yes _____ No __x___

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation* of the rule?
Yes _____ No ___x____

Economic analysis completed for questions (1) – (3):

Rule Chapter 69L-31, F.A.C., is a procedural rule chapter identifying the process the Department will follow when resolving reimbursement dispute determinations. The proposed rule amendments attempt to provide clarity to a process that is already in existence. Because the requirements in the proposed rules are very similar to the rule language currently in effect, the proposed amendments to the rules are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.002, F.A.C., provides definitions of terms used throughout the rule chapter. The defined terms are very similar terms used in the rule language currently in effect and therefore do not increase the regulatory costs or impacts of the statute. The proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.003, F.A.C., describes the form required to file a reimbursement dispute and adds more specificity to the existing required documentation supporting the dispute. The proposed rule amendments attempt to provide clarity to a process that is already in existence. Because the requirements in the proposed rule are very similar to the rule language currently in effect, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.004, F.A.C., describes the form required to respond to a petition for reimbursement dispute and adds more specificity and clarity to the existing required documentation supporting the reimbursement decision. Because the requirements in the proposed rule are very similar to the rule language currently in effect, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.005, F.A.C., describes the documentation on which the Department will base a determination. Existing statutory sections outlining the consequences for failure to comply with Department rules and statutes were added for emphasis. Because the requirements in the proposed rule are very similar to the rule language currently in effect and the consequences are outlined in statute, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Additionally, Proposed Rule 69L-31.005(1), F.A.C., identifies a specific set of facts in which the Department *will* use an EMA; specifically, when both parties provide a response with supporting documentation. Under section 440.13(9), F.S., the Department is currently permitted to use an expert medical advisor ("EMA") in any reimbursement dispute. Per statute and rule, an EMA is paid $300 per hour with a cap of 8 hours. For the previous three fiscal years, the average number of reimbursement disputes that involved the issue of medical necessity was 117. The Department estimates that an average EMA report will cost $1,500 per case. The estimated average annual cost for the Department to include EMA reports in the reimbursement dispute process is $175,500. Because the statute already permits the Department to use an EMA, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule. The Department also expects a decrease in the number of medical necessity cases.

Proposed Rule 69L-31.006, F.A.C., repeals this rule; the provision is in statute. The repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule; the requirements still exist in statute, and the rule did not increase the regulatory costs or impacts of the statute.

Proposed Rule 69L-31.007, F.A.C., provides clarity to the process of serving a petition or response, and the process for the Department to request additional or missing information. Because the requirements in the proposed rule are very similar to the rule language currently in effect, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.008, F.A.C., outlines the trigger for computing the timely submission of a petition or the response. Because the requirements in the proposed rule are very similar to the rule language currently in effect, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.009, F.A.C., repeals this rule. The previous rule content is incorporated into one or more of the other proposed rules. Because the result of the repeal is to move requirements from one rule into another and no additional requirements are imposed through this repeal, the repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.010, F.A.C., repeals this rule. The previous rule content is incorporated into one or more of the other proposed rules. Because the result of the repeal is to move requirements from one rule into another and no additional requirements are imposed through this repeal, the repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.011, F.A.C., repeals this rule. The previous rule content is incorporated into one or more of the other proposed rules. Because the result of the repeal is to move requirements from one rule into another and no additional requirements are imposed through this repeal, the repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.012, F.A.C., repeals this rule. The rule is unnecessary. The repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule; repealing this rule does not increase regulation or impose additional requirements.

Proposed Rule 69L-31.013, F.A.C., expands the timeline for a party to withdraw its Petition as well as clarifies the process to withdraw a petition. Because the requirements in the proposed rule are very similar to the rule language currently in effect, the proposed amendments to the rule are not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Proposed Rule 69L-31.014, F.A.C., repeals this rule; statutory authority already exists pertaining to overutilization. The repeal is not likely to have an adverse impact nor increase regulatory costs in excess of $1 million in the aggregate within 5 years after the implementation of the rule. Repealing this rule does not increase regulation or impose additional requirements.

B. Provide both:
(1) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule.

The Department estimates 756 individuals and entities on average participate in the reimbursement dispute process either as a petitioner or a respondent. During the previous 3 fiscal years, an average of 262 individuals and entities filed petitions for reimbursement disputes. These disputes involved responses from an additional 384 individuals and entities that filed responses on behalf of the carrier/payor. The total number of petitions filed for each of those fiscal years ranged between 3,234 to 4,618. Any petitioner that disputes the amount they were reimbursed by an employer/carrier may file a petition for resolution of reimbursement dispute with the Department.

(2) A general description of the types of individuals likely to be affected by the rule.

Health care providers, third party billing companies, self-insured employers, third-party administrators, and insurance companies.

C. Provide a good faith estimate of:

(1) The cost to the Department to implement and enforce the rule.

_____ None. To be done with the current workload and existing staff.
__x__ Minimal (provide a brief explanation below).
_____ Other (provide an explanation for the estimate and methodology used).

Under section 440.13(9), F.S., the Department is currently permitted to use an expert medical advisor ("EMA") in any reimbursement dispute. Proposed Rule 69L-31.004(3)(b), F.A.C., identifies a specific set of facts in which the Department *will* use an EMA; specifically, when both parties provide a response with supporting documentation. Per statute and rule, an EMA is paid $300 per hour with a cap of 8 hours. For the previous three fiscal years, the average number of reimbursement disputes that involved the issue of medical necessity was 117. The Department estimates that an average EMA report will cost $1,500 per case. The estimated average annual cost for the Department to include EMA reports in the reimbursement dispute process is $175,500.

(2) The cost to any other state and local government entity to implement and enforce the rule.

__x__ None. The rule will only affect the Department.
_____ Minimal (provide a brief explanation below).
_____ Other (provide an explanation for the estimate and methodology used).

(3) Any anticipated effect on state or local revenues.

__x__ None
_____ Minimal (provide a brief explanation below).

_____ Other (provide an explanation for the estimate and methodology used).

D. Provide a good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.

_x___ None. The rule will only affect the Department.
_____ Minimal (provide a brief explanation below).
_____ Other (provide an explanation for the estimate and methodology used).

The change from current rule to the proposed rule does not increase transactional costs for individuals and entities required to comply with the rule.

E. Provide an analysis of the impact on small business and small counties and small cities:

(1) "Small business" is defined by section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, have a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

Analysis of impact on small business:

The change from the current rules to the proposed rules is primarily to add specificity and clarity to the rule currently in effect. The proposed rules are not expected to increase or decrease costs for any participant except the Department. These rules exist to outline an informal dispute process available to individuals and entities in the Florida workers' compensation system. There are no reporting requirements within the rules. Additionally, some of the response timelines have been extended, providing for less stringent deadlines.

Some proposed alternatives, such as service by email, were not permitted under existing Florida law or would inhibit the Department from performing its duties. Other alternatives to reduce impacts on small business were either not found, not viable, or would not permit the Department to perform its required duties. Where the Department could permit flexibility and reduce burdens on small business, the Department has attempted to do so through these rules. The alternatives

that were proposed in the proposed lower cost regulatory alternatives—and that to some extent may be proposed to reduce impacts on small business—and the Department's rationales for adopting/rejecting them, are addressed in section G below.

(2) A "small city" is defined by section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

Analysis of impact on small counties and small cities:

The change from the current rules to the proposed rules is primarily to add specificity and clarity to the rule currently in effect. The proposed rules are not expected to increase or decrease costs for any participant except the Department. These rules exist to outline an informal dispute process available to individuals and entities in the Florida workers' compensation system. There are no reporting requirements within the rules. Additionally, some of the response timelines have been extended, providing for less stringent deadlines.

F. Provide any additional information that the Department determines may be useful.

The purpose of the proposed rules is to minimize the dismissal of petitions for resolution of reimbursement dispute. Rules 69L-7.710-7.740, F.A.C., are also in the process of being revised to minimize the number of disputed reimbursements by clarifying the use of reimbursement codes. All workers' compensation medical bills are required to be filed electronically with the Department. On average, the Department annually receives approximately 4 million medical bills. The average number of reimbursement disputes (3,234 to 4,618) represent approximately 0.08% to 0.12% of all medical bills filed with the Department.

G. State whether any lower cost regulatory alternatives were submitted.

Yes _x____ No ____

If yes, provide a description of each and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

A regulatory alternative was received from Automated Healthcare Solutions (AHCS). Further information, along with whether the Department adopted or rejected the alternative, is below:

(1) 69L-31.002(1) – AHCS proposes that the Department not adopt the proposed rule language, specifically the definition of "Notice of Disallowance or Adjustment."

RESPONSE: The purpose of the proposed rule is to define a term that is used in statute and throughout the remainder of the rule. Following the receipt of comments from the public and from rule hearings, the Department believes a definition is still needed, but amended the rule to correspond with Rule 69L-7.710(1)(y), F.A.C., a rule that has been in effect since 2016. This definition pre-dates the 2016 changes because the substance of the definition remained the same. The regulatory alternative AHCS proposes is REJECTED in its entirety.

(2) 69L-31.005(1) – AHCS proposes not adopting the proposed rule language and specifically objects to requiring use of EMAs as provided in the proposed rule.

RESPONSE: The Department has been subject to litigation for determinations with medical necessity as an issue where an EMA was not used. The Department expects a decrease in litigation due to the use of an EMA on the issue of medical necessity. The Department already has the statutory authority to use an EMA for any reimbursement dispute. The purpose of the amendment is to put parties on notice as to the specific circumstances in a reimbursement dispute in which the department will use an EMA. The regulatory alternative AHCS proposes is REJECTED in its entirety.

(3) 69L-31.003(3)(f) and 31.004(3)(c) – AHCS proposes not adopting the proposed rule language and specifically objects to the Department requiring written documentation as provided in the proposed rule.

RESPONSE: The proposed rule is not imposing an additional requirement of written documentation for those situations in which written documentation does not exist. The Department has considered additional public comment and comments from rule hearings regarding this issue. The Department intends to add "if any" to the end of Rules 69L-31.003(3)(f) and 69L-31.004(3)(c) in a Notice of Change. The regulatory alternative AHCS proposes is ADOPTED in part as described herein but is otherwise REJECTED.

(4) 69L-31.004(4), 69L-31.007, 60L-31.008(4) – AHCS proposes that the Department "develop rule language that allows service amongst all parties in the medical billing and reimbursement dispute process (the Division, the providers, and the carriers) by email, with acknowledgements or receipts to provide necessary documentation" and that "the rule be revised to require all carriers authorized in the Florida workers' compensation system to designate an email address for all disputes, to be filed and updated annually with the Division."

RESPONSE: Section 440.13(7)(a), F.S., requires the petitioner to serve the petition by certified mail. The Department cannot promulgate a rule permitting service of the petition by other means. Further, accurate computation of time will be constrained if the Department were to permit service via email with a read receipt to confirm service. Specifically, there is no requirement of auto generating a read receipt, and providing a read receipt is optional by both the sender and recipient. Additionally, electronic attachments involving medical records present security and capacity issues for all stakeholders. The Department is working on the development of a web portal to facilitate the movement of documentation between parties. The regulatory alternative AHCS proposes is REJECTED in its entirety.

(5) 69L-31.003(3)(e) – AHCS proposes that the Department not adopt the proposed rule language incorporating "evidence-based practice guidelines" as it relates to medical necessity.

RESPONSE: The Department is adopting the LCRA as it relates to evidence-based practice guidelines or practice guidelines. The Department intends to amend the rule in a Notice of Change to permit either a Letter of Medical Necessity signed by a health care provider who provided the services or supporting medical notes and records. The regulatory alternative AHCS proposes is ADOPTED in part as described herein but is otherwise REJECTED since the Department intends to move forward with adopting a modified version of the proposed rule.