

By Representative Clarke

1 A bill to be entitled
 2 An act transferring and reassigning divisions,
 3 functions, and responsibilities of the
 4 Department of Labor and Employment Security;
 5 providing for a type two transfer of the
 6 Division of Workers' Compensation to the
 7 Department of Insurance; providing for a type
 8 two transfer of workers' compensation medical
 9 services to the Agency for Health Care
 10 Administration; providing for a type two
 11 transfer of workers' compensation
 12 rehabilitation and reemployment services to the
 13 Department of Education; providing for a type
 14 two transfer of the administration of child
 15 labor laws to the Department of Business and
 16 Professional Regulation; providing for
 17 comparable pay grades for the transferred
 18 positions; authorizing the Department of
 19 Insurance to reorganize positions within the
 20 department and establish regional offices;
 21 authorizing the Department of Insurance to
 22 enter into contracts; providing for existing
 23 contracts to be subject to review and
 24 cancellation; providing for a type two transfer
 25 of certain functions of the Office of the
 26 Secretary and the Office of Administrative
 27 Services of the Department of Labor and
 28 Employment Security relating to labor
 29 organizations and migrant and farm labor
 30 registration to the Department of Business and
 31 Professional Regulation; providing for a type

1 two transfer of other workplace regulation
2 functions to the Department of Business and
3 Professional Regulation; providing for the
4 transfer of the Unemployment Appeals Commission
5 to the Agency for Workforce Innovation by a
6 type two transfer; providing for the transfer
7 of the Office of Information Systems to the
8 State Technology Office by a type two transfer;
9 requiring the State Technology Office and the
10 Department of Insurance to determine whether it
11 is feasible to transfer ownership of the
12 Workers' Compensation Integrated System to the
13 Department of Insurance; authorizing the
14 Department of Banking and Finance, in
15 conjunction with the Office of the Attorney
16 General, to use unexpended funds to settle
17 certain claims; providing for the continuation
18 of contracts or agreements of the Department of
19 Labor and Employment Security; providing for a
20 successor department, agency, or entity to be
21 substituted for the Department of Labor and
22 Employment Security as a party in interest in
23 pending proceedings; exempting specified state
24 agencies, on a temporary basis, from provisions
25 relating to procurement of property and
26 services and leasing of space; authorizing
27 specified state agencies to develop temporary
28 emergency rules relating to the implementation
29 of this act; transferring certain positions
30 within the Office of General Counsel of the
31 Department of Labor and Employment Security to

1 the Department of Insurance by a type two
2 transfer; amending s. 20.13, F.S.; establishing
3 the Division of Workers' Compensation within
4 the Department of Insurance; amending s.
5 440.02, F.S.; providing a definition for the
6 term "agency"; conforming definitions of
7 "department" and "division" to the transfer of
8 the Division of Workers' Compensation; amending
9 ss. 440.102 and 440.125, F.S.; conforming
10 agency references to reflect the transfer of
11 the Division of Workers' Compensation; amending
12 s. 440.13, F.S., relating to medical services
13 and supplies under the workers' compensation
14 law; reassigning certain functions from the
15 Division of Workers' Compensation to the Agency
16 for Health Care Administration; conforming
17 agency references to reflect the transfer of
18 the Division of Workers' Compensation; amending
19 s. 440.15, F.S.; providing for the agency to
20 specify certain forms and procedures governing
21 wage loss and impairment benefits; conforming a
22 cross reference; amending ss. 440.20 and
23 440.207, F.S., relating to payment of
24 compensation; conforming provisions to changes
25 made by the act; amending s. 440.24, F.S.;
26 providing for the sale of securities on deposit
27 to satisfy a compensation order; amending ss.
28 440.25 and 440.271, F.S., relating to
29 mediation, hearings, and appeals; conforming
30 provisions to changes made by the act; amending
31 s. 440.38, F.S.; transferring operation of

1 provisions requiring the securing of payment of
2 compensation by employers from the Division of
3 Workers' Compensation of the Department of
4 Labor and Employment Security to the Florida
5 Self-Insurer's Guaranty Association,
6 Incorporated, and the Department of Insurance;
7 revising and clarifying requirements and
8 procedures; providing powers and duties of the
9 association and the departments; providing for
10 allocation or payment of state funds to the
11 association for certain purposes; providing
12 rulemaking authority; amending s. 440.381,
13 F.S., relating to audits of payroll and
14 classifications; conforming provisions to
15 changes made by the act; amending s. 440.385,
16 F.S.; revising and clarifying provisions
17 relating to the association's creation, board
18 of directors, powers and duties, insolvency
19 fund, and plan of operation; providing
20 additional powers of the association;
21 transferring powers and duties of the
22 Department of Labor and Employment Security
23 relating to the association to the Department
24 of Revenue; revising such powers and duties;
25 providing additional powers and duties of the
26 Department of Revenue; providing for oversight
27 of the association by the department; deleting
28 certain provisions relating to detection and
29 prevention of employer insolvencies; amending
30 s. 440.386, F.S.; providing parity for the
31 association with the Department of Revenue

1 relating to proceedings for delinquency,
2 liquidation, and conservation of assets;
3 amending s. 440.49, F.S.; reassigning
4 responsibility for a report on the Special
5 Disability Trust Fund to the Department of
6 Insurance; amending s. 440.491, F.S., relating
7 to the reemployment of injured workers;
8 conforming references to the transfer of
9 rehabilitation and reemployment services to the
10 Department of Education; amending s. 440.525,
11 F.S., relating to the examination of carriers;
12 conforming agency references to the transfer of
13 programs from the Department of Labor and
14 Employment Security to the Department of
15 Revenue; amending s. 443.012, F.S.; providing
16 for the Unemployment Appeals Commission to be
17 created within the Agency for Workforce
18 Innovation rather than the Department of Labor
19 and Employment Security; conforming provisions;
20 amending s. 443.036, F.S.; conforming the
21 definition of "commission" to the transfer of
22 the Unemployment Appeals Commission to the
23 Agency for Workforce Innovation; amending s.
24 447.02, F.S.; conforming the definition of
25 "department" to the transfer of the regulation
26 of labor organizations to the Department of
27 Business and Professional Regulation; amending
28 s. 447.305, F.S.; providing that notification
29 of registrations and renewals of registration
30 shall be furnished to the Department of
31 Business and Professional Regulation, to

1 conform; amending s. 450.012, F.S.; conforming
2 the definition of "department" to the transfer
3 of the regulation of child labor to the
4 Department of Business and Professional
5 Regulation; amending s. 450.191, F.S., relating
6 to the duties of the Executive Office of the
7 Governor with respect to migrant labor;
8 conforming provisions to changes made by the
9 act; amending s. 450.28, F.S.; conforming the
10 definition of "department" to the transfer of
11 the regulation of farm labor to the Department
12 of Business and Professional Regulation;
13 amending ss. 110.205, 112.19, 112.191, 121.125,
14 122.03, 238.06, 440.10, 440.104, 440.134,
15 440.14, 440.51, 489.114, 489.510, 626.88,
16 626.989, 627.0915, and 627.914, F.S., to
17 conform; repealing s. 20.171, F.S., relating to
18 the establishment and the authority and
19 organizational structure of the Department of
20 Labor and Employment Security; repealing s.
21 440.4416, F.S., relating to the Workers'
22 Compensation Oversight Board; providing for
23 severability; providing effective dates.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. (1) All powers, duties, functions, rules,
28 records, personnel, property, and unexpended balances of
29 appropriations, allocations, and other funds of the Division
30 of Workers' Compensation are transferred by a type two
31 transfer, as defined in section 20.06(2), Florida Statutes,

1 from the Department of Labor and Employment Security to the
2 Department of Insurance, except as otherwise provided in this
3 section. Nineteen full-time equivalent positions and the
4 associated funding for salaries, benefits, and expenses
5 related to oversight of medical services in workers'
6 compensation provider relations, dispute and complaint
7 resolution, program evaluation, data management, and carrier
8 compliance and review are transferred by a type two transfer,
9 as defined in section 20.06(2), Florida Statutes, from the
10 Department of Labor and Employment Security to the Agency for
11 Health Care Administration; 96 full-time equivalent positions,
12 and the associated funding for salaries, benefits, and
13 expenses related to the rehabilitation and reemployment of
14 injured workers are transferred by a type two transfer, as
15 defined in section 20.06(2), Florida Statutes, from the
16 Department of Labor and Employment Security to the Department
17 of Education; and 11 full-time equivalent positions and the
18 associated funding for salaries, benefits, and expenses
19 related to the administration of child labor laws under
20 chapter 450, Florida Statutes, are transferred by a type two
21 transfer, as defined in section 20.06(2), Florida Statutes,
22 from the Department of Labor and Employment Security to the
23 Department of Business and Professional Regulation. To the
24 extent feasible, the positions established by the Department
25 of Insurance will be at pay grades comparable to the positions
26 established by the Department of Labor and Employment Security
27 based on the classification codes and specifications of the
28 positions for work to be performed at the Department of
29 Insurance. The Department of Insurance shall determine the
30 number of positions needed to administer the provisions of
31 chapter 440, Florida Statutes. The number of positions the

1 department determines is needed may not exceed the number of
2 authorized positions and the salary and benefits that were
3 authorized for the Division of Workers' Compensation within
4 the Department of Labor and Employment Security prior to the
5 transfer. The Department of Insurance is further authorized to
6 reassign, reorganize, or otherwise transfer positions to
7 appropriate administrative subdivisions within the department
8 and to establish such regional offices as are necessary to
9 properly enforce and administer its responsibilities under the
10 Florida Insurance Code and chapter 440, Florida Statutes. The
11 department may also enter into contracts with public or
12 private entities to administer its duties and responsibilities
13 associated with the transfer of the Division of Workers'
14 Compensation. Notwithstanding section 110.227, Florida
15 Statutes, if a layoff becomes necessary with respect to the
16 Division of Workers' Compensation, the competitive area
17 identified for such layoff may not include any other divisions
18 of the Department of Insurance. All existing contracts related
19 to those functions that are transferred to the Department of
20 Insurance are subject to cancellation or renewal upon review
21 by the Department of Insurance.

22 (2) All powers, duties, functions, rules, records,
23 personnel, property, and unexpended balances of
24 appropriations, allocations, and other funds of the Office of
25 the Secretary and the Office of Administrative Services of the
26 Department of Labor and Employment Security related to the
27 regulation of labor organizations under chapter 447, Florida
28 Statutes, and the administration of migrant labor and farm
29 labor laws under chapter 450, Florida Statutes, are
30 transferred by a type two transfer, as defined in section
31 20.06(2), Florida Statutes, from the Department of Labor and

1 Employment Security to the Department of Business and
2 Professional Regulation.

3 (3) Any other powers, duties, functions, rules,
4 records, property, and unexpended balances of appropriations,
5 allocations, and other funds of the Department of Labor and
6 Employment Security not otherwise transferred by this act
7 relating to workplace regulation and enforcement, including,
8 but not limited to, those under chapter 448, Florida Statutes,
9 are transferred by a type two transfer, as defined in section
10 20.06(2), Florida Statutes, from the Department of Labor and
11 Employment Security to the Department of Business and
12 Professional Regulation.

13 (4) All powers, duties, functions, rules, records,
14 personnel, property, and unexpended balances of
15 appropriations, allocations, and other funds of the
16 Unemployment Appeals Commission relating to the commission's
17 specified authority, powers, duties, and responsibilities are
18 transferred by a type two transfer, as defined in section
19 20.06(2), Florida Statutes, to the Agency for Workforce
20 Innovation.

21 (5) The Office of Information Systems is transferred
22 by a type two transfer, as defined in s. 20.06(2), Florida
23 Statutes, from the Department of Labor and Employment Security
24 to the State Technology Office. Upon completion of this
25 transfer, the State Technology Office and the Department of
26 Insurance shall enter into discussions to determine whether it
27 would be technologically feasible and cost effective to
28 separate the Workers' Compensation Integrated System from its
29 current mainframe platform and transfer ownership of this
30 system to the Department of Insurance. If the Department of
31 Insurance ultimately determines that it is technologically

1 feasible and cost effective to transfer ownership of the
2 Workers' Compensation Integrated System from the State
3 Technology Office to the Department of Insurance, the State
4 Technology Office and the Department of Insurance shall
5 jointly develop and implement a plan to transfer this system
6 to the Department of Insurance.

7 (6)(a) The records, property, and unexpended balances
8 of appropriations, allocations, and other funds and resources
9 of the Office of the Secretary and the Office of
10 Administrative Services of the Department of Labor and
11 Employment Security which support the activities and functions
12 transferred under subsection (1) to the Department of
13 Insurance are transferred as provided in section 20.06(2),
14 Florida Statutes, to the Department of Insurance.

15 (b) The records, property, and unexpended balances of
16 appropriations, allocations, and other funds and resources of
17 the Office of the Secretary and the Office of Administrative
18 Services of the Department of Labor and Employment Security
19 which support the activities and functions transferred under
20 subsection (1) to the Agency for Health Care Administration
21 are transferred as provided in section 20.06(2), Florida
22 Statutes, to the Agency for Health Care Administration.

23 (c) The records, property, and unexpended balances of
24 appropriations, allocations, and other funds and resources of
25 the Office of the Secretary and the Office of Administrative
26 Services of the Department of Labor and Employment Security
27 which support the activities and functions transferred under
28 subsection (1) to the Department of Education are transferred
29 as provided in section 20.06(2), Florida Statutes, to the
30 Department of Education.

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1 (d) The records, property, and unexpended balances of
2 appropriations, allocations, and other funds and resources of
3 the Office of the Secretary and the Office of Administrative
4 Services of the Department of Labor and Employment Security
5 which support the activities and functions transferred under
6 subsections (1), (2), and (3) to the Department of Business
7 and Professional Regulation are transferred as provided in
8 section 20.06(2), Florida Statutes, to the Department of
9 Business and Professional Regulation.

10 (e) The records, property, and unexpended balances of
11 appropriations, allocations, and other funds and resources of
12 the Office of the Secretary and the Office of Administrative
13 Services of the Department of Labor and Employment Security
14 which support the activities and functions transferred under
15 subsection (4) to the Agency for Workforce Innovation are
16 transferred as provided in section 20.06(2), Florida Statutes,
17 to the Agency for Workforce Innovation.

18 (f) The records, property, and unexpended balances of
19 appropriations, allocations, and other funds and resources of
20 the Office of the Secretary and the Office of Administrative
21 Services of the Department of Labor and Employment Security
22 which support the activities and functions transferred under
23 subsection (5) to the State Technology Office are transferred
24 as provided in section 20.06(2), Florida Statutes, to the
25 State Technology Office.

26 (7) The transfer of any programs, activities, and
27 functions under this act shall include the transfer of any
28 records and unexpended balances of appropriations,
29 allocations, or other funds related to such programs,
30 activities, and functions. Any surplus records and unexpended
31 balances of appropriations, allocations, or other funds not so

1 transferred shall be transferred to the Department of
2 Management Services for proper disposition. The Department of
3 Management Services shall become the custodian of any property
4 of the Department of Labor and Employment Security which is
5 not otherwise transferred for the purposes of chapter 273,
6 Florida Statutes. The Department of Management Services is
7 authorized to permit the use of such property by organizations
8 as necessary to implement the provisions of this act.

9 (8) The Department of Banking and Finance, in
10 conjunction with the Office of the Attorney General, may use
11 any unexpended balances of the Department of Labor and
12 Employment Security to settle any claims or leases, pay out
13 personnel annual leave or sick leave, or close out other costs
14 owed by the department, regardless of whether such costs
15 relate to federal, state, or local governments, department
16 employees, or the private sector. Any remaining balances of
17 the department shall be transferred as directed by this act or
18 by budget amendment.

19 (9) Except as otherwise provided in subsection (1) and
20 notwithstanding any other provision of law, any binding
21 contract or interagency agreement existing on or before
22 January 1, 2002, between the Department of Labor and
23 Employment Security, or an entity or agent of the department,
24 and any other agency, entity, or person shall continue as a
25 binding contract or agreement for the remainder of the term of
26 such contract or agreement with the successor department,
27 agency, or entity responsible for the program, activity, or
28 functions relative to the contract or agreement.

29 (10) This act does not affect the validity of any
30 judicial or administrative proceeding involving the Department
31 of Labor and Employment Security which is pending as of the

1 effective date of any transfer under this act. The successor
2 department, agency, or entity responsible for the program,
3 activity, or function relative to the proceeding shall be
4 substituted, as of the effective date of the applicable
5 transfer under this act, for the Department of Labor and
6 Employment Security as a party in interest in any such
7 proceedings.

8 (11) To expedite the acquisition of goods and services
9 for implementation of the provisions of this act, the
10 Department of Insurance, the Agency for Health Care
11 Administration, the Department of Education, the Department of
12 Business and Professional Regulation, the Agency for Workforce
13 Innovation, and the State Technology Office are exempt from
14 the provisions of chapter 287, Florida Statutes, when
15 contracting for the purchase or lease of goods or services
16 under this act. This subsection shall take effect upon this
17 act becoming a law and shall expire July 1, 2002.

18 (12) To expedite the leasing of facilities for
19 implementation of the provisions of this act, the Department
20 of Revenue, the Agency for Health Care Administration, the
21 Department of Education, the Department of Business and
22 Professional Regulation, the Agency for Workforce Innovation,
23 and the State Technology Office are exempt from the
24 requirements of any state laws relating to the leasing of
25 space, including, but not limited to, the requirements imposed
26 by section 255.25, Florida Statutes, and any rules adopted
27 under such laws; however, all leases entered into under this
28 act through July 1, 2002, must be submitted for approval to
29 the Department of Management Services at the earliest
30 practicable time. This subsection shall take effect upon this
31 act becoming a law and shall expire July 1, 2002.

1 (13) Notwithstanding any provisions of chapter 120,
2 Florida Statutes, to the contrary, the Department of
3 Insurance, the Agency for Health Care Administration, the
4 Department of Education, the Department of Business and
5 Professional Regulation, the Agency for Workforce Innovation,
6 and the State Technology Office are authorized to develop
7 emergency rules relating to and in furtherance of the orderly
8 implementation of the provisions of this act. This subsection
9 shall take effect upon this act becoming a law, and these
10 emergency rules shall be valid for a period of 180 days after
11 January 1, 2002.

12 (14) Four attorney positions and one administrative
13 assistant III position, and the related property and
14 unexpended balances of appropriations, allocations, and other
15 funds, are transferred from the Office of General Counsel of
16 the Department of Labor and Employment Security to the
17 Department of Insurance by a type two transfer, as defined in
18 section 20.06(2), Florida Statutes.

19 Section 2. Paragraph (k) is added to subsection (2) of
20 section 20.13, Florida Statutes, to read:

21 20.13 Department of Insurance.--There is created a
22 Department of Insurance.

23 (2) The following divisions of the Department of
24 Insurance are established:

25 (k) Division of Workers' Compensation.

26 Section 3. Subsections (3) through (39) of section
27 440.02, Florida Statutes, are renumbered as subsections (4)
28 through (40), respectively, a new subsection (3) is added to
29 said section, and renumbered subsections (12) and (14) of said
30 section are amended, to read:

31

1 440.02 Definitions.--When used in this chapter, unless
2 the context clearly requires otherwise, the following terms
3 shall have the following meanings:

4 (3) "Agency" means the Agency for Health Care
5 Administration.

6 (12)~~(11)~~ "Department" means the Department of
7 Insurance ~~Labor and Employment Security.~~

8 (14)~~(13)~~ "Division" means the Division of Workers'
9 Compensation of the Department of Insurance ~~Labor and~~
10 ~~Employment Security.~~

11 Section 4. Paragraph (a) of subsection (3) of section
12 440.102, Florida Statutes, is amended to read:

13 440.102 Drug-free workplace program requirements.--The
14 following provisions apply to a drug-free workplace program
15 implemented pursuant to law or to rules adopted by the Agency
16 for Health Care Administration:

17 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--

18 (a) One time only, prior to testing, an employer shall
19 give all employees and job applicants for employment a written
20 policy statement which contains:

21 1. A general statement of the employer's policy on
22 employee drug use, which must identify:

23 a. The types of drug testing an employee or job
24 applicant may be required to submit to, including
25 reasonable-suspicion drug testing or drug testing conducted on
26 any other basis.

27 b. The actions the employer may take against an
28 employee or job applicant on the basis of a positive confirmed
29 drug test result.

30 2. A statement advising the employee or job applicant
31 of the existence of this section.

1 3. A general statement concerning confidentiality.

2 4. Procedures for employees and job applicants to
3 confidentially report to a medical review officer the use of
4 prescription or nonprescription medications to a medical
5 review officer both before and after being tested.

6 5. A list of the most common medications, by brand
7 name or common name, as applicable, as well as by chemical
8 name, which may alter or affect a drug test. A list of such
9 medications as developed by the Agency for Health Care
10 Administration shall be available to employers through the
11 Division of Workers' Compensation of the Department of
12 Insurance ~~Labor and Employment Security~~.

13 6. The consequences of refusing to submit to a drug
14 test.

15 7. A representative sampling of names, addresses, and
16 telephone numbers of employee assistance programs and local
17 drug rehabilitation programs.

18 8. A statement that an employee or job applicant who
19 receives a positive confirmed test result may contest or
20 explain the result to the medical review officer within 5
21 working days after receiving written notification of the test
22 result; that if an employee's or job applicant's explanation
23 or challenge is unsatisfactory to the medical review officer,
24 the medical review officer shall report a positive test result
25 back to the employer; and that a person may contest the drug
26 test result pursuant to law or to rules adopted by the Agency
27 for Health Care Administration.

28 9. A statement informing the employee or job applicant
29 of his or her responsibility to notify the laboratory of any
30 administrative or civil action brought pursuant to this
31 section.

1 10. A list of all drugs for which the employer will
2 test, described by brand name or common name, as applicable,
3 as well as by chemical name.

4 11. A statement regarding any applicable collective
5 bargaining agreement or contract and the right to appeal to
6 the Public Employees Relations Commission or applicable court.

7 12. A statement notifying employees and job applicants
8 of their right to consult with a medical review officer for
9 technical information regarding prescription or
10 nonprescription medication.

11 Section 5. Section 440.125, Florida Statutes, is
12 amended to read:

13 440.125 Medical records and reports; identifying
14 information in employee medical bills; confidentiality.--

15 (1) Any medical records and medical reports of an
16 injured employee and any information identifying an injured
17 employee in medical bills which are provided to the
18 department, agency, or Department of Education ~~Division of~~
19 ~~Workers' Compensation of the Department of Labor and~~
20 ~~Employment Security~~ pursuant to s. 440.13 are confidential and
21 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
22 I of the State Constitution, except as otherwise provided by
23 this chapter.

24 (2) The Legislature finds that it is a public
25 necessity that an injured employee's medical records and
26 medical reports and information identifying the employee in
27 medical bills held by the department, agency, or Department of
28 Education ~~Division of Workers' Compensation~~ pursuant to s.
29 440.13 be confidential and exempt from the public records law.
30 Public access to such information is an invasion of the
31 injured employee's right to privacy in that personal,

1 sensitive information would be revealed, and public knowledge
2 of such information could lead to discrimination against the
3 employee by coworkers and others. Additionally, there is
4 little utility in providing public access to such information
5 in that the effectiveness and efficiency of the workers'
6 compensation program can be otherwise adequately monitored and
7 evaluated.

8 (3) The department may share any confidential and
9 exempt information received pursuant to s. 440.13 with the
10 Agency for Health Care Administration in furtherance of the
11 agency's official duties under ss. 440.13 and 440.134. The
12 agency shall maintain the confidential and exempt status of
13 the information.

14 Section 6. Subsections (1), (3), (4), (5), (6), (7),
15 (8), (9), (11), (12), and (13) of section 440.13, Florida
16 Statutes, are amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

19 (1) DEFINITIONS.--As used in this section, the term:

20 (a) "Alternate medical care" means a change in
21 treatment or health care provider.

22 (b) "Attendant care" means care rendered by trained
23 professional attendants which is beyond the scope of household
24 duties. Family members may provide nonprofessional attendant
25 care, but may not be compensated under this chapter for care
26 that falls within the scope of household duties and other
27 services normally and gratuitously provided by family members.
28 "Family member" means a spouse, father, mother, brother,
29 sister, child, grandchild, father-in-law, mother-in-law, aunt,
30 or uncle.

31

1 (c) "Carrier" means, for purposes of this section,
2 insurance carrier, self-insurance fund or individually
3 self-insured employer, or assessable mutual insurer.

4 (d) "Catastrophic injury" means an injury as defined
5 in s. 440.02.

6 (e) "Certified health care provider" means a health
7 care provider who has been certified by the agency ~~division~~ or
8 who has entered an agreement with a licensed managed care
9 organization to provide treatment to injured workers under
10 this section. Certification of such health care provider must
11 include documentation that the health care provider has read
12 and is familiar with the portions of the statute, impairment
13 guides, and rules which govern the provision of remedial
14 treatment, care, and attendance.

15 (f) "Compensable" means a determination by a carrier
16 or judge of compensation claims that a condition suffered by
17 an employee results from an injury arising out of and in the
18 course of employment.

19 (g) "Emergency services and care" means emergency
20 services and care as defined in s. 395.002.

21 (h) "Health care facility" means any hospital licensed
22 under chapter 395 and any health care institution licensed
23 under chapter 400.

24 (i) "Health care provider" means a physician or any
25 recognized practitioner who provides skilled services pursuant
26 to a prescription or under the supervision or direction of a
27 physician and who has been certified by the agency ~~division~~ as
28 a health care provider. The term "health care provider"
29 includes a health care facility.

30 (j) "Independent medical examiner" means a physician
31 selected by either an employee or a carrier to render one or

1 more independent medical examinations in connection with a
2 dispute arising under this chapter.

3 (k) "Independent medical examination" means an
4 objective evaluation of the injured employee's medical
5 condition, including, but not limited to, impairment or work
6 status, performed by a physician or an expert medical advisor
7 at the request of a party, a judge of compensation claims, or
8 the agency division to assist in the resolution of a dispute
9 arising under this chapter.

10 (l) "Instance of overutilization" means a specific
11 inappropriate service or level of service provided to an
12 injured employee.

13 (m) "Medically necessary" means any medical service or
14 medical supply which is used to identify or treat an illness
15 or injury, is appropriate to the patient's diagnosis and
16 status of recovery, and is consistent with the location of
17 service, the level of care provided, and applicable practice
18 parameters. The service should be widely accepted among
19 practicing health care providers, based on scientific
20 criteria, and determined to be reasonably safe. The service
21 must not be of an experimental, investigative, or research
22 nature, except in those instances in which prior approval of
23 the Agency for Health Care Administration has been obtained.
24 The Agency for Health Care Administration shall adopt rules
25 providing for such approval on a case-by-case basis when the
26 service or supply is shown to have significant benefits to the
27 recovery and well-being of the patient.

28 (n) "Medicine" means a drug prescribed by an
29 authorized health care provider and includes only generic
30 drugs or single-source patented drugs for which there is no
31 generic equivalent, unless the authorized health care provider

1 writes or states that the brand-name drug as defined in s.
2 465.025 is medically necessary, or is a drug appearing on the
3 schedule of drugs created pursuant to s. 465.025(6), or is
4 available at a cost lower than its generic equivalent.

5 (o) "Palliative care" means noncurative medical
6 services that mitigate the conditions, effects, or pain of an
7 injury.

8 (p) "Pattern or practice of overutilization" means
9 repetition of instances of overutilization within a specific
10 medical case or multiple cases by a single health care
11 provider.

12 (q) "Peer review" means an evaluation by two or more
13 physicians licensed under the same authority and with the same
14 or similar specialty as the physician under review, of the
15 appropriateness, quality, and cost of health care and health
16 services provided to a patient, based on medically accepted
17 standards.

18 (r) "Physician" or "doctor" means a physician licensed
19 under chapter 458, an osteopathic physician licensed under
20 chapter 459, a chiropractic physician licensed under chapter
21 460, a podiatric physician licensed under chapter 461, an
22 optometrist licensed under chapter 463, or a dentist licensed
23 under chapter 466, each of whom must be certified by the
24 agency division as a health care provider.

25 (s) "Reimbursement dispute" means any disagreement
26 between a health care provider or health care facility and
27 carrier concerning payment for medical treatment.

28 (t) "Utilization control" means a systematic process
29 of implementing measures that assure overall management and
30 cost containment of services delivered.

31

1 (u) "Utilization review" means the evaluation of the
2 appropriateness of both the level and the quality of health
3 care and health services provided to a patient, including, but
4 not limited to, evaluation of the appropriateness of
5 treatment, hospitalization, or office visits based on
6 medically accepted standards. Such evaluation must be
7 accomplished by means of a system that identifies the
8 utilization of medical services based on medically accepted
9 standards as established by medical consultants with
10 qualifications similar to those providing the care under
11 review, and that refers patterns and practices of
12 overutilization to the agency ~~division~~.

13 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

14 (a) As a condition to eligibility for payment under
15 this chapter, a health care provider who renders services must
16 be a certified health care provider and must receive
17 authorization from the carrier before providing treatment.
18 This paragraph does not apply to emergency care. The agency
19 ~~division~~ shall adopt rules to implement the certification of
20 health care providers.

21 (b) A health care provider who renders emergency care
22 must notify the carrier by the close of the third business day
23 after it has rendered such care. If the emergency care results
24 in admission of the employee to a health care facility, the
25 health care provider must notify the carrier by telephone
26 within 24 hours after initial treatment. Emergency care is not
27 compensable under this chapter unless the injury requiring
28 emergency care arose as a result of a work-related accident.
29 Pursuant to chapter 395, all licensed physicians and health
30 care providers in this state shall be required to make their
31 services available for emergency treatment of any employee

1 eligible for workers' compensation benefits. To refuse to make
2 such treatment available is cause for revocation of a license.

3 (c) A health care provider may not refer the employee
4 to another health care provider, diagnostic facility, therapy
5 center, or other facility without prior authorization from the
6 carrier, except when emergency care is rendered. Any referral
7 must be to a health care provider that has been certified by
8 the agency division, unless the referral is for emergency
9 treatment.

10 (d) A carrier must respond, by telephone or in
11 writing, to a request for authorization by the close of the
12 third business day after receipt of the request. A carrier who
13 fails to respond to a written request for authorization for
14 referral for medical treatment by the close of the third
15 business day after receipt of the request consents to the
16 medical necessity for such treatment. All such requests must
17 be made to the carrier. Notice to the carrier does not include
18 notice to the employer.

19 (e) Carriers shall adopt procedures for receiving,
20 reviewing, documenting, and responding to requests for
21 authorization. Such procedures shall be for a health care
22 provider certified under this section.

23 (f) By accepting payment under this chapter for
24 treatment rendered to an injured employee, a health care
25 provider consents to the jurisdiction of the agency division
26 as set forth in subsection (11) and to the submission of all
27 records and other information concerning such treatment to the
28 agency division in connection with a reimbursement dispute,
29 audit, or review as provided by this section. The health care
30 provider must further agree to comply with any decision of the
31 agency division rendered under this section.

1 (g) The employee is not liable for payment for medical
2 treatment or services provided pursuant to this section except
3 as otherwise provided in this section.

4 (h) The provisions of s. 456.053 are applicable to
5 referrals among health care providers, as defined in
6 subsection (1), treating injured workers.

7 (i) Notwithstanding paragraph (d), a claim for
8 specialist consultations, surgical operations,
9 physiotherapeutic or occupational therapy procedures, X-ray
10 examinations, or special diagnostic laboratory tests that cost
11 more than \$1,000 and other specialty services that the agency
12 ~~division~~ identifies by rule is not valid and reimbursable
13 unless the services have been expressly authorized by the
14 carrier, or unless the carrier has failed to respond within 10
15 days to a written request for authorization, or unless
16 emergency care is required. The insurer shall not refuse to
17 authorize such consultation or procedure unless the health
18 care provider or facility is not authorized or certified or
19 unless an expert medical advisor has determined that the
20 consultation or procedure is not medically necessary or
21 otherwise compensable under this chapter. Authorization of a
22 treatment plan does not constitute express authorization for
23 purposes of this section, except to the extent the carrier
24 provides otherwise in its authorization procedures. This
25 paragraph does not limit the carrier's obligation to identify
26 and disallow overutilization or billing errors.

27 (j) Notwithstanding anything in this chapter to the
28 contrary, a sick or injured employee shall be entitled, at all
29 times, to free, full, and absolute choice in the selection of
30 the pharmacy or pharmacist dispensing and filling
31 prescriptions for medicines required under this chapter. It is

1 expressly forbidden for the agency ~~division~~, an employer, or a
2 carrier, or any agent or representative of the agency
3 ~~division~~, an employer, or a carrier to select the pharmacy or
4 pharmacist which the sick or injured employee must use;
5 condition coverage or payment on the basis of the pharmacy or
6 pharmacist utilized; or to otherwise interfere in the
7 selection by the sick or injured employee of a pharmacy or
8 pharmacist.

9 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
10 DEPARTMENT ~~DIVISION~~.--

11 (a) Any health care provider providing necessary
12 remedial treatment, care, or attendance to any injured worker
13 shall submit treatment reports to the carrier in a format
14 prescribed by the division in consultation with the agency. A
15 claim for medical or surgical treatment is not valid or
16 enforceable against such employer or employee, unless, by the
17 close of the third business day following the first treatment,
18 the physician providing the treatment furnishes to the
19 employer or carrier a preliminary notice of the injury and
20 treatment on forms prescribed by the division in consultation
21 with the agency and, within 15 days thereafter, furnishes to
22 the employer or carrier a complete report, and subsequent
23 thereto furnishes progress reports, if requested by the
24 employer or insurance carrier, at intervals of not less than 3
25 weeks apart or at less frequent intervals if requested on
26 forms prescribed by the department ~~division~~.

27 (b) Upon the request of the division ~~of Workers'~~
28 ~~Compensation~~, each medical report or bill obtained or received
29 by the employer, the carrier, or the injured employee, or the
30 attorney for the employer, carrier, or injured employee, with
31 respect to the remedial treatment, care, and attendance of the

1 injured employee, including any report of an examination,
2 diagnosis, or disability evaluation, must be filed with the
3 department ~~Division of Workers' Compensation~~ pursuant to rules
4 adopted by the department in consultation with the agency
5 ~~division~~. The health care provider shall also furnish to the
6 injured employee or to his or her attorney, on demand, a copy
7 of his or her office chart, records, and reports, and may
8 charge the injured employee an amount authorized by the
9 department ~~division~~ for the copies. Each such health care
10 provider shall provide to the agency or department ~~division~~
11 information about the remedial treatment, care, and attendance
12 which the agency or department ~~division~~ reasonably requests.

13 (c) It is the policy for the administration of the
14 workers' compensation system that there be reasonable access
15 to medical information by all parties to facilitate the
16 self-executing features of the law. Notwithstanding the
17 limitations in s. 456.057 and subject to the limitations in s.
18 381.004, upon the request of the employer, the carrier, an
19 authorized qualified rehabilitation provider, or the attorney
20 for the employer or carrier, the medical records of an injured
21 employee must be furnished to those persons and the medical
22 condition of the injured employee must be discussed with those
23 persons, if the records and the discussions are restricted to
24 conditions relating to the workplace injury. Any such
25 discussions may be held before or after the filing of a claim
26 without the knowledge, consent, or presence of any other party
27 or his or her agent or representative. A health care provider
28 who willfully refuses to provide medical records or to discuss
29 the medical condition of the injured employee, after a
30 reasonable request is made for such information pursuant to
31

1 this subsection, shall be subject by the agency ~~division~~ to
2 one or more of the penalties set forth in paragraph (8)(b).

3 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

4 (a) In any dispute concerning overutilization, medical
5 benefits, compensability, or disability under this chapter,
6 the carrier or the employee may select an independent medical
7 examiner. The examiner may be a health care provider treating
8 or providing other care to the employee. An independent
9 medical examiner may not render an opinion outside his or her
10 area of expertise, as demonstrated by licensure and applicable
11 practice parameters.

12 (b) Each party is bound by his or her selection of an
13 independent medical examiner and is entitled to an alternate
14 examiner only if:

15 1. The examiner is not qualified to render an opinion
16 upon an aspect of the employee's illness or injury which is
17 material to the claim or petition for benefits;

18 2. The examiner ceases to practice in the specialty
19 relevant to the employee's condition;

20 3. The examiner is unavailable due to injury, death,
21 or relocation outside a reasonably accessible geographic area;
22 or

23 4. The parties agree to an alternate examiner.
24

25 Any party may request, or a judge of compensation claims may
26 require, designation of an agency ~~a division~~ medical advisor
27 as an independent medical examiner. The opinion of the
28 advisors acting as examiners shall not be afforded the
29 presumption set forth in paragraph (9)(c).

30 (c) The carrier may, at its election, contact the
31 claimant directly to schedule a reasonable time for an

1 independent medical examination. The carrier must confirm the
2 scheduling agreement in writing within 5 days and notify
3 claimant's counsel, if any, at least 7 days before the date
4 upon which the independent medical examination is scheduled to
5 occur. An attorney representing a claimant is not authorized
6 to schedule independent medical evaluations under this
7 subsection.

8 (d) If the employee fails to appear for the
9 independent medical examination without good cause and fails
10 to advise the physician at least 24 hours before the scheduled
11 date for the examination that he or she cannot appear, the
12 employee is barred from recovering compensation for any period
13 during which he or she has refused to submit to such
14 examination. Further, the employee shall reimburse the carrier
15 50 percent of the physician's cancellation or no-show fee
16 unless the carrier that schedules the examination fails to
17 timely provide to the employee a written confirmation of the
18 date of the examination pursuant to paragraph (c) which
19 includes an explanation of why he or she failed to appear. The
20 employee may appeal to a judge of compensation claims for
21 reimbursement when the carrier withholds payment in excess of
22 the authority granted by this section.

23 (e) No medical opinion other than the opinion of a
24 medical advisor appointed by the judge of compensation claims
25 or agency division, an independent medical examiner, or an
26 authorized treating provider is admissible in proceedings
27 before the judges of compensation claims.

28 (f) Attorney's fees incurred by an injured employee in
29 connection with delay of or opposition to an independent
30 medical examination, including, but not limited to, motions
31 for protective orders, are not recoverable under this chapter.

1 (6) UTILIZATION REVIEW.--Carriers shall review all
2 bills, invoices, and other claims for payment submitted by
3 health care providers in order to identify overutilization and
4 billing errors, and may hire peer review consultants or
5 conduct independent medical evaluations. Such consultants,
6 including peer review organizations, are immune from liability
7 in the execution of their functions under this subsection to
8 the extent provided in s. 766.101. If a carrier finds that
9 overutilization of medical services or a billing error has
10 occurred, it must disallow or adjust payment for such services
11 or error without order of a judge of compensation claims or
12 the agency division, if the carrier, in making its
13 determination, has complied with this section and rules
14 adopted by the agency division.

15 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

16 (a) Any health care provider, carrier, or employer who
17 elects to contest the disallowance or adjustment of payment by
18 a carrier under subsection (6) must, within 30 days after
19 receipt of notice of disallowance or adjustment of payment,
20 petition the agency division to resolve the dispute. The
21 petitioner must serve a copy of the petition on the carrier
22 and on all affected parties by certified mail. The petition
23 must be accompanied by all documents and records that support
24 the allegations contained in the petition. Failure of a
25 petitioner to submit such documentation to the agency division
26 results in dismissal of the petition.

27 (b) The carrier must submit to the agency division
28 within 10 days after receipt of the petition all documentation
29 substantiating the carrier's disallowance or adjustment.
30 Failure of the carrier to submit the requested documentation
31

1 to the agency ~~division~~ within 10 days constitutes a waiver of
2 all objections to the petition.

3 (c) Within 60 days after receipt of all documentation,
4 the agency ~~division~~ must provide to the petitioner, the
5 carrier, and the affected parties a written determination of
6 whether the carrier properly adjusted or disallowed payment.
7 The agency ~~division~~ must be guided by standards and policies
8 set forth in this chapter, including all applicable
9 reimbursement schedules, in rendering its determination.

10 (d) If the agency ~~division~~ finds an improper
11 disallowance or improper adjustment of payment by an insurer,
12 the insurer shall reimburse the health care provider,
13 facility, insurer, or employer within 30 days, subject to the
14 penalties provided in this subsection.

15 (e) The agency ~~division~~ shall adopt rules to carry out
16 this subsection. The rules may include provisions for
17 consolidating petitions filed by a petitioner and expanding
18 the timetable for rendering a determination upon a
19 consolidated petition.

20 (f) Any carrier that engages in a pattern or practice
21 of arbitrarily or unreasonably disallowing or reducing
22 payments to health care providers may be subject to one or
23 more of the following penalties imposed by the agency
24 ~~division~~:

25 1. Repayment of the appropriate amount to the health
26 care provider.

27 2. An administrative fine assessed by the agency
28 ~~division~~ in an amount not to exceed \$5,000 per instance of
29 improperly disallowing or reducing payments.

30
31

1 3. Award of the health care provider's costs,
2 including a reasonable attorney's fee, for prosecuting the
3 petition.

4 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

5 (a) Carriers must report to the agency ~~division~~ all
6 instances of overutilization including, but not limited to,
7 all instances in which the carrier disallows or adjusts
8 payment. The agency ~~division~~ shall determine whether a pattern
9 or practice of overutilization exists.

10 (b) If the agency ~~division~~ determines that a health
11 care provider has engaged in a pattern or practice of
12 overutilization or a violation of this chapter or rules
13 adopted by the agency ~~division~~, it may impose one or more of
14 the following penalties:

- 15 1. An order of the agency ~~division~~ barring the
16 provider from payment under this chapter;
- 17 2. Deauthorization of care under review;
- 18 3. Denial of payment for care rendered in the future;
- 19 4. Decertification of a health care provider certified
20 as an expert medical advisor under subsection (9) or of a
21 rehabilitation provider certified under s. 440.49;
- 22 5. An administrative fine assessed by the agency
23 ~~division~~ in an amount not to exceed \$5,000 per instance of
24 overutilization or violation; and
- 25 6. Notification of and review by the appropriate
26 licensing authority pursuant to s. 440.106(3).

27 (9) EXPERT MEDICAL ADVISORS.--

28 (a) The agency ~~division~~ shall certify expert medical
29 advisors in each specialty to assist the agency ~~division~~ and
30 the judges of compensation claims within the advisor's area of
31 expertise as provided in this section. The agency ~~division~~

1 shall, in a manner prescribed by rule, in certifying,
2 recertifying, or decertifying an expert medical advisor,
3 consider the qualifications, training, impartiality, and
4 commitment of the health care provider to the provision of
5 quality medical care at a reasonable cost. As a prerequisite
6 for certification or recertification, the agency division
7 shall require, at a minimum, that an expert medical advisor
8 have specialized workers' compensation training or experience
9 under the workers' compensation system of this state and board
10 certification or board eligibility.

11 (b) The agency division shall contract with or employ
12 expert medical advisors to provide peer review or medical
13 consultation to the agency division or to a judge of
14 compensation claims in connection with resolving disputes
15 relating to reimbursement, differing opinions of health care
16 providers, and health care and physician services rendered
17 under this chapter. Expert medical advisors contracting with
18 the agency division shall, as a term of such contract, agree
19 to provide consultation or services in accordance with the
20 timetables set forth in this chapter and to abide by rules
21 adopted by the agency division, including, but not limited to,
22 rules pertaining to procedures for review of the services
23 rendered by health care providers and preparation of reports
24 and recommendations for submission to the agency division.

25 (c) If there is disagreement in the opinions of the
26 health care providers, if two health care providers disagree
27 on medical evidence supporting the employee's complaints or
28 the need for additional medical treatment, or if two health
29 care providers disagree that the employee is able to return to
30 work, the agency division may, and the judge of compensation
31 claims shall, upon his or her own motion or within 15 days

1 after receipt of a written request by either the injured
2 employee, the employer, or the carrier, order the injured
3 employee to be evaluated by an expert medical advisor. The
4 opinion of the expert medical advisor is presumed to be
5 correct unless there is clear and convincing evidence to the
6 contrary as determined by the judge of compensation claims.
7 The expert medical advisor appointed to conduct the evaluation
8 shall have free and complete access to the medical records of
9 the employee. An employee who fails to report to and cooperate
10 with such evaluation forfeits entitlement to compensation
11 during the period of failure to report or cooperate.

12 (d) The expert medical advisor must complete his or
13 her evaluation and issue his or her report to the agency
14 ~~division~~ or to the judge of compensation claims within 45 days
15 after receipt of all medical records. The expert medical
16 advisor must furnish a copy of the report to the carrier and
17 to the employee.

18 (e) An expert medical advisor is not liable under any
19 theory of recovery for evaluations performed under this
20 section without a showing of fraud or malice. The protections
21 of s. 766.101 apply to any officer, employee, or agent of the
22 agency ~~division~~ and to any officer, employee, or agent of any
23 entity with which the agency ~~division~~ has contracted under
24 this subsection.

25 (f) If the agency ~~division~~ or a judge of compensation
26 claims determines that the services of a certified expert
27 medical advisor are required to resolve a dispute under this
28 section, the carrier must compensate the advisor for his or
29 her time in accordance with a schedule adopted by the agency
30 ~~division~~. The agency ~~division~~ may assess a penalty not to
31

1 exceed \$500 against any carrier that fails to timely
2 compensate an advisor in accordance with this section.

3 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
4 ~~DIVISION~~; JURISDICTION.--

5 (a) The Agency for Health Care Administration ~~Division~~
6 ~~of Workers' Compensation of the Department of Labor and~~
7 ~~Employment Security~~ may investigate health care providers to
8 determine whether providers are complying with this chapter
9 and with rules adopted by the agency division, whether the
10 providers are engaging in overutilization, and whether
11 providers are engaging in improper billing practices. If the
12 agency division finds that a health care provider has
13 improperly billed, overutilized, or failed to comply with
14 agency division rules or the requirements of this chapter it
15 must notify the provider of its findings and may determine
16 that the health care provider may not receive payment from the
17 carrier or may impose penalties as set forth in subsection (8)
18 or other sections of this chapter. If the health care provider
19 has received payment from a carrier for services that were
20 improperly billed or for overutilization, it must return those
21 payments to the carrier. The agency division may assess a
22 penalty not to exceed \$500 for each overpayment that is not
23 refunded within 30 days after notification of overpayment by
24 the agency division or carrier.

25 (b) The department division shall monitor and audit
26 carriers, as provided in s. 624.3161, to determine if medical
27 bills are paid in accordance with this section and department
28 division rules. ~~Any employer, if self-insured, or carrier~~
29 ~~found by the division not to be within 90 percent compliance~~
30 ~~as to the payment of medical bills after July 1, 1994, must be~~
31 ~~assessed a fine not to exceed 1 percent of the prior year's~~

1 ~~assessment levied against such entity under s. 440.51 for~~
2 ~~every quarter in which the entity fails to attain 90-percent~~
3 ~~compliance.~~The department division shall fine or otherwise
4 discipline an employer or carrier, pursuant to this chapter,
5 the insurance code, or rules adopted by the department
6 division, for each late payment of compensation that is below
7 the minimum 90-percent performance standard. Any carrier that
8 is found to be not in compliance in subsequent consecutive
9 quarters must implement a medical-bill review program approved
10 by the division, and the carrier is subject to disciplinary
11 action by the Department of Insurance.

12 (c) The agency division has exclusive jurisdiction to
13 decide any matters concerning reimbursement, to resolve any
14 overutilization dispute under subsection (7), and to decide
15 any question concerning overutilization under subsection (8),
16 which question or dispute arises after January 1, 1994.

17 (d) The following agency division actions do not
18 constitute agency action subject to review under ss. 120.569
19 and 120.57 and do not constitute actions subject to s. 120.56:
20 referral by the entity responsible for utilization review; a
21 decision by the agency division to refer a matter to a peer
22 review committee; establishment by a health care provider or
23 entity of procedures by which a peer review committee reviews
24 the rendering of health care services; and the review
25 proceedings, report, and recommendation of the peer review
26 committee.

27 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
28 REIMBURSEMENT ALLOWANCES.--

29 (a) A three-member panel is created, consisting of the
30 Insurance Commissioner, or the Insurance Commissioner's
31 designee, and two members to be appointed by the Governor,

1 subject to confirmation by the Senate, one member who, on
2 account of present or previous vocation, employment, or
3 affiliation, shall be classified as a representative of
4 employers, the other member who, on account of previous
5 vocation, employment, or affiliation, shall be classified as a
6 representative of employees. The panel shall determine
7 statewide schedules of maximum reimbursement allowances for
8 medically necessary treatment, care, and attendance provided
9 by physicians, hospitals, ambulatory surgical centers,
10 work-hardening programs, pain programs, and durable medical
11 equipment. The maximum reimbursement allowances for inpatient
12 hospital care shall be based on a schedule of per diem rates,
13 to be approved by the three-member panel no later than March
14 1, 1994, to be used in conjunction with a precertification
15 manual as determined by the agency ~~division~~. All compensable
16 charges for hospital outpatient care shall be reimbursed at 75
17 percent of usual and customary charges. Until the three-member
18 panel approves a schedule of per diem rates for inpatient
19 hospital care and it becomes effective, all compensable
20 charges for hospital inpatient care must be reimbursed at 75
21 percent of their usual and customary charges. Annually, the
22 three-member panel shall adopt schedules of maximum
23 reimbursement allowances for physicians, hospital inpatient
24 care, hospital outpatient care, ambulatory surgical centers,
25 work-hardening programs, and pain programs. However, the
26 maximum percentage of increase in the individual reimbursement
27 allowance may not exceed the percentage of increase in the
28 Consumer Price Index for the previous year. An individual
29 physician, hospital, ambulatory surgical center, pain program,
30 or work-hardening program shall be reimbursed either the usual
31 and customary charge for treatment, care, and attendance, the

1 | agreed-upon contract price, or the maximum reimbursement
2 | allowance in the appropriate schedule, whichever is less.

3 | (b) As to reimbursement for a prescription medication,
4 | the reimbursement amount for a prescription shall be the
5 | average wholesale price times 1.2 plus \$4.18 for the
6 | dispensing fee, except where the carrier has contracted for a
7 | lower amount. Fees for pharmaceuticals and pharmaceutical
8 | services shall be reimbursable at the applicable fee schedule
9 | amount. Where the employer or carrier has contracted for such
10 | services and the employee elects to obtain them through a
11 | provider not a party to the contract, the carrier shall
12 | reimburse at the schedule, negotiated, or contract price,
13 | whichever is lower.

14 | (c) Reimbursement for all fees and other charges for
15 | such treatment, care, and attendance, including treatment,
16 | care, and attendance provided by any hospital or other health
17 | care provider, ambulatory surgical center, work-hardening
18 | program, or pain program, must not exceed the amounts provided
19 | by the uniform schedule of maximum reimbursement allowances as
20 | determined by the panel or as otherwise provided in this
21 | section. This subsection also applies to independent medical
22 | examinations performed by health care providers under this
23 | chapter. Until the three-member panel approves a uniform
24 | schedule of maximum reimbursement allowances and it becomes
25 | effective, all compensable charges for treatment, care, and
26 | attendance provided by physicians, ambulatory surgical
27 | centers, work-hardening programs, or pain programs shall be
28 | reimbursed at the lowest maximum reimbursement allowance
29 | across all 1992 schedules of maximum reimbursement allowances
30 | for the services provided regardless of the place of service.
31 | In determining the uniform schedule, the panel shall first

1 approve the data which it finds representative of prevailing
2 charges in the state for similar treatment, care, and
3 attendance of injured persons. Each health care provider,
4 health care facility, ambulatory surgical center,
5 work-hardening program, or pain program receiving workers'
6 compensation payments shall maintain records verifying their
7 usual charges. In establishing the uniform schedule of maximum
8 reimbursement allowances, the panel must consider:

9 1. The levels of reimbursement for similar treatment,
10 care, and attendance made by other health care programs or
11 third-party providers;

12 2. The impact upon cost to employers for providing a
13 level of reimbursement for treatment, care, and attendance
14 which will ensure the availability of treatment, care, and
15 attendance required by injured workers;

16 3. The financial impact of the reimbursement
17 allowances upon health care providers and health care
18 facilities, including trauma centers as defined in s.
19 395.4001, and its effect upon their ability to make available
20 to injured workers such medically necessary remedial
21 treatment, care, and attendance. The uniform schedule of
22 maximum reimbursement allowances must be reasonable, must
23 promote health care cost containment and efficiency with
24 respect to the workers' compensation health care delivery
25 system, and must be sufficient to ensure availability of such
26 medically necessary remedial treatment, care, and attendance
27 to injured workers; and

28 4. The most recent average maximum allowable rate of
29 increase for hospitals determined by the Health Care Board
30 under chapter 408.

31

1 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
2 AUTHORIZED TO RENDER MEDICAL CARE.--The agency ~~division~~ shall
3 remove from the list of physicians or facilities authorized to
4 provide remedial treatment, care, and attendance under this
5 chapter the name of any physician or facility found after
6 reasonable investigation to have:

7 (a) Engaged in professional or other misconduct or
8 incompetency in connection with medical services rendered
9 under this chapter;

10 (b) Exceeded the limits of his or her or its
11 professional competence in rendering medical care under this
12 chapter, or to have made materially false statements regarding
13 his or her or its qualifications in his or her application;

14 (c) Failed to transmit copies of medical reports to
15 the employer or carrier, or failed to submit full and truthful
16 medical reports of all his or her or its findings to the
17 employer or carrier as required under this chapter;

18 (d) Solicited, or employed another to solicit for
19 himself or herself or itself or for another, professional
20 treatment, examination, or care of an injured employee in
21 connection with any claim under this chapter;

22 (e) Refused to appear before, or to answer upon
23 request of, the agency ~~division~~ or any duly authorized officer
24 of the state, any legal question, or to produce any relevant
25 book or paper concerning his or her conduct under any
26 authorization granted to him or her under this chapter;

27 (f) Self-referred in violation of this chapter or
28 other laws of this state; or

29 (g) Engaged in a pattern of practice of
30 overutilization or a violation of this chapter or rules
31 adopted by the agency ~~division~~.

1 Section 7. Paragraph (c) of subsection (2) and
2 paragraph (a) of subsection (3) of section 440.15, Florida
3 Statutes, are amended to read:

4 440.15 Compensation for disability.--Compensation for
5 disability shall be paid to the employee, subject to the
6 limits provided in s. 440.12(2), as follows:

7 (2) TEMPORARY TOTAL DISABILITY.--

8 (c) Temporary total disability benefits paid pursuant
9 to this subsection shall include such period as may be
10 reasonably necessary for training in the use of artificial
11 members and appliances, and shall include such period as the
12 employee may be receiving training and education under a
13 program pursuant to s. 440.491. Notwithstanding s. 440.02 ~~s.~~
14 ~~440.02(9)~~, the date of maximum medical improvement for
15 purposes of paragraph (3)(b) shall be no earlier than the last
16 day for which such temporary disability benefits are paid.

17 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

18 (a) Impairment benefits.--

19 1. Once the employee has reached the date of maximum
20 medical improvement, impairment benefits are due and payable
21 within 20 days after the carrier has knowledge of the
22 impairment.

23 2. The three-member panel, in cooperation with the
24 division, shall establish and use a uniform permanent
25 impairment rating schedule. This schedule must be based on
26 medically or scientifically demonstrable findings as well as
27 the systems and criteria set forth in the American Medical
28 Association's Guides to the Evaluation of Permanent
29 Impairment; the Snellen Charts, published by American Medical
30 Association Committee for Eye Injuries; and the Minnesota
31 Department of Labor and Industry Disability Schedules. The

1 schedule should be based upon objective findings. The schedule
2 shall be more comprehensive than the AMA Guides to the
3 Evaluation of Permanent Impairment and shall expand the areas
4 already addressed and address additional areas not currently
5 contained in the guides. On August 1, 1979, and pending the
6 adoption, by rule, of a permanent schedule, Guides to the
7 Evaluation of Permanent Impairment, copyright 1977, 1971,
8 1988, by the American Medical Association, shall be the
9 temporary schedule and shall be used for the purposes hereof.
10 For injuries after July 1, 1990, pending the adoption by
11 division rule of a uniform disability rating schedule, the
12 Minnesota Department of Labor and Industry Disability Schedule
13 shall be used unless that schedule does not address an injury.
14 In such case, the Guides to the Evaluation of Permanent
15 Impairment by the American Medical Association shall be used.
16 Determination of permanent impairment under this schedule must
17 be made by a physician licensed under chapter 458, a doctor of
18 osteopathic medicine licensed under chapters 458 and 459, a
19 chiropractic physician licensed under chapter 460, a podiatric
20 physician licensed under chapter 461, an optometrist licensed
21 under chapter 463, or a dentist licensed under chapter 466, as
22 appropriate considering the nature of the injury. No other
23 persons are authorized to render opinions regarding the
24 existence of or the extent of permanent impairment.

25 3. All impairment income benefits shall be based on an
26 impairment rating using the impairment schedule referred to in
27 subparagraph 2. Impairment income benefits are paid weekly at
28 the rate of 50 percent of the employee's average weekly
29 temporary total disability benefit not to exceed the maximum
30 weekly benefit under s. 440.12. An employee's entitlement to
31 impairment income benefits begins the day after the employee

1 reaches maximum medical improvement or the expiration of
2 temporary benefits, whichever occurs earlier, and continues
3 until the earlier of:

4 a. The expiration of a period computed at the rate of
5 3 weeks for each percentage point of impairment; or
6 b. The death of the employee.

7 4. After the employee has been certified by a doctor
8 as having reached maximum medical improvement or 6 weeks
9 before the expiration of temporary benefits, whichever occurs
10 earlier, the certifying doctor shall evaluate the condition of
11 the employee and assign an impairment rating, using the
12 impairment schedule referred to in subparagraph 2.
13 Compensation is not payable for the mental, psychological, or
14 emotional injury arising out of depression from being out of
15 work. If the certification and evaluation are performed by a
16 doctor other than the employee's treating doctor, the
17 certification and evaluation must be submitted to the treating
18 doctor, and the treating doctor must indicate agreement or
19 disagreement with the certification and evaluation. The
20 certifying doctor shall issue a written report to the
21 division, the employee, and the carrier certifying that
22 maximum medical improvement has been reached, stating the
23 impairment rating, and providing any other information
24 required by the division. If the employee has not been
25 certified as having reached maximum medical improvement before
26 the expiration of 102 weeks after the date temporary total
27 disability benefits begin to accrue, the carrier shall notify
28 the treating doctor of the requirements of this section.

29 5. The carrier shall pay the employee impairment
30 income benefits for a period based on the impairment rating.
31

1 6. The agency ~~division~~ may by rule specify forms and
2 procedures governing the method of payment of wage loss and
3 impairment benefits for dates of accidents before January 1,
4 1994, and for dates of accidents on or after January 1, 1994.

5 (a) A carrier that is entitled to obtain a
6 determination of an employee's date of maximum medical
7 improvement or permanent impairment has done so;

8 (b) The independent medical examiner's opinion on the
9 date of the employee's maximum medical improvement and degree
10 or permanent impairment differs from the opinion of the
11 employee's treating physician on either of those issues, or
12 from the opinion of the expert medical advisor appointed by
13 the agency ~~division~~ on the degree of permanent impairment; or

14 (c) The carrier denies any portion of an employee's
15 claim petition for benefits due to disputed maximum medical
16 improvement or permanent impairment issues.

17 (4) Only opinions of the employee's treating
18 physician, an agency ~~a division~~ medical advisor, or an
19 independent medical examiner are admissible in proceedings
20 before a judge of compensation claims to resolve maximum
21 medical improvement or impairment disputes.

22 Section 8. Subsections (3), (6), (8), (9), (10), (11),
23 (12), (15), (16), and (17) of section 440.20, Florida
24 Statutes, are amended to read:

25 440.20 Time for payment of compensation; penalties for
26 late payment.--

27 (3) Upon making payment, or upon suspension or
28 cessation of payment for any reason, the carrier shall
29 immediately notify the department ~~division~~ that it has
30 commenced, suspended, or ceased payment of compensation. The
31 department ~~division~~ may require such notification in any

1 format and manner it deems necessary to obtain accurate and
2 timely reporting.

3 (6) If any installment of compensation for death or
4 dependency benefits, disability, permanent impairment, or wage
5 loss payable without an award is not paid within 7 days after
6 it becomes due, as provided in subsection (2), subsection (3),
7 or subsection (4), there shall be added to such unpaid
8 installment a punitive penalty of an amount equal to 20
9 percent of the unpaid installment or \$5, which shall be paid
10 at the same time as, but in addition to, such installment of
11 compensation, unless notice is filed under subsection (4) or
12 unless such nonpayment results from conditions over which the
13 employer or carrier had no control. When any installment of
14 compensation payable without an award has not been paid within
15 7 days after it became due and the claimant concludes the
16 prosecution of the claim before a judge of compensation claims
17 without having specifically claimed additional compensation in
18 the nature of a penalty under this section, the claimant will
19 be deemed to have acknowledged that, owing to conditions over
20 which the employer or carrier had no control, such installment
21 could not be paid within the period prescribed for payment and
22 to have waived the right to claim such penalty. However,
23 during the course of a hearing, the judge of compensation
24 claims shall on her or his own motion raise the question of
25 whether such penalty should be awarded or excused. The
26 department ~~division~~ may assess without a hearing the punitive
27 penalty against either the employer or the insurance carrier,
28 depending upon who was at fault in causing the delay. The
29 insurance policy cannot provide that this sum will be paid by
30 the carrier if the department ~~division~~ or the judge of
31 compensation claims determines that the punitive penalty

1 should be made by the employer rather than the carrier. Any
2 additional installment of compensation paid by the carrier
3 pursuant to this section shall be paid directly to the
4 employee.

5 (8) In addition to any other penalties provided by
6 this chapter for late payment, if any installment of
7 compensation is not paid when it becomes due, the employer,
8 carrier, or servicing agent shall pay interest thereon at the
9 rate of 12 percent per year from the date the installment
10 becomes due until it is paid, whether such installment is
11 payable without an order or under the terms of an order. The
12 interest payment shall be the greater of the amount of
13 interest due or \$5.

14 (a) Within 30 days after final payment of compensation
15 has been made, the employer, carrier, or servicing agent shall
16 send to the department ~~division~~ a notice, in accordance with a
17 format and manner ~~form~~ prescribed by the department ~~division~~,
18 stating that such final payment has been made and stating the
19 total amount of compensation paid, the name of the employee
20 and of any other person to whom compensation has been paid,
21 the date of the injury or death, and the date to which
22 compensation has been paid.

23 (b) If the employer, carrier, or servicing agent fails
24 to so notify the department ~~division~~ within such time, the
25 department ~~division~~ shall assess against such employer,
26 carrier, or servicing agent a civil penalty in an amount not
27 over \$100.

28 (c) In order to ensure carrier compliance under this
29 chapter and provisions of the insurance code, the department
30 ~~division~~ shall monitor the performance of carriers by
31 conducting market conduct examinations, as provided in s.

1 624.3161, and conducting investigations, as provided in s.
2 624.317. The department division shall impose penalties on
3 ~~establish by rule minimum performance standards for carriers~~
4 ~~to ensure that a minimum of 90 percent of all compensation~~
5 ~~benefits are timely paid. The division shall fine a carrier as~~
6 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~
7 ~~of compensation pursuant to s. 624.4211 that is below the~~
8 ~~minimum 90 percent performance standard. This paragraph does~~
9 not affect the imposition of any penalties or interest due to
10 the claimant. If a carrier contracts with a servicing agent to
11 fulfill its administrative responsibilities under this
12 chapter, the payment practices of the servicing agent are
13 deemed the payment practices of the carrier for the purpose of
14 assessing penalties against the carrier.

15 (9) The department division may upon its own
16 initiative at any time in a case in which payments are being
17 made without an award investigate same and shall, in any case
18 in which the right to compensation is controverted, or in
19 which payments of compensation have been stopped or suspended,
20 upon receipt of notice from any person entitled to
21 compensation or from the employer that the right to
22 compensation is controverted or that payments of compensation
23 have been stopped or suspended, make such investigations,
24 cause such medical examination to be made, or hold such
25 hearings, and take such further action as it considers will
26 properly protect the rights of all parties.

27 (10) Whenever the department division deems it
28 advisable, it may require any employer to make a deposit with
29 the Treasurer to secure the prompt and convenient payments of
30 such compensation; and payments therefrom upon any awards

31

1 shall be made upon order of the department ~~division~~ or judge
2 of compensation claims.

3 (11)(a) When a claimant is not represented by counsel,
4 upon joint petition of all interested parties, a lump-sum
5 payment in exchange for the employer's or carrier's release
6 from liability for future medical expenses, as well as future
7 payments of compensation expenses and any other benefits
8 provided under this chapter, shall be allowed at any time in
9 any case in which the employer or carrier has filed a written
10 notice of denial within 120 days after the employer receives
11 notice of the injury, and the judge of compensation claims at
12 a hearing to consider the settlement proposal finds a
13 justiciable controversy as to legal or medical compensability
14 of the claimed injury or the alleged accident. The employer
15 or carrier may not pay any attorney's fees on behalf of the
16 claimant for any settlement under this section unless
17 expressly authorized elsewhere in this chapter. Upon the joint
18 petition of all interested parties and after giving due
19 consideration to the interests of all interested parties, the
20 judge of compensation claims may enter a compensation order
21 approving and authorizing the discharge of the liability of
22 the employer for compensation and remedial treatment, care,
23 and attendance, as well as rehabilitation expenses, by the
24 payment of a lump sum. Such a compensation order so entered
25 upon joint petition of all interested parties is not subject
26 to modification or review under s. 440.28. If the settlement
27 proposal together with supporting evidence is not approved by
28 the judge of compensation claims, it shall be considered void.
29 Upon approval of a lump-sum settlement under this subsection,
30 the judge of compensation claims shall send a report to the
31 Chief Judge of the amount of the settlement and a statement of

1 the nature of the controversy. The Chief Judge shall keep a
2 record of all such reports filed by each judge of compensation
3 claims and shall submit to the Legislature a summary of all
4 such reports filed under this subsection annually by September
5 15.

6 (b) When a claimant is not represented by counsel,
7 upon joint petition of all interested parties, a lump-sum
8 payment in exchange for the employer's or carrier's release
9 from liability for future medical expenses, as well as future
10 payments of compensation and rehabilitation expenses, and any
11 other benefits provided under this chapter, may be allowed at
12 any time in any case after the injured employee has attained
13 maximum medical improvement. An employer or carrier may not
14 pay any attorney's fees on behalf of the claimant for any
15 settlement, unless expressly authorized elsewhere in this
16 chapter. A compensation order so entered upon joint petition
17 of all interested parties shall not be subject to modification
18 or review under s. 440.28. However, a judge of compensation
19 claims is not required to approve any award for lump-sum
20 payment when it is determined by the judge of compensation
21 claims that the payment being made is in excess of the value
22 of benefits the claimant would be entitled to under this
23 chapter. The judge of compensation claims shall make or cause
24 to be made such investigations as she or he considers
25 necessary, in each case in which the parties have stipulated
26 that a proposed final settlement of liability of the employer
27 for compensation shall not be subject to modification or
28 review under s. 440.28, to determine whether such final
29 disposition will definitely aid the rehabilitation of the
30 injured worker or otherwise is clearly for the best interests
31 of the person entitled to compensation and, in her or his

1 discretion, may have an investigation made by the Department
2 of Education Rehabilitation Section of the Division of
3 ~~Workers' Compensation~~. The joint petition and the report of
4 any investigation so made will be deemed a part of the
5 proceeding. An employer shall have the right to appear at any
6 hearing pursuant to this subsection which relates to the
7 discharge of such employer's liability and to present
8 testimony at such hearing. The carrier shall provide
9 reasonable notice to the employer of the time and date of any
10 such hearing and inform the employer of her or his rights to
11 appear and testify. The probability of the death of the
12 injured employee or other person entitled to compensation
13 before the expiration of the period during which such person
14 is entitled to compensation shall, in the absence of special
15 circumstances making such course improper, be determined in
16 accordance with the most recent United States Life Tables
17 published by the National Office of Vital Statistics of the
18 United States Department of Health and Human Services. The
19 probability of the happening of any other contingency
20 affecting the amount or duration of the compensation, except
21 the possibility of the remarriage of a surviving spouse, shall
22 be disregarded. As a condition of approving a lump-sum payment
23 to a surviving spouse, the judge of compensation claims, in
24 the judge of compensation claims' discretion, may require
25 security which will ensure that, in the event of the
26 remarriage of such surviving spouse, any unaccrued future
27 payments so paid may be recovered or recouped by the employer
28 or carrier. Such applications shall be considered and
29 determined in accordance with s. 440.25.

30 (c) Notwithstanding s. 440.21(2), when a claimant is
31 represented by counsel, the claimant may waive all rights to

1 any and all benefits under this chapter by entering into a
2 settlement agreement releasing the employer and the carrier
3 from liability for workers' compensation benefits in exchange
4 for a lump-sum payment to the claimant. The settlement
5 agreement requires approval by the judge of compensation
6 claims only as to the attorney's fees paid to the claimant's
7 attorney by the claimant. The parties need not submit any
8 information or documentation in support of the settlement,
9 except as needed to justify the amount of the attorney's fees.
10 Neither the employer nor the carrier is responsible for any
11 attorney's fees relating to the settlement and release of
12 claims under this section. Payment of the lump-sum settlement
13 amount must be made within 14 days after the date the judge of
14 compensation claims mails the order approving the attorney's
15 fees. Any order entered by a judge of compensation claims
16 approving the attorney's fees as set out in the settlement
17 under this subsection is not considered to be an award and is
18 not subject to modification or review. The judge of
19 compensation claims shall report these settlements to the
20 Deputy Chief Judge in accordance with the requirements set
21 forth in paragraphs (a) and (b). Settlements entered into
22 under this subsection are valid and apply to all dates of
23 accident.

24 (d)1. With respect to any lump-sum settlement under
25 this subsection, a judge of compensation claims must consider
26 at the time of the settlement, whether the settlement
27 allocation provides for the appropriate recovery of child
28 support arrearages.

29 2. When reviewing any settlement of lump-sum payment
30 pursuant to this subsection, judges of compensation claims
31 shall consider the interests of the worker and the worker's

1 family when approving the settlement, which must consider and
2 provide for appropriate recovery of past due support.

3 (e) This section applies to all claims that the
4 parties have not previously settled, regardless of the date of
5 accident.

6 (12)(a) Liability of an employer for future payments
7 of compensation may not be discharged by advance payment
8 unless prior approval of a judge of compensation claims or the
9 department ~~division~~ has been obtained as hereinafter provided.
10 The approval shall not constitute an adjudication of the
11 claimant's percentage of disability.

12 (b) When the claimant has reached maximum recovery and
13 returned to her or his former or equivalent employment with no
14 substantial reduction in wages, such approval of a reasonable
15 advance payment of a part of the compensation payable to the
16 claimant may be given informally by letter by a judge of
17 compensation claims or, by the department ~~division~~ ~~director~~,
18 ~~or by the administrator of claims of the division.~~

19 (c) In the event the claimant has not returned to the
20 same or equivalent employment with no substantial reduction in
21 wages or has suffered a substantial loss of earning capacity
22 or a physical impairment, actual or apparent:

23 1. An advance payment of compensation not in excess of
24 \$2,000 may be approved informally by letter, without hearing,
25 by any judge of compensation claims or the Chief Judge.

26 2. An advance payment of compensation not in excess of
27 \$2,000 may be ordered by any judge of compensation claims
28 after giving the interested parties an opportunity for a
29 hearing thereon pursuant to not less than 10 days' notice by
30 mail, unless such notice is waived, and after giving due
31 consideration to the interests of the person entitled thereto.

1 When the parties have stipulated to an advance payment of
2 compensation not in excess of \$2,000, such advance may be
3 approved by an order of a judge of compensation claims, with
4 or without hearing, or informally by letter by any such judge
5 of compensation claims, or by the department division
6 ~~director~~, if such advance is found to be for the best
7 interests of the person entitled thereto.

8 3. When the parties have stipulated to an advance
9 payment in excess of \$2,000, subject to the approval of the
10 department division, such payment may be approved by a judge
11 of compensation claims by order if the judge finds that such
12 advance payment is for the best interests of the person
13 entitled thereto and is reasonable under the circumstances of
14 the particular case. The judge of compensation claims shall
15 make or cause to be made such investigations as she or he
16 considers necessary concerning the stipulation and, in her or
17 his discretion, may have an investigation of the matter made
18 by the Department of Education Rehabilitation Section of the
19 ~~division~~. The stipulation and the report of any investigation
20 shall be deemed a part of the record of the proceedings.

21 (d) When an application for an advance payment in
22 excess of \$2,000 is opposed by the employer or carrier, it
23 shall be heard by a judge of compensation claims after giving
24 the interested parties not less than 10 days' notice of such
25 hearing by mail, unless such notice is waived. In her or his
26 discretion, the judge of compensation claims may have an
27 investigation of the matter made by the Department of
28 Education Rehabilitation Section of the division, in which
29 event the report and recommendation of that section will be
30 deemed a part of the record of the proceedings. If the judge
31 of compensation claims finds that such advance payment is for

1 the best interests of the person entitled to compensation,
2 will not materially prejudice the rights of the employer and
3 carrier, and is reasonable under the circumstances of the
4 case, she or he may order the same paid. However, in no event
5 may any such advance payment under this paragraph be granted
6 in excess of \$7,500 or 26 weeks of benefits in any 48-month
7 period, whichever is greater, from the date of the last
8 advance payment.

9 (15)(a) The department division shall examine on an
10 ongoing basis claims files in accordance with ss. 624.3161 and
11 624.310(5) in order to identify questionable claims-handling
12 techniques, questionable patterns or practices of claims, or a
13 pattern of repeated unreasonably controverted claims by
14 employers, carriers, and self-insurers, ~~health care providers,~~
15 ~~health care facilities, training and education providers, or~~
16 ~~any others~~ providing services to employees pursuant to this
17 chapter ~~and may certify its findings to the Department of~~
18 ~~insurance. If the department finds~~ such questionable
19 techniques, patterns, or repeated unreasonably controverted
20 claims as constitute a general business practice of a carrier
21 ~~in the judgment of the division shall be certified in its~~
22 ~~findings by the division to the Department of Insurance or~~
23 ~~such other appropriate licensing agency. Such certification by~~
24 ~~the division is exempt from the provisions of chapter 120.~~
25 ~~Upon receipt of any such certification, the department of~~
26 ~~insurance~~ shall take appropriate action so as to bring such
27 general business practices to a halt pursuant to s.
28 440.38(3)(a) or may impose penalties pursuant to s. 624.4211.
29 The department division may initiate investigations of
30 questionable techniques, patterns, practices, or repeated
31 unreasonably controverted claims. The department division may

1 by rule establish penalties for violations and forms and
2 procedures for corrective action plans and for auditing
3 carriers.

4 (b) As to any examination, investigation, or hearing
5 being conducted under this chapter, the Treasurer or his or
6 her designee ~~Secretary of Labor and Employment Security or the~~
7 ~~secretary's designee:~~

8 1. May administer oaths, examine and cross-examine
9 witnesses, receive oral and documentary evidence; and

10 2. Shall have the power to subpoena witnesses, compel
11 their attendance and testimony, and require by subpoena the
12 production of books, papers, records, files, correspondence,
13 documents, or other evidence which is relevant to the inquiry.

14 (c) If any person refuses to comply with any such
15 subpoena or to testify as to any matter concerning which she
16 or he may be lawfully interrogated, the Circuit Court of Leon
17 County or of the county wherein such examination,
18 investigation, or hearing is being conducted, or of the county
19 wherein such person resides, may, on the application of the
20 department, issue an order requiring such person to comply
21 with the subpoena and to testify.

22 (d) Subpoenas shall be served, and proof of such
23 service made, in the same manner as if issued by a circuit
24 court. Witness fees, costs, and reasonable travel expenses, if
25 claimed, shall be allowed the same as for testimony in a
26 circuit court.

27 (e) ~~The division shall publish annually a report which~~
28 ~~indicates the promptness of first payment of compensation~~
29 ~~records of each carrier or self-insurer so as to focus~~
30 ~~attention on those carriers or self-insurers with poor payment~~
31 ~~records for the preceding year. A copy of such report shall be~~

1 ~~certified to~~ The department of Insurance which shall take
2 appropriate steps so as to cause such poor carrier payment
3 practices to halt pursuant to s. 440.38(3)~~(a)~~. In addition,
4 the department ~~division~~ shall take appropriate action so as to
5 halt such poor payment practices of self-insurers. "Poor
6 payment practice" means a practice of late payment sufficient
7 to constitute a general business practice.

8 (f) The department ~~division~~ shall promulgate rules
9 providing guidelines to carriers, self-insurers, and employers
10 to indicate behavior that may be construed as questionable
11 claims-handling techniques, questionable patterns of claims,
12 repeated unreasonably controverted claims, or poor payment
13 practices.

14 (16) No penalty assessed under this section may be
15 recouped by any carrier or self-insurer in the rate base, the
16 premium, or any rate filing. ~~In the case of carriers, The~~
17 Department of Insurance shall enforce this subsection; ~~and in~~
18 ~~the case of self-insurers, the division shall enforce this~~
19 subsection.

20 (17) The department ~~division~~ may by rule establish
21 audit procedures and set standards for the Automated Carrier
22 Performance System.

23 Section 9. Subsection (1) of section 440.207, Florida
24 Statutes, is amended to read:

25 440.207 Workers' compensation system guide.--

26 (1) The Division of Workers' Compensation of the
27 Department of Insurance ~~Labor and Employment Security~~ shall
28 educate all persons providing or receiving benefits pursuant
29 to this chapter as to their rights and responsibilities under
30 this chapter.

31

1 Section 10. Subsections (1), (2), and (3) of section
2 440.24, Florida Statutes, are amended to read:

3 440.24 Enforcement of compensation orders;
4 penalties.--

5 (1) In case of default by the employer or carrier in
6 the payment of compensation due under any compensation order
7 of a judge of compensation claims or other failure by the
8 employer or carrier to comply with such order within 10 days
9 after the order becomes final, any circuit court of this state
10 within the jurisdiction of which the employer or carrier
11 resides or transacts business shall, upon application by the
12 department ~~division~~ or any beneficiary under such order, have
13 jurisdiction to issue a rule nisi directing such employer or
14 carrier to show cause why a writ of execution, or such other
15 process as may be necessary to enforce the terms of such
16 order, shall not be issued, and, unless such cause is shown,
17 the court shall have jurisdiction to issue a writ of execution
18 or such other process or final order as may be necessary to
19 enforce the terms of such order of the judge of compensation
20 claims.

21 (2) In any case where the employer is insured and the
22 carrier fails to comply with any compensation order of a judge
23 of compensation claims or court within 10 days after such
24 order becomes final, ~~the division shall notify the department~~
25 ~~of Insurance of such failure, and the Department of Insurance~~
26 shall thereupon suspend the license of such carrier to do an
27 insurance business in this state, until such carrier has
28 complied with such order.

29 (3) In any case where the employer is a self-insurer
30 and fails to comply with any compensation order of a judge of
31 compensation claims or court within 10 days after such order

1 becomes final, the department ~~division~~ may suspend or revoke
2 any authorization previously given to the employer to become a
3 self-insurer, and the Florida Self-Insurers Guaranty
4 Association, Incorporated,~~division~~ may sell such of the
5 securities deposited by such self-insurer with the association
6 ~~division~~ as may be necessary to satisfy such order.

7 Section 11. Subsections (5) and (7) of section 440.25,
8 Florida Statutes, are amended to read:

9 440.25 Procedures for mediation and hearings.--

10 (5)(a) Procedures with respect to appeals from orders
11 of judges of compensation claims shall be governed by rules
12 adopted by the Supreme Court. Such an order shall become final
13 30 days after mailing of copies of such order to the parties,
14 unless appealed pursuant to such rules.

15 (b) An appellant may be relieved of any necessary
16 filing fee by filing a verified petition of indigency for
17 approval as provided in s. 57.081(1) and may be relieved in
18 whole or in part from the costs for preparation of the record
19 on appeal if, within 15 days after the date notice of the
20 estimated costs for the preparation is served, the appellant
21 files with the judge of compensation claims a copy of the
22 designation of the record on appeal, and a verified petition
23 to be relieved of costs. A verified petition filed prior to
24 the date of service of the notice of the estimated costs shall
25 be deemed not timely filed. The verified petition relating to
26 record costs shall contain a sworn statement that the
27 appellant is insolvent and a complete, detailed, and sworn
28 financial affidavit showing all the appellant's assets,
29 liabilities, and income. Failure to state in the affidavit all
30 assets and income, including marital assets and income, shall
31 be grounds for denying the petition with prejudice. The Office

1 of the Judges of Compensation Claims shall adopt rules as may
2 be required pursuant to this subsection, including forms for
3 use in all petitions brought under this subsection. The
4 appellant's attorney, or the appellant if she or he is not
5 represented by an attorney, shall include as a part of the
6 verified petition relating to record costs an affidavit or
7 affirmation that, in her or his opinion, the notice of appeal
8 was filed in good faith and that there is a probable basis for
9 the District Court of Appeal, First District, to find
10 reversible error, and shall state with particularity the
11 specific legal and factual grounds for the opinion. Failure to
12 so affirm shall be grounds for denying the petition. A copy of
13 the verified petition relating to record costs shall be served
14 upon all interested parties. The judge of compensation claims
15 shall promptly conduct a hearing on the verified petition
16 relating to record costs, giving at least 15 days' notice to
17 the appellant, the department ~~division~~, and all other
18 interested parties, all of whom shall be parties to the
19 proceedings. The judge of compensation claims may enter an
20 order without such hearing if no objection is filed by an
21 interested party within 20 days from the service date of the
22 verified petition relating to record costs. Such proceedings
23 shall be conducted in accordance with the provisions of this
24 section and with the workers' compensation rules of procedure,
25 to the extent applicable. In the event an insolvency petition
26 is granted, the judge of compensation claims shall direct the
27 department ~~division~~ to pay record costs and filing fees from
28 the Workers' Compensation Administrative Trust Fund pending
29 final disposition of the costs of appeal. The department
30 ~~division~~ may transcribe or arrange for the transcription of
31

1 the record in any proceeding for which it is ordered to pay
2 the cost of the record.

3 (c) As a condition of filing a notice of appeal to the
4 District Court of Appeal, First District, an employer who has
5 not secured the payment of compensation under this chapter in
6 compliance with s. 440.38 shall file with the notice of appeal
7 a good and sufficient bond, as provided in s. 59.13,
8 conditioned to pay the amount of the demand and any interest
9 and costs payable under the terms of the order if the appeal
10 is dismissed, or if the District Court of Appeal, First
11 District, affirms the award in any amount. Upon the failure of
12 such employer to file such bond with the judge of compensation
13 claims or the District Court of Appeal, First District, along
14 with the notice of appeal, the District Court of Appeal, First
15 District, shall dismiss the notice of appeal.

16 (7) An injured employee claiming or entitled to
17 compensation shall submit to such physical examination by a
18 certified expert medical advisor approved by the agency
19 ~~division~~ or the judge of compensation claims as the agency
20 ~~division~~ or the judge of compensation claims may require. The
21 place or places shall be reasonably convenient for the
22 employee. Such physician or physicians as the employee,
23 employer, or carrier may select and pay for may participate in
24 an examination if the employee, employer, or carrier so
25 requests. Proceedings shall be suspended and no compensation
26 shall be payable for any period during which the employee may
27 refuse to submit to examination. Any interested party shall
28 have the right in any case of death to require an autopsy, the
29 cost thereof to be borne by the party requesting it; and the
30 judge of compensation claims shall have authority to order and
31

1 require an autopsy and may, in her or his discretion, withhold
2 her or his findings and award until an autopsy is held.

3 Section 12. Section 440.271, Florida Statutes, is
4 amended to read:

5 440.271 Appeal of order of judge of compensation
6 claims.--Review of any order of a judge of compensation claims
7 entered pursuant to this chapter shall be by appeal to the
8 District Court of Appeal, First District. Appeals shall be
9 filed in accordance with rules of procedure prescribed by the
10 Supreme Court for review of such orders. The department
11 ~~division~~ shall be given notice of any proceedings pertaining
12 to s. 440.25, regarding indigency, or s. 440.49, regarding the
13 Special Disability Trust Fund, and shall have the right to
14 intervene in any proceedings.

15 Section 13. Subsections (1), (2), and (3) of section
16 440.38, Florida Statutes, are amended to read:

17 440.38 Security for compensation; insurance carriers
18 and self-insurers.--

19 (1) Every employer shall secure the payment of
20 compensation under this chapter:

21 (a) By insuring and keeping insured the payment of
22 such compensation with any stock company or mutual company or
23 association or exchange, authorized to do business in the
24 state;

25 (b) By furnishing satisfactory proof to the Florida
26 Self-Insurers Guaranty Association, Incorporated, created in
27 s. 440.385, that it has the financial strength necessary to
28 ensure timely payment of all current and future claims
29 ~~division of its financial ability to pay such compensation~~
30 individually and on behalf of its subsidiary and affiliated
31 companies with employees in this state and receiving an

1 authorization from the Department of Insurance ~~division~~ to pay
2 such compensation directly. The association shall review the
3 financial strength of applicants for membership, current
4 members, and former members and make recommendations to the
5 department regarding their qualifications to self-insure in
6 accordance with this act and ss. 440.385 and 440.386. The
7 department shall consult with the association on any
8 recommendation before taking action.~~the following provisions:~~

9 1. The association ~~division~~ may recommend that the
10 Department of Insurance require an employer to deposit with
11 the association ~~division~~ a qualifying security deposit. The
12 association ~~division~~ shall recommend ~~determine~~ the type and
13 amount of the qualifying security deposit and shall prescribe
14 conditions for the qualifying security deposit, which shall
15 include authorization for the association ~~division~~ to call the
16 qualifying security deposit in the case of default. ~~In~~
17 ~~addition, the division shall require,~~As a condition to
18 authorization to self-insure, the employer shall provide proof
19 that the employer has provided for competent personnel with
20 whom to deliver benefits and to provide a safe working
21 environment. ~~Further,~~The employer ~~division~~ shall also provide
22 evidence of ~~require such employer to carry~~ reinsurance at
23 levels that will ensure the financial strength and actuarial
24 soundness of such employer in accordance with rules adopted
25 ~~promulgated~~ by the Department of Insurance ~~division~~. The
26 Department of Insurance ~~division~~ may by rule require that, in
27 the event of an individual self-insurer's insolvency, such
28 qualifying security deposits and reinsurance policies are
29 payable to the ~~Florida Self-Insurers Guaranty~~ association,
30 ~~incorporated, created pursuant to s. 440.385.~~ Any employer
31 securing compensation in accordance with the provisions of

1 this paragraph shall be known as a self-insurer and shall be
2 classed as a carrier of her or his own insurance. All such
3 employers shall, if requested, provide the association with an
4 actuarial report signed by a member of the American Academy of
5 Actuaries providing an opinion of the appropriate present
6 value of the reserves for current and future compensation
7 claims. If any member or former member of the association
8 refuses to timely provide such a report, the association may
9 obtain an order from a circuit court requiring the member to
10 produce such a report and ordering such other relief as the
11 court determines appropriate. The association shall be
12 entitled to recover all reasonable costs and attorney's fees
13 in such proceedings.

14 2. If the employer fails to maintain the foregoing
15 requirements, the association ~~division~~ shall recommend to the
16 Department of Insurance that it revoke the employer's
17 authority to self-insure, unless the employer provides to the
18 association ~~division~~ the certified opinion of an independent
19 actuary who is a member of the American Academy ~~Society~~ of
20 Actuaries as to the actuarial present value of the employer's
21 determined and estimated future compensation payments based on
22 cash reserves, using a 4-percent discount rate, and a
23 qualifying security deposit equal to 1.5 times the value so
24 certified. The employer shall thereafter annually provide such
25 a certified opinion until such time as the employer meets the
26 requirements of subparagraph 1. The qualifying security
27 deposit shall be adjusted at the time of each such annual
28 report. Upon the failure of the employer to timely provide
29 such opinion or to timely provide a security deposit in an
30 amount equal to 1.5 times the value certified in the latest
31 opinion, the association shall provide such information to the

1 department along with a recommendation, and the Department of
2 Insurance ~~division~~ shall then revoke an ~~such~~ employer's
3 authorization to self-insure., ~~and such~~ Failure to comply with
4 this provision shall be deemed to constitute an immediate
5 serious danger to the public health, safety, or welfare
6 sufficient to justify the summary suspension of the employer's
7 authorization to self-insure pursuant to s. 120.68.

8 3. Upon the suspension or revocation of the employer's
9 authorization to self-insure, the employer shall provide to
10 the ~~division and to the Florida Self-Insurers Guaranty~~
11 ~~association, Incorporated, created pursuant to s. 440.385~~ the
12 certified opinion of an independent actuary who is a member of
13 the American Academy Society of Actuaries of the actuarial
14 present value of the determined and estimated future
15 compensation payments of the employer for claims incurred
16 while the member exercised the privilege of self-insurance,
17 using a discount rate of 4 percent. The employer shall provide
18 such an opinion at 6-month intervals thereafter until such
19 time as the latest opinion shows no remaining value of claims.
20 With each such opinion, the employer shall deposit with the
21 association ~~division~~ a qualifying security deposit in an
22 amount equal to the value certified by the actuary. The
23 association has a cause of action against an employer, and
24 against any successor of the employer, who fails to timely
25 provide such opinion or who fails to timely maintain the
26 required security deposit with the association ~~division~~. The
27 association shall recover a judgment in the amount of the
28 actuarial present value of the determined and estimated future
29 compensation payments of the employer for claims incurred
30 while the employer exercised the privilege of self-insurance,
31 together with attorney's fees. For purposes of this section,

1 the successor of an employer means any person, business
2 entity, or group of persons or business entities, which holds
3 or acquires legal or beneficial title to the majority of the
4 assets or the majority of the shares of the employer.

5 4. A qualifying security deposit shall consist, at the
6 option of the employer, of:

7 a. Surety bonds, in a form and containing such terms
8 as prescribed by the association ~~division~~, issued by a
9 corporation surety authorized to transact surety business by
10 the Department of Insurance, and whose policyholders' and
11 financial ratings, as reported in A.M. Best's Insurance
12 Reports, Property-Liability, are not less than "A" and "V",
13 respectively.

14 b. Irrevocable letters of credit in favor of the
15 association ~~division~~ issued by financial institutions located
16 within this state, the deposits of which are insured through
17 the Federal Deposit Insurance Corporation.

18 5. The qualifying security deposit shall be held by
19 the association ~~division~~ exclusively for the benefit of
20 workers' compensation claimants. The security shall not be
21 subject to assignment, execution, attachment, or any legal
22 process whatsoever, except as necessary to guarantee the
23 payment of compensation under this chapter. No surety bond may
24 be terminated, and no letter of credit may be allowed to
25 expire, without 90 days' prior written notice to the
26 association ~~division~~ and the deposit by the self-insuring
27 employer of some other qualifying security deposit of equal
28 value within 10 business days after such notice. Failure to
29 provide such written notice or failure to timely provide
30 qualifying replacement security after such notice shall
31 constitute grounds for the association ~~division~~ to call or sue

1 upon the surety bond or to exercise its rights under a letter
2 of credit. Current self-insured employers must comply with
3 this section on or before December 31, 2001, or upon the
4 maturity of existing security deposits, whichever occurs
5 later. The Department of Insurance ~~division~~ may specify by
6 rule the amount of the qualifying security deposit required
7 prior to authorizing an employer to self-insure and the amount
8 of net worth required for an employer to qualify for
9 authorization to self-insure;

10 (c) By entering into a contract with a public utility
11 under an approved utility-provided self-insurance program as
12 set forth in s. 624.46225 in effect as of July 1, 1983. The
13 Department of Insurance ~~division~~ shall adopt rules to
14 implement this paragraph;

15 (d) By entering into an interlocal agreement with
16 other local governmental entities to create a local government
17 pool pursuant to s. 624.4622;

18 (e) In accordance with s. 440.135, an employer, other
19 than a local government unit, may elect coverage under the
20 Workers' Compensation Law and retain the benefit of the
21 exclusiveness of liability provided in s. 440.11 by obtaining
22 a 24-hour health insurance policy from an authorized property
23 and casualty insurance carrier or an authorized life and
24 health insurance carrier, or by participating in a fully or
25 partially self-insured 24-hour health plan that is established
26 or maintained by or for two or more employers, so long as the
27 law of this state is not preempted by the Employee Retirement
28 Income Security Act of 1974, Pub. L. No. 93-406, or any
29 amendment to that law, which policy or plan must provide, for
30 at least occupational injuries and illnesses, medical benefits
31 that are comparable to those required by this chapter. A local

1 government unit, as a single employer, in accordance with s.
2 440.135, may participate in the 24-hour health insurance
3 coverage plan referenced in this paragraph. Disputes and
4 remedies arising under policies issued under this section are
5 governed by the terms and conditions of the policies and under
6 the applicable provisions of the Florida Insurance Code and
7 rules adopted under the insurance code and other applicable
8 laws of this state. The 24-hour health insurance policy may
9 provide for health care by a health maintenance organization
10 or a preferred provider organization. The premium for such
11 24-hour health insurance policy shall be paid entirely by the
12 employer. The 24-hour health insurance policy may use
13 deductibles and coinsurance provisions that require the
14 employee to pay a portion of the actual medical care received
15 by the employee. If an employer obtains a 24-hour health
16 insurance policy or self-insured plan to secure payment of
17 compensation as to medical benefits, the employer must also
18 obtain an insurance policy or policies that provide indemnity
19 benefits as follows:

20 1. If indemnity benefits are provided only for
21 occupational-related disability, such benefits must be
22 comparable to those required by this chapter.

23 2. If indemnity benefits are provided for both
24 occupational-related and nonoccupational-related disability,
25 such benefits must be comparable to those required by this
26 chapter, except that they must be based on 60 percent of the
27 average weekly wages.

28 3. The employer shall provide for each of its
29 employees life insurance with a death benefit of \$100,000.

30 4. Policies providing coverage under this subsection
31 must use prescribed and acceptable underwriting standards,

1 forms, and policies approved by the Department of Insurance.
2 If any insurance policy that provides coverage under this
3 section is canceled, terminated, or nonrenewed for any reason,
4 the cancellation, termination, or nonrenewal is ineffective
5 until the self-insured employer or insurance carrier or
6 carriers notify ~~the division~~ and the Department of Insurance
7 of the cancellation, termination, or nonrenewal, and until the
8 Department of Insurance ~~division~~ has actually received the
9 notification. The Department of Insurance ~~division~~ must be
10 notified of replacement coverage under a workers' compensation
11 and employer's liability insurance policy or plan by the
12 employer prior to the effective date of the cancellation,
13 termination, or nonrenewal; or

14 (f) By entering into a contract with an individual
15 self-insurer under an approved individual
16 self-insurer-provided self-insurance program as set forth in
17 s. 624.46225. The Department of Insurance ~~division~~ may adopt
18 rules to administer this subsection.

19 (2)(a) The Department of Insurance ~~division~~ shall
20 adopt rules by which businesses may become qualified to
21 provide underwriting claims-adjusting, loss control, and
22 safety engineering services to self-insurers.

23 (b) The Department of Insurance ~~division~~ shall adopt
24 rules requiring self-insurers to file any reports necessary to
25 fulfill the requirements of this chapter. Any self-insurer
26 who fails to file any report as prescribed by the rules
27 adopted by the department ~~division~~ shall be subject to a civil
28 penalty ~~not to exceed \$100 for each such failure.~~

29 ~~(3)(a) The license of any stock company or mutual~~
30 ~~company or association or exchange authorized to do insurance~~
31 ~~business in the state shall for good cause, upon~~

1 ~~recommendation of the division, be suspended or revoked by the~~
2 ~~Department of Insurance. No suspension or revocation shall~~
3 ~~affect the liability of any carrier already incurred.~~

4 (a)~~(b)~~ The Department of Insurance ~~division~~ shall
5 suspend or revoke any authorization to a self-insurer for
6 failure to comply with this act or for good cause, as defined
7 by rule of the department ~~division~~. No suspension or
8 revocation shall affect the liability of any self-insurer
9 already incurred.

10 (b)~~(c)~~ Violation of s. 440.381 by a self-insurance
11 fund shall result in the imposition of a fine not to exceed
12 \$1,000 per audit if the self-insurance fund fails to act on
13 said audits by correcting errors in employee classification or
14 accepted applications for coverage where it knew employee
15 classifications were incorrect. Such fines shall be levied by
16 the Department of Insurance ~~division~~ and deposited into the
17 Workers' Compensation Administration Trust Fund.

18 Section 14. Subsections (3) and (7) of section
19 440.381, Florida Statutes, are amended to read:

20 440.381 Application for coverage; reporting payroll;
21 payroll audit procedures; penalties.--

22 (3) ~~The department of Insurance and the Department of~~
23 ~~Labor and Employment Security~~ shall establish by rule minimum
24 requirements for audits of payroll and classifications in
25 order to ensure that the appropriate premium is charged for
26 workers' compensation coverage. The rules shall ensure that
27 audits performed by both carriers and employers are adequate
28 to provide that all sources of payments to employees,
29 subcontractors, and independent contractors have been reviewed
30 and that the accuracy of classification of employees has been
31 verified. The rules shall provide that employers in all

1 classes other than the construction class be audited not less
2 frequently than biennially and may provide for more frequent
3 audits of employers in specified classifications based on
4 factors such as amount of premium, type of business, loss
5 ratios, or other relevant factors. In no event shall employers
6 in the construction class, generating more than the amount of
7 premium required to be experience rated, be audited less than
8 annually. The annual audits required for construction classes
9 shall consist of physical onsite audits. Payroll verification
10 audit rules must include, but need not be limited to, the use
11 of state and federal reports of employee income, payroll and
12 other accounting records, certificates of insurance maintained
13 by subcontractors, and duties of employees.

14 (7) If an employee suffering a compensable injury was
15 not reported as earning wages on the last quarterly earnings
16 report filed with the Division of Unemployment Compensation
17 before the accident, the employer shall indemnify the carrier
18 for all workers' compensation benefits paid to or on behalf of
19 the employee unless the employer establishes that the employee
20 was hired after the filing of the quarterly report, in which
21 case the employer and employee shall attest to the fact that
22 the employee was employed by the employer at the time of the
23 injury. ~~It shall be the responsibility of the Division of~~
24 ~~Workers' Compensation to collect all necessary data so as to~~
25 ~~enable it to notify the carrier of the name of an injured~~
26 ~~worker who was not reported as earning wages on the last~~
27 ~~quarterly earnings report. The division is hereby authorized~~
28 ~~to release such records to the carrier which will enable the~~
29 ~~carrier to seek reimbursement as provided under this~~
30 ~~subsection.~~ Failure of the employer to indemnify the insurer
31 within 21 days after demand by the insurer shall constitute

1 grounds for the insurer to immediately cancel coverage. Any
2 action for indemnification brought by the carrier shall be
3 cognizable in the circuit court having jurisdiction where the
4 employer or carrier resides or transacts business. The
5 insurer shall be entitled to a reasonable attorney's fee if it
6 recovers any portion of the benefits paid in such action.

7 Section 15. Section 440.385, Florida Statutes, is
8 amended to read:

9 440.385 Florida Self-Insurers Guaranty Association,
10 Incorporated.--

11 (1) CREATION OF ASSOCIATION.--

12 (a) There is created a nonprofit corporation to be
13 known as the "Florida Self-Insurers Guaranty Association,
14 Incorporated," hereinafter referred to as "the association."
15 Upon incorporation of the association, all individual
16 self-insurers as defined in ss. 440.02(24)(~~23~~)(a) and
17 440.38(1)(b), other than individual self-insurers which are
18 public utilities or governmental entities, shall be members of
19 the association as a condition of their authority to
20 individually self-insure in this state. The association shall
21 perform its functions under a plan of operation as established
22 and approved under subsection (5) and shall exercise its
23 powers and duties through a board of directors as established
24 under subsection (2). The association ~~corporation~~ shall have
25 those powers granted or permitted associations ~~corporations~~
26 not for profit, as provided in chapter 617. The activities of
27 the association shall be subject to review by the Department
28 of Revenue. The department shall have oversight responsibility
29 as set forth in this act. The association is specifically
30 authorized to enter into agreements with this state to perform
31 specified services.

1 (b) A member may voluntarily withdraw from the
2 association when the member voluntarily terminates the
3 self-insurance privilege and pays all assessments due to the
4 date of such termination. However, the withdrawing member
5 shall continue to be bound by the provisions of this section
6 relating to the period of his or her membership and any claims
7 charged pursuant thereto. The withdrawing member who is a
8 member on or after January 1, 1991, shall also be required to
9 provide to the association ~~division~~ upon withdrawal, and at
10 12-month intervals thereafter, satisfactory proof, including,
11 if requested by the association, a report of known and
12 potential claims certified by a member of the American Academy
13 of Actuaries, that it continues to meet the standards of s.
14 440.38(1)(b)1. in relation to claims incurred while the
15 withdrawing member exercised the privilege of self-insurance.
16 Such reporting shall continue until the withdrawing member
17 demonstrates to the association ~~satisfies the division~~ that
18 there is no remaining value to claims incurred while the
19 withdrawing member was self-insured. If a withdrawing member
20 fails or refuses to timely provide an actuarial report to the
21 association, the association may obtain an order from a
22 circuit court requiring the member to produce such report and
23 ordering such other relief as the court determines
24 appropriate. The association shall be entitled to recover all
25 reasonable costs and attorney's fees expended in such
26 proceedings. If during this reporting period the withdrawing
27 member fails to meet the standards of s. 440.38(1)(b)1., the
28 withdrawing member who is a member on or after January 1,
29 1991, shall thereupon, and at 6-month intervals thereafter,
30 provide to the ~~division and the~~ association the certified
31 opinion of an independent actuary who is a member of the

1 American ~~Academy Society~~ of Actuaries of the actuarial present
2 value of the determined and estimated future compensation
3 payments of the member for claims incurred while the member
4 was a self-insurer, using a discount rate of 4 percent. With
5 each such opinion, the withdrawing member shall deposit with
6 the association ~~division~~ security in an amount equal to the
7 value certified by the actuary and of a type that is
8 acceptable for qualifying security deposits under s.
9 440.38(1)(b). The withdrawing member shall continue to
10 provide such opinions and to provide such security until such
11 time as the latest opinion shows no remaining value of claims.
12 The association has a cause of action against a withdrawing
13 member, and against any successor of a withdrawing member, who
14 fails to timely provide the required opinion or who fails to
15 maintain the required deposit with the association ~~division~~.
16 The association shall be entitled to recover a judgment in the
17 amount of the actuarial present value of the determined and
18 estimated future compensation payments of the withdrawing
19 member for claims incurred during the time that the
20 withdrawing member exercised the privilege of self-insurance,
21 together with reasonable attorney's fees. The association is
22 also entitled to recover reasonable attorney's fees in any
23 action to compel production of any actuarial report required
24 by this section. For purposes of this section, the successor
25 of a withdrawing member means any person, business entity, or
26 group of persons or business entities, which holds or acquires
27 legal or beneficial title to the majority of the assets or the
28 majority of the shares of the withdrawing member.
29 (2) BOARD OF DIRECTORS.--The board of directors of the
30 association shall consist of nine persons and shall be
31 organized as established in the plan of operation. All board

1 members shall be experienced in self-insurance in this state.
2 ~~With respect to initial appointments, the Secretary of Labor~~
3 ~~and Employment Security shall, by July 15, 1982, approve and~~
4 ~~appoint to the board persons who are experienced with~~
5 ~~self-insurance in this state and who are recommended by the~~
6 ~~individual self-insurers in this state required to become~~
7 ~~members of the association pursuant to the provisions of~~
8 ~~paragraph (1)(a). In the event the secretary finds that any~~
9 ~~person so recommended does not have the necessary~~
10 ~~qualifications for service on the board and a majority of the~~
11 ~~board has been appointed, the secretary shall request the~~
12 ~~directors thus far approved and appointed to recommend another~~
13 ~~person for appointment to the board.~~Each director shall serve
14 for a 4-year term and may be reappointed. Appointments after
15 January 1, 2002,~~other than initial appointments~~ shall be made
16 by the Department of Revenue ~~Secretary of Labor and Employment~~
17 ~~Security~~ upon recommendation of members of the association.
18 Any vacancy on the board shall be filled for the remaining
19 period of the term in the same manner as appointments other
20 than initial appointments are made. Each director shall be
21 reimbursed for expenses incurred in carrying out the duties of
22 the board on behalf of the association.

23 (3) POWERS AND DUTIES.--

24 (a) Upon creation of the Insolvency Fund pursuant to
25 the provisions of subsection (4), the association is obligated
26 for payment of compensation under this chapter to insolvent
27 members' employees resulting from incidents and injuries
28 existing prior to the member becoming an insolvent member and
29 from incidents and injuries occurring within 30 days after the
30 member has become an insolvent member, provided the incidents
31 giving rise to claims for compensation under this chapter

1 occur during the year in which such insolvent member is a
2 member of the guaranty fund and was assessable pursuant to the
3 plan of operation, and provided the employee makes timely
4 claim for such payments according to procedures set forth by a
5 court of competent jurisdiction over the delinquency or
6 bankruptcy proceedings of the insolvent member. Such
7 obligation includes only that amount due the injured worker or
8 workers of the insolvent member under this chapter. In no
9 event is the association obligated to a claimant in an amount
10 in excess of the obligation of the insolvent member. The
11 association shall be deemed the insolvent employer for
12 purposes of this chapter to the extent of its obligation on
13 the covered claims and, to such extent, shall have all rights,
14 duties, and obligations of the insolvent employer as if the
15 employer had not become insolvent. However, in no event shall
16 the association be liable for any penalties or interest.

17 (b) The association may:

18 1. Employ or retain such persons as are necessary to
19 handle claims and perform other duties of the association.

20 2. Borrow funds necessary to effect the purposes of
21 this section in accord with the plan of operation.

22 3. Sue or be sued.

23 4. Negotiate and become a party to such contracts as
24 are necessary to carry out the purposes of this section.

25 5. Purchase such reinsurance as is determined
26 necessary pursuant to the plan of operation.

27 6. Review all applicants for membership in the
28 association to determine whether an applicant is qualified for
29 membership under the law. The association shall recommend to
30 the Department of Revenue that the application be accepted or
31 rejected based on the criteria set forth in s. 440.38(1)(b).

1 The department shall approve or disapprove the application as
2 provided in paragraph (6)(a). Prior to a final determination
3 ~~by the Division of Workers' Compensation as to whether or not~~
4 ~~to approve any applicant for membership in the association,~~
5 ~~the association may issue opinions to the division concerning~~
6 ~~any applicant, which opinions shall be considered by the~~
7 ~~division prior to any final determination.~~

8 7. Collect and review financial information from
9 employers and make recommendations to the Department of
10 Revenue regarding the appropriate security deposit and
11 reinsurance amounts necessary for an employer to demonstrate
12 that the employer has the financial strength necessary to
13 ensure the timely payment of all current and future claims.
14 The association may audit and examine an employer to verify
15 the financial strength of the employer's current and former
16 members. If the association determines that a current or
17 former self-insured employer does not have the financial
18 strength necessary to ensure the timely payment of all current
19 and estimated future claims, the association may recommend to
20 the department that the department:

21 a. Revoke the employer's self-insurance privilege.

22 b. Require the employer to provide a certified opinion
23 of an independent actuary who is a member of the American
24 Academy of Actuaries as to the actuarial present value of the
25 employer's estimated current and future compensation payments,
26 using a 4-percent discount rate.

27 c. Require an increase in the employer's security
28 deposit in an amount determined by the association to be
29 necessary to ensure payment of compensation claims. The
30 Department of Revenue shall act on such recommendations as
31 provided in paragraph (6)(a). The association has a cause of

1 action against an employer, and against any successor of an
2 employer, who fails to provide an additional security deposit
3 required by the department. The association shall recover a
4 judgment in the amount of the requested additional security
5 deposit together with reasonable attorney's fees. For the
6 purposes of this section, the successor of an employer is any
7 person or business entity or group of persons or business
8 entities that holds or acquires legal or beneficial title to
9 the majority of the assets or the majority of the shares of
10 the employer.

11 8.7. Charge fees to any member of the association to
12 cover the actual costs of examining the financial and safety
13 conditions of that member.

14 9.8. Charge an applicant for membership in the
15 association a fee sufficient to cover the actual costs of
16 examining the financial condition of the applicant.

17 10. Implement any and all procedures necessary to
18 ensure compliance with regulatory actions taken by the
19 Department of Revenue.

20 (c)1. To the extent necessary to secure funds for the
21 payment of covered claims and also to pay the reasonable costs
22 to administer them, the association, subject to approval by
23 the Department of Revenue ~~Labor and Employment Security, upon~~
24 ~~certification of the board of directors,~~ shall levy
25 assessments based on the annual written ~~normal~~ premium each
26 employer would have paid had the employer not been
27 self-insured. Every assessment shall be made as a uniform
28 percentage of the figure applicable to all individual
29 self-insurers, provided that the assessment levied against any
30 self-insurer in any one year shall not exceed 1 percent of the
31 annual written ~~normal~~ premium during the calendar year

1 preceding the date of the assessment. Assessments shall be
2 remitted to and administered by the board of directors in the
3 manner specified by the approved plan. Each employer so
4 assessed shall have at least 30 days' written notice as to the
5 date the assessment is due and payable. The association shall
6 levy assessments against any newly admitted member of the
7 association so that the basis of contribution of any newly
8 admitted member is the same as previously admitted members,
9 provision for which shall be contained in the plan of
10 operation.

11 2. If, in any one year, funds available from such
12 assessments, together with funds previously raised, are not
13 sufficient to make all the payments or reimbursements then
14 owing, the funds available shall be prorated, and the unpaid
15 portion shall be paid as soon thereafter as sufficient
16 additional funds become available.

17 3. Funds may be allocated or paid from the Workers'
18 Compensation Administration Trust Fund to contract with the
19 association to perform services required by law. However, no
20 state funds of any kind shall be allocated or paid to the
21 association or any of its accounts for payment of covered
22 claims or related expenses except those state funds accruing
23 to the association by and through the assignment of rights of
24 an insolvent employer. The Department of Revenue shall not
25 levy any assessment on the Florida Self-Insurance Guaranty
26 Association.

27 (4) ~~INSOLVENCY FUND.--Upon the adoption of a plan of~~
28 ~~operation or the adoption of rules by the Department of Labor~~
29 ~~and Employment Security pursuant to subsection (5), there~~
30 shall be created an Insolvency Fund to be managed by the
31 association.

1 (a) The Insolvency Fund is created for purposes of
2 meeting the obligations of insolvent members incurred while
3 members of the association and after the exhaustion of any
4 security deposit bond, as required under this chapter.
5 However, if such security deposit bond, surety, or reinsurance
6 policy is payable to the Florida Self-Insurers Guaranty
7 Association, the association shall commence to provide
8 benefits out of the Insolvency Fund and be reimbursed from the
9 security deposit bond, surety, or reinsurance policy. The
10 method of operation of the Insolvency Fund shall be defined in
11 the plan of operation as provided in subsection (5).

12 (b) The Department of Revenue shall have the authority
13 to audit the financial soundness of the Insolvency Fund
14 annually.

15 (c) The Department of Revenue may offer certain
16 amendments to the plan of operation to the board of directors
17 of the association for purposes of assuring the ongoing
18 financial soundness of the Insolvency Fund and its ability to
19 meet the obligations of this section.

20 ~~(d) The department actuary may make certain~~
21 ~~recommendations to improve the orderly payment of claims.~~

22 (5) PLAN OF OPERATION.--The association shall operate
23 pursuant to a plan of operation approved by the board of
24 directors. The plan of operation in effect on January 1,
25 2002, and approved by the Department of Labor and Employment
26 Security shall remain in effect. However, any amendments to
27 the plan shall not become effective until approved by the
28 Department of Revenue.~~By September 15, 1982, the board of~~
29 ~~directors shall submit to the Department of Labor and~~
30 ~~Employment Security a proposed plan of operation for the~~
31 ~~administration of the association and the Insolvency Fund.~~

1 (a) The purpose of the plan of operation shall be to
2 provide the association and the board of directors with the
3 authority and responsibility to establish the necessary
4 programs and to take the necessary actions to protect against
5 the insolvency of a member of the association. In addition,
6 the plan shall provide that the members of the association
7 shall be responsible for maintaining an adequate Insolvency
8 Fund to meet the obligations of insolvent members provided for
9 under this act and shall authorize the board of directors to
10 contract and employ those persons with the necessary expertise
11 to carry out this stated purpose. By January 1, 2003, the
12 board of directors shall submit to the Department of Revenue a
13 proposed plan of operation for the administration of the
14 association. The department shall approve the plan by order,
15 consistent with this act. The department shall approve any
16 amendments to the plan, by order consistent with this act,
17 determined appropriate to carry out the duties and
18 responsibilities of the association.

19 ~~(b) The plan of operation, and any amendments thereto,~~
20 ~~shall take effect upon approval in writing by the department.~~
21 ~~If the board of directors fails to submit a plan by September~~
22 ~~15, 1982, or fails to make required amendments to the plan~~
23 ~~within 30 days thereafter, the department shall promulgate~~
24 ~~such rules as are necessary to effectuate the provisions of~~
25 ~~this subsection. Such rules shall continue in force until~~
26 ~~modified by the department or superseded by a plan submitted~~
27 ~~by the board of directors and approved by the department.~~

28 (b)(c) All member employers shall comply with the plan
29 of operation.

30 (c)(d) The plan of operation shall:
31

- 1 1. Establish the procedures whereby all the powers and
2 duties of the association under subsection (3) will be
3 performed.
- 4 2. Establish procedures for handling assets of the
5 association.
- 6 3. Establish the amount and method of reimbursing
7 members of the board of directors under subsection (2).
- 8 4. Establish procedures by which claims may be filed
9 with the association and establish acceptable forms of proof
10 of covered claims. Notice of claims to the receiver or
11 liquidator of the insolvent employer shall be deemed notice to
12 the association or its agent, and a list of such claims shall
13 be submitted periodically to the association or similar
14 organization in another state by the receiver or liquidator.
- 15 5. Establish regular places and times for meetings of
16 the board of directors.
- 17 6. Establish procedures for records to be kept of all
18 financial transactions of the association and its agents and
19 the board of directors.
- 20 7. Provide that any member employer aggrieved by any
21 final action or decision of the association may appeal to the
22 Department of Revenue within 30 days after the action or
23 decision.
- 24 8. Establish the procedures whereby recommendations of
25 candidates for the board of directors shall be submitted to
26 the Department of Revenue.
- 27 9. Contain additional provisions necessary or proper
28 for the execution of the powers and duties of the association.
- 29 ~~(d)(e)~~ The plan of operation may provide that any or
30 all of the powers and duties of the association, except those
31 specified under subparagraphs ~~(c)(d)~~ 1. and 2., be delegated to

1 a corporation, association, or other organization which
2 performs or will perform functions similar to those of this
3 association or its equivalent in two or more states. Such a
4 corporation, association, or organization shall be reimbursed
5 as a servicing facility would be reimbursed and shall be paid
6 for its performance of any other functions of the association.
7 A delegation of powers or duties under this subsection shall
8 take effect only with the approval of both the board of
9 directors and the Department of Revenue and may be made only
10 to a corporation, association, or organization which extends
11 protection which is not substantially less favorable and
12 effective than the protection provided by this section.

13 (6) POWERS AND DUTIES OF DEPARTMENT OF REVENUE ~~LABOR~~
14 ~~AND EMPLOYMENT SECURITY~~.--

15 ~~(a)~~ The Department of Revenue shall:

16 (a) Review recommendations of the association
17 concerning whether current or former self-insured employers or
18 members of the association have the financial strength
19 necessary to ensure the timely payment of all current and
20 estimated future claims. If the association determines an
21 employer does not have the financial strength necessary to
22 ensure the timely payment of all current and future claims and
23 recommends action pursuant to paragraph (3)(b), the department
24 may take such action as necessary to order the employer to
25 comply with the recommendation unless the department
26 determines by clear and convincing evidence that the
27 recommendation is erroneous.

28 ~~1. Notify the association of the existence of an~~
29 ~~insolvent employer not later than 3 days after it receives~~
30 ~~notice of the determination of insolvency.~~

31

1 ~~2. Upon request of the board of directors, provide the~~
2 ~~association with a statement of the annual normal premiums of~~
3 ~~each member employer.~~

4 (b) Contract with the association for services, which
5 may include, but need not be limited to, the following:

6 1. Process applications for self-insurance.

7 2. Collect and review financial statements and loss
8 reserve information from individual self-insurers.

9 3. Collect and maintain files for original security
10 deposit documents and reinsurance policies from individual
11 self-insurers and, if necessary, perfect security interests in
12 security deposits.

13 4. Process compliance documentation for individual
14 self-insurers and provide such documentation to the Division
15 of Workers' Compensation.

16 5. Collect all data necessary to calculate annual
17 premium for all individual self-insurers, including individual
18 self-insurers that are public utilities or governmental
19 entities, and provide such calculated annual premium to the
20 Division of Workers' Compensation for assessment purposes.

21 6. Inspect and audit annually, if necessary, the
22 payroll and other records of each individual self-insurer,
23 including individual self-insurers that are public utilities
24 or governmental entities, in order to determine the wages paid
25 by each individual self-insurer, the premium such individual
26 self-insurer would have to pay if insured, and all payments of
27 compensation made by such individual self-insurer during each
28 prior period, and provide the results of such audit to the
29 Division of Workers' Compensation. For the purposes of this
30 section, the payroll records of each individual self-insurer
31 shall be open to inspection and audit by the association, an

1 authorized representative of the association, or the
2 Department of Revenue during regular business hours.

3 7. Process applications and make recommendations
4 regarding the qualifications of businesses to be approved to
5 provide or continue to provide underwriting, claims adjusting,
6 loss control, and safety engineering services to individual
7 self-insurers.

8 8. Provide legal representation to implement the
9 administration and audit of individual self-insurers and make
10 recommendations regarding prosecution of any administrative or
11 legal proceedings necessitated by the department's regulation
12 of the individual self-insurers.

13 (c) Contract with an attorney or attorneys recommended
14 by the association for representation of the department in any
15 administrative or legal proceedings necessitated by the
16 recommended regulation of the individual self-insurers.

17 (d) Direct the association to require from each
18 individual self-insurer, at such time and in accordance with
19 such regulations as the department prescribes, reports with
20 respect to wages paid, the amount of premiums such individual
21 self-insurer would have to pay if insured, and all payments of
22 compensation made by such individual self-insurer during each
23 prior period and determine the amounts paid by each individual
24 self-insurer and the amounts paid by all individual
25 self-insurers during such period. For the purposes of this
26 section, the payroll records of each individual self-insurer
27 shall be open to annual inspection and audit by the
28 association or the department, or an authorized representative
29 of the association or department, during regular business
30 hours and, if any audit of such records of an individual
31 self-insurer discloses a deficiency in the amount reported to

1 the association or in the amounts paid to the Division of
2 Workers' Compensation by an individual self-insurer for its
3 assessment for the Workers' Compensation Administration Trust
4 Fund, the Department of Revenue or the association may assess
5 the cost of such audit against the individual self-insurer.

6 ~~The department may:~~

7 (e)1. Require that the association notify the member
8 employers and any other interested parties of the
9 determination of insolvency and of their rights under this
10 section. Such notification shall be by mail at the last known
11 address thereof when available; but, if sufficient information
12 for notification by mail is not available, notice by
13 publication in a newspaper of general circulation shall be
14 sufficient.

15 (f)2. Suspend or revoke the authority of any member
16 employer failing to pay an assessment when due or failing to
17 comply with the plan of operation to self-insure in this
18 state. As an alternative, the department may levy a fine on
19 any member employer failing to pay an assessment when due.
20 Such fine shall not exceed 5 percent of the unpaid assessment
21 per month, except that no fine shall be less than \$100 per
22 month.

23 (g)3. Revoke the designation of any servicing facility
24 if the department finds that claims are being handled
25 unsatisfactorily.

26 (7) EFFECT OF PAID CLAIMS.--

27 (a) Any person who recovers from the association under
28 this section shall be deemed to have assigned his or her
29 rights to the association to the extent of such recovery.
30 Every claimant seeking the protection of this section shall
31 cooperate with the association to the same extent as such

1 person would have been required to cooperate with the
2 insolvent member. The association shall have no cause of
3 action against the employee of the insolvent member for any
4 sums the association has paid out, except such causes of
5 action as the insolvent member would have had if such sums had
6 been paid by the insolvent member. In the case of an
7 insolvent member operating on a plan with assessment
8 liability, payments of claims by the association shall not
9 operate to reduce the liability of the insolvent member to the
10 receiver, liquidator, or statutory successor for unpaid
11 assessments.

12 (b) The receiver, liquidator, or statutory successor
13 of an insolvent member shall be bound by settlements of
14 covered claims by the association or a similar organization in
15 another state. The court having jurisdiction shall grant such
16 claims priority against the assets of the insolvent member
17 equal to that to which the claimant would have been entitled
18 in the absence of this section. The expense of the association
19 or similar organization in handling claims shall be accorded
20 the same priority as the expenses of the liquidator.

21 (c) The association shall file periodically with the
22 receiver or liquidator of the insolvent member statements of
23 the covered claims paid by the association and estimates of
24 anticipated claims on the association, which shall preserve
25 the rights of the association against the assets of the
26 insolvent member.

27 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid
28 in the detection and prevention of employer insolvencies, ⁺
29 ~~(a)~~ upon determination by majority vote that any
30 member employer may be insolvent or in a financial condition
31 hazardous to the employees thereof or to the public, it shall

1 be the duty of the board of directors to notify the Department
2 of Revenue ~~Labor and Employment Security~~ of any information
3 indicating such condition.

4 ~~(b) The board of directors may, upon majority vote,~~
5 ~~request that the department determine the condition of any~~
6 ~~member employer which the board in good faith believes may no~~
7 ~~longer be qualified to be a member of the association. Within~~
8 ~~30 days of the receipt of such request or, for good cause~~
9 ~~shown, within a reasonable time thereafter, the department~~
10 ~~shall make such determination and shall forthwith advise the~~
11 ~~board of its findings. Each request for a determination shall~~
12 ~~be kept on file by the department, but the request shall not~~
13 ~~be open to public inspection prior to the release of the~~
14 ~~determination to the public.~~

15 ~~(c) It shall also be the duty of the department to~~
16 ~~report to the board of directors when it has reasonable cause~~
17 ~~to believe that a member employer may be in such a financial~~
18 ~~condition as to be no longer qualified to be a member of the~~
19 ~~association.~~

20 ~~(d) The board of directors may, upon majority vote,~~
21 ~~make reports and recommendations to the department upon any~~
22 ~~matter which is germane to the solvency, liquidation,~~
23 ~~rehabilitation, or conservation of any member employer. Such~~
24 ~~reports and recommendations shall not be considered public~~
25 ~~documents.~~

26 ~~(e) The board of directors may, upon majority vote,~~
27 ~~make recommendations to the department for the detection and~~
28 ~~prevention of employer insolvencies.~~

29 ~~(f) The board of directors shall, at the conclusion of~~
30 ~~any member's insolvency in which the association was obligated~~
31 ~~to pay covered claims, prepare a report on the history and~~

1 ~~cause of such insolvency, based on the information available~~
2 ~~to the association, and shall submit such report to the~~
3 ~~department.~~

4 (9) EXAMINATION OF THE ASSOCIATION.--The association
5 shall be subject to examination and regulation by the
6 Department of Revenue ~~Labor and Employment Security~~. No later
7 than March 30 of each year, the board of directors shall
8 submit an audited ~~a financial statement~~ report for the
9 preceding calendar year in a form approved by the department.

10 (10) IMMUNITY.--There shall be no liability on the
11 part of, and no cause of action of any nature shall arise
12 against, any member employer, the association or its agents or
13 employees, the board of directors, or the Department of
14 Revenue ~~Labor and Employment Security~~ or its representatives
15 for any action taken by them in the performance of their
16 powers and duties under this section.

17 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
18 JUDGMENTS.--All proceedings in which an insolvent employer is
19 a party, or is obligated to defend a party, in any court or
20 before any quasi-judicial body or administrative board in this
21 state shall be stayed for up to 6 months, or for such
22 additional period from the date the employer becomes an
23 insolvent member, as is deemed necessary by a court of
24 competent jurisdiction to permit proper defense by the
25 association of all pending causes of action as to any covered
26 claims arising from a judgment under any decision, verdict, or
27 finding based on the default of the insolvent member. The
28 association, either on its own behalf or on behalf of the
29 insolvent member, may apply to have such judgment, order,
30 decision, verdict, or finding set aside by the same court or
31 administrator that made such judgment, order, decision,

1 verdict, or finding and shall be permitted to defend against
2 such claim on the merits. If requested by the association,
3 the stay of proceedings may be shortened or waived.

4 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
5 any other provision of this chapter, a covered claim, as
6 defined herein, with respect to which settlement is not
7 effected and pursuant to which suit is not instituted against
8 the insured of an insolvent member or the association within 1
9 year after the deadline for filing claims with the receiver of
10 the insolvent member, or any extension of the deadline, shall
11 thenceforth be barred as a claim against the association.

12 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
13 by a member by refund, dividend, or otherwise from the
14 association shall be payable within 30 days of receipt to the
15 Department of Revenue for deposit with the Treasurer to the
16 credit of the General Revenue Fund. All provisions of chapter
17 220 relating to penalties and interest on delinquent corporate
18 income tax payments apply to payments due under this
19 subsection.

20 Section 16. Subsections (2), (3), and (4) of section
21 440.386, Florida Statutes, are amended to read:

22 440.386 Individual self-insurers' insolvency;
23 conservation; liquidation.--

24 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
25 Department of Revenue or the Florida Self-Insurers Guaranty
26 Association, Incorporated, may commence a delinquency ~~any such~~
27 proceeding by application to the court for an order directing
28 the individual self-insurer to show cause why the department
29 or association should not have the relief prayed for. ~~The~~
30 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may
31 ~~petition the department to commence such proceedings, and upon~~

1 ~~receipt of such petition, the department shall commence such~~
2 ~~proceeding.~~ On the return of such order to show cause, and
3 after a full hearing, the court shall either deny the
4 application or grant the application, together with such other
5 relief as the nature of the case and the interests of the
6 claimants, creditors, stockholders, members, subscribers, or
7 public may require. The department and the Florida
8 ~~Self-Insurers Guaranty association, Incorporated,~~ shall give
9 ~~be given~~ reasonable written notice to each other by the
10 department of all hearings which pertain to an adjudication of
11 insolvency of a member individual self-insurer.

12 (3) GROUNDS FOR LIQUIDATION.--The Department of
13 Revenue or the association may apply to the court for an order
14 appointing a receiver and directing the receiver to liquidate
15 the business of a domestic individual self-insurer if such
16 individual self-insurer is insolvent. ~~Florida Self-Insurers~~
17 ~~Guaranty Association, Incorporated,~~ may petition the
18 department to apply to the court for such order. Upon receipt
19 of such petition, the department shall apply to the court for
20 such order.

21 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
22 SELF-INSURERS.--

23 (a) The Department of Revenue or the association may
24 apply to the court for an order appointing a receiver or
25 ancillary receiver, and directing the receiver to conserve the
26 assets within this state, of a foreign individual self-insurer
27 if such individual self-insurer is insolvent. ~~Florida~~
28 ~~Self-Insurers Guaranty Association, Incorporated,~~ may petition
29 the department to apply for such order, and, upon receipt of
30 such petition, the department shall apply to the court for
31 such order.

1 (b) An order to conserve the assets of an individual
2 self-insurer shall require the receiver forthwith to take
3 possession of the property of the receiver within the state
4 and to conserve it, subject to the further direction of the
5 court.

6 Section 17. Subsection (8) and paragraph (e) of
7 subsection (9) of section 440.49, Florida Statutes, are
8 amended to read:

9 440.49 Limitation of liability for subsequent injury
10 through Special Disability Trust Fund.--

11 (8) PREFERRED WORKER PROGRAM.--The Department of
12 Education ~~division~~ or administrator shall issue identity cards
13 to preferred workers upon request by qualified employees; and
14 the Department of Insurance shall reimburse an employer, from
15 the Special Disability Trust Fund, for the cost of workers'
16 compensation premium related to the preferred workers payroll
17 for up to 3 years of continuous employment upon satisfactory
18 evidence of placement and issuance of payroll and
19 classification records and upon the employee's certification
20 of employment. The department and the Department of Education
21 ~~division~~ may by rule prescribe definitions, forms, and
22 procedures for the administration of the preferred worker
23 program. The Department of Education ~~division~~ may by rule
24 prescribe the schedule for submission of forms for
25 participation in the program.

26 (9) SPECIAL DISABILITY TRUST FUND.--

27 (e) The Department of Insurance ~~Labor and Employment~~
28 ~~Security~~ or administrator shall report annually on the status
29 of the Special Disability Trust Fund. The report shall update
30 the estimated undiscounted and discounted fund liability, as
31 determined by an independent actuary, change in the total

1 number of notices of claim on file with the fund in addition
2 to the number of newly filed notices of claim, change in the
3 number of proofs of claim processed by the fund, the fee
4 revenues refunded and revenues applied to pay down the
5 liability of the fund, the average time required to reimburse
6 accepted claims, and the average administrative costs per
7 claim. The department or administrator shall submit its
8 report to the Governor, the President of the Senate, and the
9 Speaker of the House of Representatives by December 1 of each
10 year.

11 Section 18. Present paragraphs (b) through (h) of
12 subsection (1) of section 440.491, Florida Statutes, are
13 redesignated as paragraphs (c) through (i), respectively, and
14 a new paragraph (b) is added to said subsection, and paragraph
15 (c) of subsection (1), paragraph (a) of subsection (3),
16 paragraph (b) of subsection (4), paragraphs (b) and (c) of
17 subsection (5), and subsections (6), (7), and (8) of said
18 section are amended, to read:

19 440.491 Reemployment of injured workers;
20 rehabilitation.--

21 (1) DEFINITIONS.--As used in this section, the term:

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

23 (d)~~(c)~~ "Qualified rehabilitation provider" means a
24 rehabilitation nurse, rehabilitation counselor, vocational
25 evaluator, rehabilitation facility, or agency approved by the
26 Department of Education ~~division~~ as qualified to provide
27 reemployment assessments, medical care coordination,
28 reemployment services, or vocational evaluations under this
29 chapter.

30 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.--

31

1 (a) When an employee who has suffered an injury
2 compensable under this chapter is unemployed 60 days after the
3 date of injury and is receiving benefits for temporary total
4 disability, temporary partial disability, or wage loss, and
5 has not yet been provided medical care coordination and
6 reemployment services voluntarily by the carrier, the carrier
7 must determine whether the employee is likely to return to
8 work and must report its determination to the department
9 ~~division~~. The carrier must thereafter determine the
10 reemployment status of the employee at 90-day intervals as
11 long as the employee remains unemployed, is not receiving
12 medical care coordination or reemployment services, and is
13 receiving the benefits specified in this subsection.

14 (4) REEMPLOYMENT ASSESSMENTS.--

15 (b) The carrier shall authorize only a qualified
16 rehabilitation provider to provide the reemployment
17 assessment. The rehabilitation provider shall conduct its
18 assessment and issue a report to the carrier, the employee,
19 and the department ~~division~~ within 30 days after the time such
20 assessment is complete.

21 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
22 SERVICES.--

23 (b) If the rehabilitation provider concludes that
24 training and education are necessary to return the employee to
25 suitable gainful employment, or if the employee has not
26 returned to suitable gainful employment within 180 days after
27 referral for reemployment services or receives \$2,500 in
28 reemployment services, whichever comes first, the carrier must
29 discontinue reemployment services and refer the employee to
30 the department ~~division~~ for a vocational evaluation.
31 Notwithstanding any provision of chapter 289 or chapter 627,

1 the cost of a reemployment assessment and the first \$2,500 in
2 reemployment services to an injured employee must not be
3 treated as loss adjustment expense for workers' compensation
4 ratemaking purposes.

5 (c) A carrier may voluntarily provide medical care
6 coordination or reemployment services to the employee at
7 intervals more frequent than those required in this section.
8 For the purpose of monitoring reemployment, the carrier or the
9 rehabilitation provider shall report to the department
10 division, in the manner prescribed by the department ~~division~~,
11 the date of reemployment and wages of the employee. The
12 carrier shall report its voluntary service activity to the
13 department ~~division~~ as required by rule. Voluntary services
14 offered by the carrier for any of the following injuries must
15 be considered benefits for purposes of ratemaking: traumatic
16 brain injury; spinal cord injury; amputation, including loss
17 of an eye or eyes; burns of 5 percent or greater of the total
18 body surface.

19 (6) TRAINING AND EDUCATION.--

20 (a) Upon referral of an injured employee by the
21 carrier, or upon the request of an injured employee, the
22 department ~~division~~ shall conduct a training and education
23 screening to determine whether it should refer the employee
24 for a vocational evaluation and, if appropriate, approve
25 training and education or other vocational services for the
26 employee. The department ~~division~~ may not approve formal
27 training and education programs unless it determines, after
28 consideration of the reemployment assessment, pertinent
29 reemployment status reviews or reports, and such other
30 relevant factors as it prescribes by rule, that the
31 reemployment plan is likely to result in return to suitable

1 gainful employment. The department ~~division~~ is authorized to
2 expend moneys from the Workers' Compensation Administration
3 Trust Fund, established by s. 440.50, to secure appropriate
4 training and education or other vocational services when
5 necessary to satisfy the recommendation of a vocational
6 evaluator. The department ~~division~~ shall establish training
7 and education standards pertaining to employee eligibility,
8 course curricula and duration, and associated costs.

9 (b) When it appears that an employee who has attained
10 maximum medical improvement requires training and education to
11 obtain suitable gainful employment, the employer shall pay the
12 employee additional temporary total compensation while the
13 employee receives such training and education for a period not
14 to exceed 26 weeks, which period may be extended for an
15 additional 26 weeks or less, if such extended period is
16 determined to be necessary and proper by a judge of
17 compensation claims. However, a carrier or employer is not
18 precluded from voluntarily paying additional temporary total
19 disability compensation beyond that period. If an employee
20 requires temporary residence at or near a facility or an
21 institution providing training and education which is located
22 more than 50 miles away from the employee's customary
23 residence, the reasonable cost of board, lodging, or travel
24 must be borne by the department ~~division~~ from the Workers'
25 Compensation Administration Trust Fund established by s.
26 440.50. An employee who refuses to accept training and
27 education that is recommended by the vocational evaluator and
28 considered necessary by the department ~~division~~ is subject to
29 a 50-percent reduction in weekly compensation benefits,
30 including wage-loss benefits, as determined under s.
31 440.15(3)(b).

1 (7) PROVIDER QUALIFICATIONS.--

2 (a) The department ~~division~~ shall investigate and
3 maintain a directory of each qualified public and private
4 rehabilitation provider, facility, and agency, and shall
5 establish by rule the minimum qualifications, credentials, and
6 requirements that each rehabilitation service provider,
7 facility, and agency must satisfy to be eligible for listing
8 in the directory. These minimum qualifications and credentials
9 must be based on those generally accepted within the service
10 specialty for which the provider, facility, or agency is
11 approved.

12 (b) The department ~~division~~ shall impose a biennial
13 application fee of \$25 for each listing in the directory, and
14 all such fees must be deposited in the Workers' Compensation
15 Administration Trust Fund.

16 (c) The department ~~division~~ shall monitor and evaluate
17 each rehabilitation service provider, facility, and agency
18 qualified under this subsection to ensure its compliance with
19 the minimum qualifications and credentials established by the
20 department ~~division~~. The failure of a qualified rehabilitation
21 service provider, facility, or agency to provide the
22 department ~~division~~ with information requested or access
23 necessary for the department ~~division~~ to satisfy its
24 responsibilities under this subsection is grounds for
25 disqualifying the provider, facility, or agency from further
26 referrals.

27 (d) A qualified rehabilitation service provider,
28 facility, or agency may not be authorized by an employer, a
29 carrier, or the department ~~division~~ to provide any services,
30 including expert testimony, under this section in this state
31 unless the provider, facility, or agency is listed or has been

1 approved for listing in the directory. This restriction does
2 not apply to services provided outside this state under this
3 section.

4 (e) The department ~~division~~, after consultation with
5 representatives of employees, employers, carriers,
6 rehabilitation providers, and qualified training and education
7 providers, shall adopt rules governing professional practices
8 and standards.

9 (8) CARRIER PRACTICES.--The department ~~division~~ shall
10 monitor the selection of providers and the provision of
11 services by carriers under this section for consistency with
12 legislative intent set forth in subsection (2).

13 Section 19. Section 440.525, Florida Statutes, is
14 amended to read:

15 440.525 Examination of carriers.--~~Beginning July 1,~~
16 ~~1994,~~The Division of Workers' Compensation of the Department
17 of Insurance ~~Labor and Employment Security~~ may examine each
18 carrier as often as is warranted to ensure that carriers are
19 fulfilling their obligations under the law, and shall examine
20 each carrier not less frequently than once every 3 years. The
21 examination must cover the preceding 3 fiscal years of the
22 carrier's operations and must commence within 12 months after
23 the end of the most recent fiscal year being covered by the
24 examination. The examination may cover any period of the
25 carrier's operations since the last previous examination.

26 Section 20. Subsections (1), (4), and (5) of section
27 443.012, Florida Statutes, are amended to read:

28 443.012 Unemployment Appeals Commission.--

29 (1) There is created within the Agency for Workforce
30 Innovation ~~Department of Labor and Employment Security~~ an
31 Unemployment Appeals Commission, hereinafter referred to as

1 the "commission." The commission shall consist of a chair and
2 two other members to be appointed by the Governor, subject to
3 confirmation by the Senate. Not more than one appointee must
4 be a person who, on account of previous vocation, employment,
5 or affiliation, is classified as a representative of
6 employers; and not more than one such appointee must be a
7 person who, on account of previous vocation, employment, or
8 affiliation, is classified as a representative of employees.

9 (a) The chair shall devote his or her entire time to
10 commission duties and shall be responsible for the
11 administrative functions of the commission.

12 (b) The chair shall have the authority to appoint a
13 general counsel and such other personnel as may be necessary
14 to carry out the duties and responsibilities of the
15 commission.

16 (c) The chair shall have the qualifications required
17 by law for a judge of the circuit court and shall not engage
18 in any other business vocation or employment. Notwithstanding
19 any other provisions of existing law, the chair shall be paid
20 a salary equal to that paid under state law to a judge of the
21 circuit court.

22 (d) The remaining members shall be paid a stipend of
23 \$100 for each day they are engaged in the work of the
24 commission. The chair and other members shall also be
25 reimbursed for travel expenses, as provided in s. 112.061.

26 (e) The total salary and travel expenses of each
27 member of the commission shall be paid from the Employment
28 Security Administration Trust Fund.

29 (4) The property, personnel, and appropriations
30 relating to the specified authority, powers, duties, and
31 responsibilities of the commission shall be provided to the

1 commission by the Agency for Workforce Innovation ~~Department~~
2 ~~of Labor and Employment Security~~.

3 (5) The commission shall not be subject to control,
4 supervision, or direction by the Agency for Workforce
5 Innovation ~~Department of Labor and Employment Security~~ in the
6 performance of its powers and duties under this chapter.

7 Section 21. Subsection (12) of section 443.036,
8 Florida Statutes, is amended to read:

9 443.036 Definitions.--As used in this chapter, unless
10 the context clearly requires otherwise:

11 (12) COMMISSION.--"Commission" means the Unemployment
12 Appeals Commission ~~of the Department of Labor and Employment~~
13 ~~Security~~.

14 Section 22. Subsection (3) of section 447.02, Florida
15 Statutes, is amended to read:

16 447.02 Definitions.--The following terms, when used in
17 this chapter, shall have the meanings ascribed to them in this
18 section:

19 (3) The term "department" means the Department of
20 Business and Professional Regulation ~~Labor and Employment~~
21 ~~Security~~.

22 Section 23. Subsection (4) of section 447.305, Florida
23 Statutes, is amended to read:

24 447.305 Registration of employee organization.--

25 (4) Notification of registrations and renewals of
26 registration shall be furnished at regular intervals by the
27 commission to the Department of Business and Professional
28 Regulation ~~Labor and Employment Security~~.

29 Section 24. Subsection (4) of section 450.012, Florida
30 Statutes, is amended to read:

31

1 450.012 Definitions.--For the purpose of this chapter,
2 the word, phrase, or term:

3 (4) "Department" means the Department of Business and
4 Professional Regulation ~~Labor and Employment Security~~.

5 Section 25. Paragraph (j) of subsection (1) of section
6 450.191, Florida Statutes, is amended to read:

7 450.191 Executive Office of the Governor; powers and
8 duties.--

9 (1) The Executive Office of the Governor is authorized
10 and directed to:

11 (j) Cooperate with the farm labor office of the
12 Department of Business and Professional Regulation ~~Labor and~~
13 ~~Employment Security~~ in the recruitment and referral of migrant
14 laborers and other persons for the planting, cultivation, and
15 harvesting of agricultural crops in Florida.

16 Section 26. Subsection (2) of section 450.28, Florida
17 Statutes, is amended to read:

18 450.28 Definitions.--

19 (2) "Department" means the Department of Business and
20 Professional Regulation ~~Labor and Employment Security~~.

21 Section 27. Paragraph (m) of subsection (2) of section
22 110.205, Florida Statutes, is amended to read:

23 110.205 Career service; exemptions.--

24 (2) EXEMPT POSITIONS.--The exempt positions that are
25 not covered by this part include the following:

26 (m) All assistant division director, deputy division
27 director, and bureau chief positions in any department, and
28 those positions determined by the department to have
29 managerial responsibilities comparable to such positions,
30 which positions include, but are not limited to, positions in
31 the Department of Health, the Department of Children and

1 Family Services, and the Department of Corrections that are
2 assigned primary duties of serving as the superintendent or
3 assistant superintendent, or warden or assistant warden, of an
4 institution; positions in the Department of Corrections that
5 are assigned primary duties of serving as the circuit
6 administrator or deputy circuit administrator; positions in
7 the Department of Transportation that are assigned primary
8 duties of serving as regional toll managers and managers of
9 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
10 in the Department of Environmental Protection that are
11 assigned the duty of an Environmental Administrator or program
12 administrator; ~~those positions described in s. 20.171 as~~
13 ~~included in the Senior Management Service~~; and positions in
14 the Department of Health that are assigned the duties of
15 Environmental Administrator, Assistant County Health
16 Department Director, and County Health Department Financial
17 Administrator. Unless otherwise fixed by law, the department
18 shall set the salary and benefits of these positions in
19 accordance with the rules established for the Selected Exempt
20 Service.

21 Section 28. Paragraph (h) of subsection (2) of section
22 112.19, Florida Statutes, is amended to read:

23 112.19 Law enforcement, correctional, and correctional
24 probation officers; death benefits.--

25 (2)

26 (h)1. Any employer who employs a full-time law
27 enforcement, correctional, or correctional probation officer
28 who, on or after January 1, 1995, suffers a catastrophic
29 injury, as defined in s. 440.02 ~~s. 440.02(37)~~, in the line of
30 duty shall pay the entire premium of the employer's health
31 insurance plan for the injured employee, the injured

1 employee's spouse, and for each dependent child of the injured
2 employee until the child reaches the age of majority or until
3 the end of the calendar year in which the child reaches the
4 age of 25 if the child continues to be dependent for support,
5 or the child is a full-time or part-time student and is
6 dependent for support. The term "health insurance plan" does
7 not include supplemental benefits that are not part of the
8 basic group health insurance plan. If the injured employee
9 subsequently dies, the employer shall continue to pay the
10 entire health insurance premium for the surviving spouse until
11 remarried, and for the dependent children, under the
12 conditions outlined in this paragraph. However:

13 a. Health insurance benefits payable from any other
14 source shall reduce benefits payable under this section.

15 b. It is unlawful for a person to willfully and
16 knowingly make, or cause to be made, or to assist, conspire
17 with, or urge another to make, or cause to be made, any false,
18 fraudulent, or misleading oral or written statement to obtain
19 health insurance coverage as provided under this paragraph. A
20 person who violates this sub-subparagraph commits a
21 misdemeanor of the first degree, punishable as provided in s.
22 775.082 or s. 775.083.

23 c. In addition to any applicable criminal penalty,
24 upon conviction for a violation as described in
25 sub-subparagraph b., a law enforcement, correctional, or
26 correctional probation officer or other beneficiary who
27 receives or seeks to receive health insurance benefits under
28 this paragraph shall forfeit the right to receive such health
29 insurance benefits, and shall reimburse the employer for all
30 benefits paid due to the fraud or other prohibited activity.
31 For purposes of this sub-subparagraph, "conviction" means a

1 determination of guilt that is the result of a plea or trial,
2 regardless of whether adjudication is withheld.

3 2. In order for the officer, spouse, and dependent
4 children to be eligible for such insurance coverage, the
5 injury must have occurred as the result of the officer's
6 response to fresh pursuit, the officer's response to what is
7 reasonably believed to be an emergency, or an unlawful act
8 perpetrated by another. Except as otherwise provided herein,
9 nothing in this paragraph shall be construed to limit health
10 insurance coverage for which the officer, spouse, or dependent
11 children may otherwise be eligible, except that a person who
12 qualifies under this section shall not be eligible for the
13 health insurance subsidy provided under chapter 121, chapter
14 175, or chapter 185.

15 Section 29. Paragraph (g) of subsection (2) of section
16 112.191, Florida Statutes, is amended to read:

17 112.191 Firefighters; death benefits.--

18 (2)

19 (g)1. Any employer who employs a full-time firefighter
20 who, on or after January 1, 1995, suffers a catastrophic
21 injury, as defined in s. 440.02 ~~s. 440.02(37)~~, in the line of
22 duty shall pay the entire premium of the employer's health
23 insurance plan for the injured employee, the injured
24 employee's spouse, and for each dependent child of the injured
25 employee until the child reaches the age of majority or until
26 the end of the calendar year in which the child reaches the
27 age of 25 if the child continues to be dependent for support,
28 or the child is a full-time or part-time student and is
29 dependent for support. The term "health insurance plan" does
30 not include supplemental benefits that are not part of the
31 basic group health insurance plan. If the injured employee

1 subsequently dies, the employer shall continue to pay the
2 entire health insurance premium for the surviving spouse until
3 remarried, and for the dependent children, under the
4 conditions outlined in this paragraph. However:

5 a. Health insurance benefits payable from any other
6 source shall reduce benefits payable under this section.

7 b. It is unlawful for a person to willfully and
8 knowingly make, or cause to be made, or to assist, conspire
9 with, or urge another to make, or cause to be made, any false,
10 fraudulent, or misleading oral or written statement to obtain
11 health insurance coverage as provided under this paragraph. A
12 person who violates this sub-subparagraph commits a
13 misdemeanor of the first degree, punishable as provided in s.
14 775.082 or s. 775.083.

15 c. In addition to any applicable criminal penalty,
16 upon conviction for a violation as described in
17 sub-subparagraph b., a firefighter or other beneficiary who
18 receives or seeks to receive health insurance benefits under
19 this paragraph shall forfeit the right to receive such health
20 insurance benefits, and shall reimburse the employer for all
21 benefits paid due to the fraud or other prohibited activity.
22 For purposes of this sub-subparagraph, "conviction" means a
23 determination of guilt that is the result of a plea or trial,
24 regardless of whether adjudication is withheld.

25 2. In order for the firefighter, spouse, and dependent
26 children to be eligible for such insurance coverage, the
27 injury must have occurred as the result of the firefighter's
28 response to what is reasonably believed to be an emergency
29 involving the protection of life or property, or an unlawful
30 act perpetrated by another. Except as otherwise provided
31 herein, nothing in this paragraph shall be construed to limit

1 health insurance coverage for which the firefighter, spouse,
2 or dependent children may otherwise be eligible, except that a
3 person who qualifies for benefits under this section shall not
4 be eligible for the health insurance subsidy provided under
5 chapter 121, chapter 175, or chapter 185.

6
7 Notwithstanding any provision of this section to the contrary,
8 the death benefits provided in paragraphs (b), (c), and (f)
9 shall also be applicable and paid in cases where a firefighter
10 received bodily injury prior to July 1, 1993, and subsequently
11 died on or after July 1, 1993, as a result of such
12 in-line-of-duty injury.

13 Section 30. Section 121.125, Florida Statutes, is
14 amended to read:

15 121.125 Credit for workers' compensation payment
16 periods.--A member of the retirement system created by this
17 chapter who has been eligible or becomes eligible to receive
18 workers' compensation payments for an injury or illness
19 occurring during his or her employment while a member of any
20 state retirement system shall, upon return to active
21 employment with a covered employer for 1 calendar month or
22 upon approval for disability retirement in accordance with s.
23 121.091(4), receive full retirement credit for the period
24 prior to such return to active employment or disability
25 retirement for which the workers' compensation payments were
26 received. However, no member may receive retirement credit
27 for any such period occurring after the earlier of the date of
28 maximum medical improvement ~~has been attained~~ as defined in s.
29 440.02 ~~s. 440.02(9)~~ or the date termination has occurred as
30 defined in s. 121.021(39). The employer of record at the time
31 of the worker's compensation injury or illness shall make the

1 required retirement contributions based on the member's rate
2 of monthly compensation immediately prior to his or her
3 receiving workers' compensation payments for retirement credit
4 received by the member.

5 Section 31. Subsection (7) of section 122.03, Florida
6 Statutes, is amended to read:

7 122.03 Contributions; participants; prior service
8 credit.--

9 (7) A member of the retirement system created by this
10 chapter who has been eligible or becomes eligible to receive
11 workers' compensation payments for an injury or illness
12 occurring during his or her employment while a member of any
13 state retirement system shall, upon his or her return to
14 active employment with a covered employer for 1 calendar month
15 or upon his or her approval for disability retirement in
16 accordance with s. 122.09, receive full retirement credit for
17 the period prior to such return to active employment or
18 disability retirement for which the workers' compensation
19 payments were received. However, no member may receive
20 retirement credit for any such period occurring after the
21 earlier of the date of maximum medical improvement ~~has been~~
22 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date
23 termination has occurred as defined in s. 121.021(39). The
24 employer of record at the time of the worker's compensation
25 injury or illness shall make the required employee and
26 employer retirement contributions based on the member's rate
27 of monthly compensation immediately prior to receipt of
28 workers' compensation payments.

29 Section 32. Subsection (10) of section 238.06, Florida
30 Statutes, is amended to read:

31

1 238.06 Membership application, creditable service, and
2 time for making contributions.--

3 (10) A member of the retirement system created by this
4 chapter who has been eligible or becomes eligible to receive
5 workers' compensation payments for an injury or illness
6 occurring during his or her employment while a member of any
7 state retirement system shall, upon his or her return to
8 active employment with a covered employer for 1 calendar month
9 or upon his or her approval for disability retirement in
10 accordance with s. 238.07, receive full retirement credit for
11 the period prior to such return to active employment or
12 disability retirement for which the workers' compensation
13 payments were received. However, no member may receive
14 retirement credit for any such period occurring after the
15 earlier of the date of maximum medical improvement ~~has been~~
16 ~~attained~~ as defined in s. 440.02 ~~s. 440.02(9)~~ or the date
17 termination has occurred as defined in s. 121.021(39). The
18 employer of record at the time of the worker's compensation
19 injury or illness shall make the required employee and
20 employer retirement contributions based on the member's rate
21 of monthly compensation immediately prior to his or her
22 receiving workers' compensation payments.

23 Section 33. Subsection (1) of section 440.10, Florida
24 Statutes, is amended to read:

25 440.10 Liability for compensation.--

26 (1)(a) Every employer coming within the provisions of
27 this chapter, including any brought within the chapter by
28 waiver of exclusion or of exemption, shall be liable for, and
29 shall secure, the payment to his or her employees, or any
30 physician, surgeon, or pharmacist providing services under the
31 provisions of s. 440.13, of the compensation payable under ss.

1 440.13, 440.15, and 440.16. Any contractor or subcontractor
2 who engages in any public or private construction in the state
3 shall secure and maintain compensation for his or her
4 employees under this chapter as provided in s. 440.38.

5 (b) In case a contractor sublets any part or parts of
6 his or her contract work to a subcontractor or subcontractors,
7 all of the employees of such contractor and subcontractor or
8 subcontractors engaged on such contract work shall be deemed
9 to be employed in one and the same business or establishment;
10 and the contractor shall be liable for, and shall secure, the
11 payment of compensation to all such employees, except to
12 employees of a subcontractor who has secured such payment.

13 (c) A contractor may require a subcontractor to
14 provide evidence of workers' compensation insurance or a copy
15 of his or her certificate of election. A subcontractor
16 electing to be exempt as a sole proprietor, partner, or
17 officer of a corporation shall provide a copy of his or her
18 certificate of election to the contractor.

19 (d)1. If a contractor becomes liable for the payment
20 of compensation to the employees of a subcontractor who has
21 failed to secure such payment in violation of s. 440.38, the
22 contractor or other third-party payor shall be entitled to
23 recover from the subcontractor all benefits paid or payable
24 plus interest unless the contractor and subcontractor have
25 agreed in writing that the contractor will provide coverage.

26 2. If a contractor or third-party payor becomes liable
27 for the payment of compensation to the employee of a
28 subcontractor who is actively engaged in the construction
29 industry and has elected to be exempt from the provisions of
30 this chapter, but whose election is invalid, the contractor or
31 third-party payor may recover from the claimant, partnership,

1 or corporation all benefits paid or payable plus interest,
2 unless the contractor and the subcontractor have agreed in
3 writing that the contractor will provide coverage.

4 (e) A subcontractor is not liable for the payment of
5 compensation to the employees of another subcontractor on such
6 contract work and is not protected by the
7 exclusiveness-of-liability provisions of s. 440.11 from action
8 at law or in admiralty on account of injury of such employee
9 of another subcontractor.

10 (f) If an employer willfully fails to secure
11 compensation as required by this chapter, the division may
12 assess against the employer a penalty not to exceed \$5,000 for
13 each employee of that employer who is classified by the
14 employer as an independent contractor but who is found by the
15 division to not meet the criteria for an independent
16 contractor that are set forth in s. 440.02.

17 (g) For purposes of this section, a person is
18 conclusively presumed to be an independent contractor if:

19 1. The independent contractor provides the general
20 contractor with an affidavit stating that he or she meets all
21 the requirements of s. 440.02(15)(d)~~s. 440.02(14)(d)~~; and

22 2. The independent contractor provides the general
23 contractor with a valid certificate of workers' compensation
24 insurance or a valid certificate of exemption issued by the
25 division.

26
27 A sole proprietor, partner, or officer of a corporation who
28 elects exemption from this chapter by filing a certificate of
29 election under s. 440.05 may not recover benefits or
30 compensation under this chapter. An independent contractor
31 who provides the general contractor with both an affidavit

1 stating that he or she meets the requirements of s.
2 440.02(15)(d)~~s. 440.02(14)(d)~~ and a certificate of exemption
3 is not an employee under s. 440.02(15)(c)~~s. 440.02(14)(c)~~ and
4 may not recover benefits under this chapter. For purposes of
5 determining the appropriate premium for workers' compensation
6 coverage, carriers may not consider any person who meets the
7 requirements of this paragraph to be an employee.

8 Section 34. Subsection (1) of section 440.104, Florida
9 Statutes, is amended to read:

10 440.104 Competitive bidder; civil actions.--

11 (1) Any person engaged in the construction industry,
12 as provided in s. 440.02 ~~s. 440.02(7)~~, who loses a competitive
13 bid for a contract shall have a cause of action for damages
14 against the person awarded the contract for which the bid was
15 made, if the person making the losing bid establishes that the
16 winning bidder knew or should have known that he or she was in
17 violation of s. 440.10, s. 440.105, or s. 440.38 while
18 performing the work under the contract.

19 Section 35. Subsection (23) of section 440.134,
20 Florida Statutes, is amended to read:

21 440.134 Workers' compensation managed care
22 arrangement.--

23 (23) The agency shall immediately notify the
24 Department of Insurance ~~and the Department of Labor and~~
25 ~~Employment Security~~ whenever it issues an administrative
26 complaint or an order or otherwise initiates legal proceedings
27 resulting in, or which may result in, suspension or revocation
28 of an insurer's authorization.

29 Section 36. Subsection (4) of section 440.14, Florida
30 Statutes, is amended to read:

31 440.14 Determination of pay.--

1 (4) Upon termination of the employee or upon
2 termination of the payment of fringe benefits of any employee
3 who is collecting indemnity benefits pursuant to s. 440.15(2)
4 or (3)(b), the employer shall within 7 days of such
5 termination file a corrected 13-week wage statement reflecting
6 the wages paid and the fringe benefits that had been paid to
7 the injured employee, as provided ~~defined~~ in s. 440.02(28) ~~s.~~
8 ~~440.02(27)~~.

9 Section 37. Subsection (3) of section 440.51, Florida
10 Statutes, is amended to read:

11 440.51 Expenses of administration.--

12 (3) If any carrier fails to pay the amounts assessed
13 against him or her under the provisions of this section within
14 60 days from the time such notice is served upon him or her,
15 the Department of Insurance upon being advised by the division
16 may suspend or revoke the authorization to insure compensation
17 in accordance with the procedure in s. 440.38(3) ~~(a)~~. The
18 division may permit a carrier to remit any underpayment of
19 assessments for assessments levied after January 1, 2001.

20 Section 38. Section 489.114, Florida Statutes, is
21 amended to read:

22 489.114 Evidence of workers' compensation
23 coverage.--Except as provided in s. 489.115(5)(d), any person,
24 business organization, or qualifying agent engaged in the
25 business of contracting in this state and certified or
26 registered under this part shall, as a condition precedent to
27 the issuance or renewal of a certificate, registration, or
28 certificate of authority of the contractor, provide to the
29 Construction Industry Licensing Board, as provided by board
30 rule, evidence of workers' compensation coverage pursuant to
31 chapter 440. In the event that the Division of Workers'

1 Compensation of the Department of Insurance ~~Labor and~~
2 ~~Employment Security~~ receives notice of the cancellation of a
3 policy of workers' compensation insurance insuring a person or
4 entity governed by this section, the Division of Workers'
5 Compensation shall certify and identify all persons or
6 entities by certification or registration license number to
7 the department after verification is made by the Division of
8 Workers' Compensation that such cancellation has occurred or
9 that persons or entities governed by this section are no
10 longer covered by workers' compensation insurance. Such
11 certification and verification by the Division of Workers'
12 Compensation shall result solely from records furnished to the
13 Division of Workers' Compensation by the persons or entities
14 governed by this section. The department shall notify the
15 persons or entities governed by this section who have been
16 determined to be in noncompliance with chapter 440, and the
17 persons or entities notified shall provide certification of
18 compliance with chapter 440 to the department and pay an
19 administrative fine as provided by rule. The failure to
20 maintain workers' compensation coverage as required by law
21 shall be grounds for the board to revoke, suspend, or deny the
22 issuance or renewal of a certificate, registration, or
23 certificate of authority of the contractor under the
24 provisions of s. 489.129.

25 Section 39. Section 489.510, Florida Statutes, is
26 amended to read:

27 489.510 Evidence of workers' compensation
28 coverage.--Except as provided in s. 489.515(3)(b), any person,
29 business organization, or qualifying agent engaged in the
30 business of contracting in this state and certified or
31 registered under this part shall, as a condition precedent to

1 the issuance or renewal of a certificate or registration of
2 the contractor, provide to the Electrical Contractors'
3 Licensing Board, as provided by board rule, evidence of
4 workers' compensation coverage pursuant to chapter 440. In
5 the event that the Division of Workers' Compensation of the
6 Department of Insurance ~~Labor and Employment Security~~ receives
7 notice of the cancellation of a policy of workers'
8 compensation insurance insuring a person or entity governed by
9 this section, the Division of Workers' Compensation shall
10 certify and identify all persons or entities by certification
11 or registration license number to the department after
12 verification is made by the Division of Workers' Compensation
13 that such cancellation has occurred or that persons or
14 entities governed by this section are no longer covered by
15 workers' compensation insurance. Such certification and
16 verification by the Division of Workers' Compensation shall
17 result solely from records furnished to the Division of
18 Workers' Compensation by the persons or entities governed by
19 this section. The department shall notify the persons or
20 entities governed by this section who have been determined to
21 be in noncompliance with chapter 440, and the persons or
22 entities notified shall provide certification of compliance
23 with chapter 440 to the department and pay an administrative
24 fine as provided by rule. The failure to maintain workers'
25 compensation coverage as required by law shall be grounds for
26 the board to revoke, suspend, or deny the issuance or renewal
27 of a certificate or registration of the contractor under the
28 provisions of s. 489.533.

29 Section 40. Paragraph (m) of subsection (1) of section
30 626.88, Florida Statutes, is amended to read:

31 626.88 Definitions of "administrator" and "insurer".--

1 (1) For the purposes of this part, an "administrator"
2 is any person who directly or indirectly solicits or effects
3 coverage of, collects charges or premiums from, or adjusts or
4 settles claims on residents of this state in connection with
5 authorized commercial self-insurance funds or with insured or
6 self-insured programs which provide life or health insurance
7 coverage or coverage of any other expenses described in s.
8 624.33(1), other than any of the following persons:

9 (m) A person approved by the Division of Workers'
10 Compensation of the Department of Insurance ~~Labor and~~
11 ~~Employment Security~~ who administers only self-insured workers'
12 compensation plans.

13 Section 41. Subsection (9) of section 626.989, Florida
14 Statutes, is amended to read:

15 626.989 Investigation by department or Division of
16 Insurance Fraud; compliance; immunity; confidential
17 information; reports to division; division investigator's
18 power of arrest.--

19 (9) In recognition of the complementary roles of
20 investigating instances of workers' compensation fraud and
21 enforcing compliance with the workers' compensation coverage
22 requirements under chapter 440, the Division of Insurance
23 Fraud and the Division of Workers' Compensation of the
24 Department of Insurance ~~and the Division of Workers'~~
25 ~~Compensation of the Department of Labor and Employment~~
26 ~~Security~~ are directed to prepare and submit a joint
27 performance report to the President of the Senate and the
28 Speaker of the House of Representatives by November 1 of each
29 year for each of the next 2 years, and then every 3 years
30 thereafter, describing the results obtained in achieving
31 compliance with the workers' compensation coverage

1 requirements and reducing the incidence of workers'
2 compensation fraud.

3 Section 42. Section 627.0915, Florida Statutes, is
4 amended to read:

5 627.0915 Rate filings; workers' compensation,
6 drug-free workplace, and safe employers.--The Department of
7 Insurance shall approve rating plans for workers' compensation
8 insurance that give specific identifiable consideration in the
9 setting of rates to employers that either implement a
10 drug-free workplace program pursuant to rules adopted by the
11 Division of Workers' Compensation ~~of the Department of Labor~~
12 ~~and Employment Security~~ or implement a safety program pursuant
13 to provisions of the rating plan or implement both a drug-free
14 workplace program and a safety program. The plans must be
15 actuarially sound and must state the savings anticipated to
16 result from such drug-testing and safety programs.

17 Section 43. Subsection (3) of section 627.914, Florida
18 Statutes, is amended to read:

19 627.914 Reports of information by workers'
20 compensation insurers required.--

21 (3) Individual self-insurers as defined in s. 440.02
22 shall report only Florida data as prescribed in paragraphs
23 (2)(a)-(e) to the Division of Workers' Compensation of the
24 Department of Insurance ~~Labor and Employment Security~~.

25 (a) The Division of Workers' Compensation shall
26 publish the dates and forms necessary to enable individual
27 self-insurers to comply with this section.

28 (b) A statistical or rating organization may be used
29 by individual self-insurers for the purposes of reporting the
30 data required by this section and calculating experience
31 ratings.

