

Blog Post

Florida Appeals Court Rejects Rules Protecting Physician Dispensing in Workers' Compensation Cases

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A recent decision by Florida's First District Court of Appeal (DCA) has significant implications for physicians and other practitioners who dispense medications to injured workers. In *Publix Super Markets, Inc. v. Dep't of Fin. Servs.*, No. 1D2023-0941, 2026 WL 513788 (Fla. 1st DCA Feb. 25, 2026), the court invalidated two rules issued by the Florida Department of Financial Services (DFS) that made it harder for workers' compensation insurers to refuse to cover medications dispensed directly by physicians and other registered dispensing practitioners. The court held that these rules are an invalid exercise of DFS's rulemaking authority. Accordingly, workers' compensation insurers may require injured workers to use pharmacies as opposed to receiving medications directly from their treating providers.

Background: "Free, Full, and Absolute Choice"

Florida's Workers' Compensation Law generally allows insurers to control and authorize medical treatment. However, section 440.13(3)(j), Florida Statutes, grants injured workers the "free, full, and absolute choice" of the pharmacy or pharmacist that dispenses their medications. It expressly prohibits insurers and employers from directing or conditioning that choice.

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In 2020, DFS took the position that this right extends to physicians and other practitioners who dispense medications directly to patients. Specifically, DFS issued a bulletin that said it is contrary to Florida's "absolute choice" law for workers' compensation insurers to fail to authorize or reimburse a prescription medication solely because the medication is dispensed by a dispensing physician instead of a pharmacist.

Several workers' compensation insurers filed a petition with Florida's administrative law court challenging DFS's authority to issue the bulletin. As part of the settlement of that case, DFS rescinded the bulletin and initiated the rulemaking process, which culminated in two proposed rules making it harder for workers' compensation insurers to deny authorization or payment simply because a drug was dispensed by a physician or other dispensing practitioner.

In particular, the rules clarify that physicians (including oral surgeons), physician assistants, advanced registered nurse practitioners, and any other recognized practitioners registered to dispense medications pursuant to section 465.0276, F.S., may dispense medications to injured workers, and workers' compensation claims for medication dispensed by such practitioners must be paid, absent a contrary contractual provision.

Several workers' compensation insurers and a supermarket chain filed an administrative challenge to the rules. An administrative law judge concluded that the rules were valid, and the petitioners appealed the case to the First DCA.

What Did the First DCA Decide?

The court held that both of the rules are invalid because they cannot "be squared with the plain language of the 'absolute choice' provision in section 440.13(3)(j)." The court pointed out that the absolute choice provision only applies to pharmacies and

licensed pharmacists. It reasoned that dispensing practitioners do not fit within the meaning of the term “pharmacist” and do not engage in the practice of “pharmacy” for the purposes of Florida’s Workers’ Compensation Law because dispensing practitioners are only authorized to dispense prescriptions, which the court noted is just one part of the broader practice of pharmacy. Thus, the court concluded that DFS’s rules are invalid because they improperly expanded the law through rulemaking. In other words, only the Florida Legislature can extend the protections of the absolute choice provision to physicians and other dispensing practitioners.

What Does This Mean for Medical Practices?

While it is still legal for properly registered physicians and other practitioners to dispense medications in Florida, workers’ compensation insurers have more discretion to deny authorization or reimbursement for medications dispensed by such practitioners to injured workers. Medical practices that dispense medications to injured workers should expect to see closer scrutiny of medication authorization requests and billing by workers’ compensation insurers. Further, these medical practices could see an increase in denials or efforts by workers’ compensation insurers to require injured workers to fill their prescriptions at pharmacies.

Medical practices might consider becoming licensed as pharmacies to enjoy the protection of Florida’s “absolute choice” law. However, doing so would require compliance with the Florida Pharmacy Act and would alter the amount of the reimbursement received for medications dispensed to injured workers. Florida’s Workers’ Compensation Law generally sets reimbursement for prescription medications at the average wholesale price of the drug plus \$4.18 for the dispensing fee. Yet, repackaged or relabeled prescription medications dispensed by a dispensing practitioner are reimbursed at a higher rate of 112.5 percent of the average wholesale price, plus \$8.00 for the

dispensing fee. Upon becoming licensed as a pharmacy, repackaged or relabeled prescription medications dispensed by a medical practice would no longer be dispensed by a dispensing practitioner. Instead, they would be dispensed by a pharmacy and so ineligible for the higher reimbursement rate set for dispensing practitioners.

There are federal and state laws addressing physician referral to entities in which they have an ownership or compensation arrangement. Violation of these laws can result in strict penalties, including incarceration, fines, and exclusion from healthcare programs. Therefore, a physician group should consult healthcare regulatory counsel before it decides to own or operate a pharmacy to which it will refer patients.

Legislative Advocacy May Be the Next Battleground

The First DCA made clear that only the Legislature can change the “absolute choice” framework to apply to dispensing practitioners. Dispensing practitioners could shift their focus from agency rulemaking to a legislative amendment. However, such efforts would likely be opposed by employers and workers’ compensation insurers.

Takeaway

The *Publix* decision narrows regulatory protections for physicians and other practitioners dispensing medications to injured workers and allows workers’ compensation insurers more authority in prescription drug coverage decisions. Dispensing practitioners and their practices should prepare for stricter workers’ compensation authorization and reimbursement practices. And they should watch for legislative developments in this area. Akerman’s Healthcare Practice Group is available to answer any questions you may have about how this could affect your practice.

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