

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; amending s. 20.13, F.S.;
30 establishing the Division of Workers'
31 Compensation within the Department of

1 Insurance; amending s. 440.02, F.S.; providing
2 a definition for the term "agency"; conforming
3 definitions of "department" and "division" to
4 the transfer of the Division of Workers'
5 Compensation; amending ss. 440.102 and 440.125,
6 F.S.; conforming agency references to reflect
7 the transfer of the Division of Workers'
8 Compensation; amending s. 440.13, F.S.,
9 relating to medical services and supplies under
10 the workers' compensation law; reassigning
11 certain functions from the Division of Workers'
12 Compensation to the Agency for Health Care
13 Administration; conforming agency references to
14 reflect the transfer of the Division of
15 Workers' Compensation; amending s. 440.15,
16 F.S.; providing for the agency to specify
17 certain forms and procedures governing wage
18 loss and impairment benefits; conforming a
19 cross reference; amending ss. 440.20 and
20 440.207, F.S., relating to payment of
21 compensation; conforming provisions to changes
22 made by the act; amending ss. 440.25 and
23 440.271, F.S., relating to mediation, hearings,
24 and appeals; conforming provisions to changes
25 made by the act; amending s. 440.381, F.S.,
26 relating to audits of payroll and
27 classifications; conforming provisions to
28 changes made by the act; amending s. 440.49,
29 F.S.; reassigning responsibility for a report
30 on the Special Disability Trust Fund to the
31 Department of Insurance; amending s. 440.491,

1 F.S., relating to the reemployment of injured
2 workers; conforming references to the transfer
3 of rehabilitation and reemployment services to
4 the Department of Education; amending s.
5 440.525, F.S., relating to the examination of
6 carriers; conforming agency references to the
7 transfer of programs from the Department of
8 Labor and Employment Security to the Department
9 of Insurance; amending s. 443.012, F.S.;
10 providing for the Unemployment Appeals
11 Commission to be created within the Agency for
12 Workforce Innovation rather than the Department
13 of Labor and Employment Security; conforming
14 provisions; amending s. 443.036, F.S.;
15 conforming the definition of "commission" to
16 the transfer of the Unemployment Appeals
17 Commission to the Agency for Workforce
18 Innovation; amending s. 447.02, F.S.;
19 conforming the definition of "department" to
20 the transfer of the regulation of labor
21 organizations to the Department of Business and
22 Professional Regulation; amending s. 447.305,
23 F.S.; providing that notification of
24 registrations and renewals of registration
25 shall be furnished to the Department of
26 Business and Professional Regulation, to
27 conform; amending s. 450.012, F.S.; conforming
28 the definition of "department" to the transfer
29 of the regulation of child labor to the
30 Department of Business and Professional
31 Regulation; amending s. 450.191, F.S., relating

1 to the duties of the Executive Office of the
2 Governor with respect to migrant labor;
3 conforming provisions to changes made by the
4 act; amending s. 450.28, F.S.; conforming the
5 definition of "department" to the transfer of
6 the regulation of farm labor to the Department
7 of Business and Professional Regulation;
8 amending ss. 110.205, 112.19, 112.191, 121.125,
9 122.03, 238.06, 440.10, 440.104, 440.134,
10 440.14, 440.51, 489.114, 489.510, 626.88,
11 626.989, 627.0915, and 627.914, F.S., to
12 conform; repealing s. 20.171, F.S., relating to
13 the establishment and the authority and
14 organizational structure of the Department of
15 Labor and Employment Security; repealing s.
16 440.4416, F.S., relating to the Workers'
17 Compensation Oversight Board; repealing s.
18 440.59, F.S., relating to certain reporting
19 requirements; providing for severability;
20 providing effective dates.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. (1) All powers, duties, functions, rules,
25 records, personnel, property, and unexpended balances of
26 appropriations, allocations, and other funds of the Division
27 of Workers' Compensation are transferred by a type two
28 transfer, as defined in section 20.06(2), Florida Statutes,
29 from the Department of Labor and Employment Security to the
30 Department of Insurance, except as otherwise provided in this
31 section. The full-time equivalent positions and the associated

1 funding for salaries, benefits, and expenses related to
2 oversight of medical services in workers' compensation
3 provider relations, dispute and complaint resolution, program
4 evaluation, data management, and carrier compliance and review
5 are transferred by a type two transfer, as defined in section
6 20.06(2), Florida Statutes, from the Department of Labor and
7 Employment Security to the Agency for Health Care
8 Administration; the full-time equivalent positions and the
9 associated funding for salaries, benefits, and expenses
10 related to the rehabilitation and reemployment of injured
11 workers are transferred by a type two transfer, as defined in
12 section 20.06(2), Florida Statutes, from the Department of
13 Labor and Employment Security to the Department of Education;
14 and the full-time equivalent positions and the associated
15 funding for salaries, benefits, and expenses related to the
16 administration of child labor laws under chapter 450, Florida
17 Statutes, are transferred by a type two transfer, as defined
18 in section 20.06(2), Florida Statutes, from the Department of
19 Labor and Employment Security to the Department of Business
20 and Professional Regulation. To the extent feasible, the
21 positions established by the Department of Insurance will be
22 at pay grades comparable to the positions established by the
23 Department of Labor and Employment Security based on the
24 classification codes and specifications of the positions for
25 work to be performed at the Department of Insurance. The
26 number of positions the department determines is needed may
27 not exceed the number of authorized positions and the salary
28 and benefits that were authorized for the Division of Workers'
29 Compensation within the Department of Labor and Employment
30 Security prior to the transfer. The Department of Insurance is
31 further authorized to reassign, reorganize, or otherwise

1 transfer positions to appropriate administrative subdivisions
2 within the department and to establish such regional offices
3 as are necessary to properly enforce and administer its
4 responsibilities under the Florida Insurance Code and chapter
5 440, Florida Statutes. The department may also enter into
6 contracts with public or private entities to administer its
7 duties and responsibilities associated with the transfer of
8 the Division of Workers' Compensation.

9 (2) All powers, duties, functions, rules, records,
10 personnel, property, and unexpended balances of
11 appropriations, allocations, and other funds of the Office of
12 the Secretary and the Office of Administrative Services of the
13 Department of Labor and Employment Security related to the
14 regulation of labor organizations under chapter 447, Florida
15 Statutes, and the administration of migrant labor and farm
16 labor laws under chapter 450, Florida Statutes, are
17 transferred by a type two transfer, as defined in section
18 20.06(2), Florida Statutes, from the Department of Labor and
19 Employment Security to the Department of Business and
20 Professional Regulation.

21 (3) Any other powers, duties, functions, rules,
22 records, property, and unexpended balances of appropriations,
23 allocations, and other funds of the Department of Labor and
24 Employment Security not otherwise transferred by this act
25 relating to workplace regulation and enforcement, including,
26 but not limited to, those under chapter 448, Florida Statutes,
27 are transferred by a type two transfer, as defined in section
28 20.06(2), Florida Statutes, from the Department of Labor and
29 Employment Security to the Department of Business and
30 Professional Regulation.

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1 (4) All powers, duties, functions, rules, records,
2 personnel, property, and unexpended balances of
3 appropriations, allocations, and other funds of the
4 Unemployment Appeals Commission relating to the commission's
5 specified authority, powers, duties, and responsibilities are
6 transferred by a type two transfer, as defined in section
7 20.06(2), Florida Statutes, to the Agency for Workforce
8 Innovation.

9 (5) The Office of Information Systems is transferred
10 by a type two transfer, as defined in s. 20.06(2), Florida
11 Statutes, from the Department of Labor and Employment Security
12 to the State Technology Office. Upon completion of this
13 transfer, the State Technology Office and the Department of
14 Insurance shall enter into discussions to determine whether it
15 would be technologically feasible and cost effective to
16 separate the Workers' Compensation Integrated System from its
17 current mainframe platform and transfer ownership of this
18 system to the Department of Insurance. If the State Technology
19 Office ultimately determines that it is technologically
20 feasible and cost effective to transfer ownership of the
21 Workers' Compensation Integrated System from the State
22 Technology Office to the Department of Insurance, the State
23 Technology Office and the Department of Insurance shall
24 jointly develop and implement a plan to transfer this system
25 to the Department of Insurance.

26 (6)(a) The records, property, and unexpended balances
27 of appropriations, allocations, and other funds and resources
28 of the Office of the Secretary and the Office of
29 Administrative Services of the Department of Labor and
30 Employment Security which support the activities and functions
31 transferred under subsection (1) to the Department of

1 Insurance are transferred as provided in section 20.06(2),
2 Florida Statutes, to the Department of Insurance.

3 (b) The records, property, and unexpended balances of
4 appropriations, allocations, and other funds and resources of
5 the Office of the Secretary and the Office of Administrative
6 Services of the Department of Labor and Employment Security
7 which support the activities and functions transferred under
8 subsection (1) to the Agency for Health Care Administration
9 are transferred as provided in section 20.06(2), Florida
10 Statutes, to the Agency for Health Care Administration.

11 (c) The records, property, and unexpended balances of
12 appropriations, allocations, and other funds and resources of
13 the Office of the Secretary and the Office of Administrative
14 Services of the Department of Labor and Employment Security
15 which support the activities and functions transferred under
16 subsection (1) to the Department of Education are transferred
17 as provided in section 20.06(2), Florida Statutes, to the
18 Department of Education.

19 (d) The records, property, and unexpended balances of
20 appropriations, allocations, and other funds and resources of
21 the Office of the Secretary and the Office of Administrative
22 Services of the Department of Labor and Employment Security
23 which support the activities and functions transferred under
24 subsections (1), (2), and (3) to the Department of Business
25 and Professional Regulation are transferred as provided in
26 section 20.06(2), Florida Statutes, to the Department of
27 Business and Professional Regulation.

28 (e) The records, property, and unexpended balances of
29 appropriations, allocations, and other funds and resources of
30 the Office of the Secretary and the Office of Administrative
31 Services of the Department of Labor and Employment Security

1 which support the activities and functions transferred under
2 subsection (4) to the Agency for Workforce Innovation are
3 transferred as provided in section 20.06(2), Florida Statutes,
4 to the Agency for Workforce Innovation.

5 (f) The records, property, and unexpended balances of
6 appropriations, allocations, and other funds and resources of
7 the Office of the Secretary and the Office of Administrative
8 Services of the Department of Labor and Employment Security
9 which support the activities and functions transferred under
10 subsection (5) to the State Technology Office are transferred
11 as provided in section 20.06(2), Florida Statutes, to the
12 State Technology Office.

13 (7) The transfer of any programs, activities, and
14 functions under this act shall include the transfer of any
15 records and unexpended balances of appropriations,
16 allocations, or other funds related to such programs,
17 activities, and functions. Any surplus records and unexpended
18 balances of appropriations, allocations, or other funds not so
19 transferred shall be transferred to the Department of
20 Management Services for proper disposition. The Department of
21 Management Services shall become the custodian of any property
22 of the Department of Labor and Employment Security which is
23 not otherwise transferred for the purposes of chapter 273,
24 Florida Statutes. The Department of Management Services is
25 authorized to permit the use of such property by organizations
26 as necessary to implement the provisions of this act.

27 (8) The Department of Banking and Finance, in
28 conjunction with the Office of the Attorney General, may use
29 any unexpended balances of the Department of Labor and
30 Employment Security to settle any claims or leases, pay out
31 personnel annual leave or sick leave, or close out other costs

1 owed by the department, regardless of whether such costs
2 relate to federal, state, or local governments, department
3 employees, or the private sector. Any remaining balances of
4 the department shall be transferred as directed by this act or
5 by budget amendment.

6 (9) Except as otherwise provided in subsection (1) and
7 notwithstanding any other provision of law, any binding
8 contract or interagency agreement existing on or before July
9 1, 2002, between the Department of Labor and Employment
10 Security, or an entity or agent of the department, and any
11 other agency, entity, or person shall continue as a binding
12 contract or agreement for the remainder of the term of such
13 contract or agreement with the successor department, agency,
14 or entity responsible for the program, activity, or functions
15 relative to the contract or agreement.

16 (10) This act does not affect the validity of any
17 judicial or administrative proceeding involving the Department
18 of Labor and Employment Security which is pending as of the
19 effective date of any transfer under this act. The successor
20 department, agency, or entity responsible for the program,
21 activity, or function relative to the proceeding shall be
22 substituted, as of the effective date of the applicable
23 transfer under this act, for the Department of Labor and
24 Employment Security as a party in interest in any such
25 proceedings.

26 (11) To expedite the acquisition of goods and services
27 for implementation of the provisions of this act, the
28 Department of Insurance, the Agency for Health Care
29 Administration, the Department of Education, the Department of
30 Business and Professional Regulation, the Agency for Workforce
31 Innovation, and the State Technology Office are exempt from

1 the provisions of chapter 287, Florida Statutes, when
2 contracting for the purchase or lease of goods or services
3 under this act. This subsection shall take effect upon this
4 act becoming a law and shall expire July 1, 2003.

5 (12) To expedite the leasing of facilities for
6 implementation of the provisions of this act, the Department
7 of Revenue, the Agency for Health Care Administration, the
8 Department of Education, the Department of Business and
9 Professional Regulation, the Agency for Workforce Innovation,
10 and the State Technology Office are exempt from the
11 requirements of any state laws relating to the leasing of
12 space, including, but not limited to, the requirements imposed
13 by section 255.25, Florida Statutes, and any rules adopted
14 under such laws; however, all leases entered into under this
15 act through January 1, 2003, must be submitted for approval to
16 the Department of Management Services at the earliest
17 practicable time. This subsection shall take effect upon this
18 act becoming a law and shall expire January 1, 2003.

19 (13) Notwithstanding any provisions of chapter 120,
20 Florida Statutes, to the contrary, the Department of
21 Insurance, the Agency for Health Care Administration, the
22 Department of Education, the Department of Business and
23 Professional Regulation, the Agency for Workforce Innovation,
24 and the State Technology Office are authorized to develop
25 emergency rules relating to and in furtherance of the orderly
26 implementation of the provisions of this act. This subsection
27 shall take effect upon this act becoming a law, and these
28 emergency rules shall be valid for a period of 180 days after
29 July 1, 2002.

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

1 20.13 Department of Insurance.--There is created a
2 Department of Insurance.

3 (2) The following divisions of the Department of
4 Insurance are established:

5 (k) Division of Workers' Compensation.

6 Section 3. Subsections (3) through (39) of section
7 440.02, Florida Statutes, are renumbered as subsections (4)
8 through (40), respectively, a new subsection (3) is added to
9 said section, and renumbered subsections (12) and (14) of said
10 section are amended, to read:

11 440.02 Definitions.--When used in this chapter, unless
12 the context clearly requires otherwise, the following terms
13 shall have the following meanings:

14 (3) "Agency" means the Agency for Health Care
15 Administration.

16 (12)~~(11)~~ "Department" means the Department of
17 Insurance ~~Labor and Employment Security.~~

18 (14)~~(13)~~ "Division" means the Division of Workers'
19 Compensation of the Department of Insurance ~~Labor and~~
20 ~~Employment Security.~~

21 Section 4. Paragraph (a) of subsection (3) of section
22 440.102, Florida Statutes, is amended to read:

23 440.102 Drug-free workplace program requirements.--The
24 following provisions apply to a drug-free workplace program
25 implemented pursuant to law or to rules adopted by the Agency
26 for Health Care Administration:

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

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

31

- 1 1. A general statement of the employer's policy on
2 employee drug use, which must identify:
 - 3 a. The types of drug testing an employee or job
4 applicant may be required to submit to, including
5 reasonable-suspicion drug testing or drug testing conducted on
6 any other basis.
 - 7 b. The actions the employer may take against an
8 employee or job applicant on the basis of a positive confirmed
9 drug test result.
- 10 2. A statement advising the employee or job applicant
11 of the existence of this section.
- 12 3. A general statement concerning confidentiality.
- 13 4. Procedures for employees and job applicants to
14 confidentially report to a medical review officer the use of
15 prescription or nonprescription medications to a medical
16 review officer both before and after being tested.
- 17 5. A list of the most common medications, by brand
18 name or common name, as applicable, as well as by chemical
19 name, which may alter or affect a drug test. A list of such
20 medications as developed by the Agency for Health Care
21 Administration shall be available to employers through the
22 Division of Workers' Compensation of the Department of
23 Insurance ~~Labor and Employment Security~~.
- 24 6. The consequences of refusing to submit to a drug
25 test.
- 26 7. A representative sampling of names, addresses, and
27 telephone numbers of employee assistance programs and local
28 drug rehabilitation programs.
- 29 8. A statement that an employee or job applicant who
30 receives a positive confirmed test result may contest or
31 explain the result to the medical review officer within 5

1 working days after receiving written notification of the test
2 result; that if an employee's or job applicant's explanation
3 or challenge is unsatisfactory to the medical review officer,
4 the medical review officer shall report a positive test result
5 back to the employer; and that a person may contest the drug
6 test result pursuant to law or to rules adopted by the Agency
7 for Health Care Administration.

8 9. A statement informing the employee or job applicant
9 of his or her responsibility to notify the laboratory of any
10 administrative or civil action brought pursuant to this
11 section.

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

15 11. A statement regarding any applicable collective
16 bargaining agreement or contract and the right to appeal to
17 the Public Employees Relations Commission or applicable court.

18 12. A statement notifying employees and job applicants
19 of their right to consult with a medical review officer for
20 technical information regarding prescription or
21 nonprescription medication.

22 Section 5. Section 440.125, Florida Statutes, is
23 amended to read:

24 440.125 Medical records and reports; identifying
25 information in employee medical bills; confidentiality.--

26 (1) Any medical records and medical reports of an
27 injured employee and any information identifying an injured
28 employee in medical bills which are provided to the
29 department, agency, or Department of Education ~~Division of~~
30 ~~Workers' Compensation of the Department of Labor and~~
31 ~~Employment Security~~ pursuant to s. 440.13 are confidential and

1 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
2 I of the State Constitution, except as otherwise provided by
3 this chapter.

4 (2) The Legislature finds that it is a public
5 necessity that an injured employee's medical records and
6 medical reports and information identifying the employee in
7 medical bills held by the department, agency, or Department of
8 Education Division of Workers' Compensation pursuant to s.
9 440.13 be confidential and exempt from the public records law.
10 Public access to such information is an invasion of the
11 injured employee's right to privacy in that personal,
12 sensitive information would be revealed, and public knowledge
13 of such information could lead to discrimination against the
14 employee by coworkers and others. Additionally, there is
15 little utility in providing public access to such information
16 in that the effectiveness and efficiency of the workers'
17 compensation program can be otherwise adequately monitored and
18 evaluated.

19 (3) The department may share any confidential and
20 exempt information received pursuant to s. 440.13 with the
21 Agency for Health Care Administration in furtherance of the
22 agency's official duties under ss. 440.13 and 440.134. The
23 agency shall maintain the confidential and exempt status of
24 the information.

25 Section 6. Subsections (1), (3), (4), (5), (6), (7),
26 (8), (9), (11), (12), and (13) of section 440.13, Florida
27 Statutes, are amended to read:

28 440.13 Medical services and supplies; penalty for
29 violations; limitations.--

30 (1) DEFINITIONS.--As used in this section, the term:
31

1 (a) "Alternate medical care" means a change in
2 treatment or health care provider.

3 (b) "Attendant care" means care rendered by trained
4 professional attendants which is beyond the scope of household
5 duties. Family members may provide nonprofessional attendant
6 care, but may not be compensated under this chapter for care
7 that falls within the scope of household duties and other
8 services normally and gratuitously provided by family members.

9 "Family member" means a spouse, father, mother, brother,
10 sister, child, grandchild, father-in-law, mother-in-law, aunt,
11 or uncle.

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

15 (d) "Catastrophic injury" means an injury as defined
16 in s. 440.02.

17 (e) "Certified health care provider" means a health
18 care provider who has been certified by the agency ~~division~~ or
19 who has entered an agreement with a licensed managed care
20 organization to provide treatment to injured workers under
21 this section. Certification of such health care provider must
22 include documentation that the health care provider has read
23 and is familiar with the portions of the statute, impairment
24 guides, and rules which govern the provision of remedial
25 treatment, care, and attendance.

26 (f) "Compensable" means a determination by a carrier
27 or judge of compensation claims that a condition suffered by
28 an employee results from an injury arising out of and in the
29 course of employment.

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

1 (h) "Health care facility" means any hospital licensed
2 under chapter 395 and any health care institution licensed
3 under chapter 400.

4 (i) "Health care provider" means a physician or any
5 recognized practitioner who provides skilled services pursuant
6 to a prescription or under the supervision or direction of a
7 physician and who has been certified by the agency ~~division~~ as
8 a health care provider. The term "health care provider"
9 includes a health care facility.

10 (j) "Independent medical examiner" means a physician
11 selected by either an employee or a carrier to render one or
12 more independent medical examinations in connection with a
13 dispute arising under this chapter.

14 (k) "Independent medical examination" means an
15 objective evaluation of the injured employee's medical
16 condition, including, but not limited to, impairment or work
17 status, performed by a physician or an expert medical advisor
18 at the request of a party, a judge of compensation claims, or
19 the agency ~~division~~ to assist in the resolution of a dispute
20 arising under this chapter.

21 (l) "Instance of overutilization" means a specific
22 inappropriate service or level of service provided to an
23 injured employee.

24 (m) "Medically necessary" means any medical service or
25 medical supply which is used to identify or treat an illness
26 or injury, is appropriate to the patient's diagnosis and
27 status of recovery, and is consistent with the location of
28 service, the level of care provided, and applicable practice
29 parameters. The service should be widely accepted among
30 practicing health care providers, based on scientific
31 criteria, and determined to be reasonably safe. The service

1 must not be of an experimental, investigative, or research
2 nature, except in those instances in which prior approval of
3 the Agency for Health Care Administration has been obtained.
4 The Agency for Health Care Administration shall adopt rules
5 providing for such approval on a case-by-case basis when the
6 service or supply is shown to have significant benefits to the
7 recovery and well-being of the patient.

8 (n) "Medicine" means a drug prescribed by an
9 authorized health care provider and includes only generic
10 drugs or single-source patented drugs for which there is no
11 generic equivalent, unless the authorized health care provider
12 writes or states that the brand-name drug as defined in s.
13 465.025 is medically necessary, or is a drug appearing on the
14 schedule of drugs created pursuant to s. 465.025(6), or is
15 available at a cost lower than its generic equivalent.

16 (o) "Palliative care" means noncurative medical
17 services that mitigate the conditions, effects, or pain of an
18 injury.

19 (p) "Pattern or practice of overutilization" means
20 repetition of instances of overutilization within a specific
21 medical case or multiple cases by a single health care
22 provider.

23 (q) "Peer review" means an evaluation by two or more
24 physicians licensed under the same authority and with the same
25 or similar specialty as the physician under review, of the
26 appropriateness, quality, and cost of health care and health
27 services provided to a patient, based on medically accepted
28 standards.

29 (r) "Physician" or "doctor" means a physician licensed
30 under chapter 458, an osteopathic physician licensed under
31 chapter 459, a chiropractic physician licensed under chapter

1 460, a podiatric physician licensed under chapter 461, an
2 optometrist licensed under chapter 463, or a dentist licensed
3 under chapter 466, each of whom must be certified by the
4 agency ~~division~~ as a health care provider.

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

8 (t) "Utilization control" means a systematic process
9 of implementing measures that assure overall management and
10 cost containment of services delivered.

11 (u) "Utilization review" means the evaluation of the
12 appropriateness of both the level and the quality of health
13 care and health services provided to a patient, including, but
14 not limited to, evaluation of the appropriateness of
15 treatment, hospitalization, or office visits based on
16 medically accepted standards. Such evaluation must be
17 accomplished by means of a system that identifies the
18 utilization of medical services based on medically accepted
19 standards as established by medical consultants with
20 qualifications similar to those providing the care under
21 review, and that refers patterns and practices of
22 overutilization to the agency ~~division~~.

23 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

24 (a) As a condition to eligibility for payment under
25 this chapter, a health care provider who renders services must
26 be a certified health care provider and must receive
27 authorization from the carrier before providing treatment.
28 This paragraph does not apply to emergency care. The agency
29 ~~division~~ shall adopt rules to implement the certification of
30 health care providers.

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1 (b) A health care provider who renders emergency care
2 must notify the carrier by the close of the third business day
3 after it has rendered such care. If the emergency care results
4 in admission of the employee to a health care facility, the
5 health care provider must notify the carrier by telephone
6 within 24 hours after initial treatment. Emergency care is not
7 compensable under this chapter unless the injury requiring
8 emergency care arose as a result of a work-related accident.
9 Pursuant to chapter 395, all licensed physicians and health
10 care providers in this state shall be required to make their
11 services available for emergency treatment of any employee
12 eligible for workers' compensation benefits. To refuse to make
13 such treatment available is cause for revocation of a license.

14 (c) A health care provider may not refer the employee
15 to another health care provider, diagnostic facility, therapy
16 center, or other facility without prior authorization from the
17 carrier, except when emergency care is rendered. Any referral
18 must be to a health care provider that has been certified by
19 the agency division, unless the referral is for emergency
20 treatment.

21 (d) A carrier must respond, by telephone or in
22 writing, to a request for authorization by the close of the
23 third business day after receipt of the request. A carrier who
24 fails to respond to a written request for authorization for
25 referral for medical treatment by the close of the third
26 business day after receipt of the request consents to the
27 medical necessity for such treatment. All such requests must
28 be made to the carrier. Notice to the carrier does not include
29 notice to the employer.

30 (e) Carriers shall adopt procedures for receiving,
31 reviewing, documenting, and responding to requests for

1 authorization. Such procedures shall be for a health care
2 provider certified under this section.

3 (f) By accepting payment under this chapter for
4 treatment rendered to an injured employee, a health care
5 provider consents to the jurisdiction of the agency ~~division~~
6 as set forth in subsection (11) and to the submission of all
7 records and other information concerning such treatment to the
8 agency ~~division~~ in connection with a reimbursement dispute,
9 audit, or review as provided by this section. The health care
10 provider must further agree to comply with any decision of the
11 agency ~~division~~ rendered under this section.

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

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

18 (i) Notwithstanding paragraph (d), a claim for
19 specialist consultations, surgical operations,
20 physiotherapeutic or occupational therapy procedures, X-ray
21 examinations, or special diagnostic laboratory tests that cost
22 more than \$1,000 and other specialty services that the agency
23 ~~division~~ identifies by rule is not valid and reimbursable
24 unless the services have been expressly authorized by the
25 carrier, or unless the carrier has failed to respond within 10
26 days to a written request for authorization, or unless
27 emergency care is required. The insurer shall not refuse to
28 authorize such consultation or procedure unless the health
29 care provider or facility is not authorized or certified or
30 unless an expert medical advisor has determined that the
31 consultation or procedure is not medically necessary or

1 otherwise compensable under this chapter. Authorization of a
2 treatment plan does not constitute express authorization for
3 purposes of this section, except to the extent the carrier
4 provides otherwise in its authorization procedures. This
5 paragraph does not limit the carrier's obligation to identify
6 and disallow overutilization or billing errors.

7 (j) Notwithstanding anything in this chapter to the
8 contrary, a sick or injured employee shall be entitled, at all
9 times, to free, full, and absolute choice in the selection of
10 the pharmacy or pharmacist dispensing and filling
11 prescriptions for medicines required under this chapter. It is
12 expressly forbidden for the agency ~~division~~, an employer, or a
13 carrier, or any agent or representative of the agency
14 ~~division~~, an employer, or a carrier to select the pharmacy or
15 pharmacist which the sick or injured employee must use;
16 condition coverage or payment on the basis of the pharmacy or
17 pharmacist utilized; or to otherwise interfere in the
18 selection by the sick or injured employee of a pharmacy or
19 pharmacist.

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

22 (a) Any health care provider providing necessary
23 remedial treatment, care, or attendance to any injured worker
24 shall submit treatment reports to the carrier in a format
25 prescribed by the division in consultation with the agency. A
26 claim for medical or surgical treatment is not valid or
27 enforceable against such employer or employee, unless, by the
28 close of the third business day following the first treatment,
29 the physician providing the treatment furnishes to the
30 employer or carrier a preliminary notice of the injury and
31 treatment on forms prescribed by the division in consultation

1 with the agency and, within 15 days thereafter, furnishes to
2 the employer or carrier a complete report, and subsequent
3 thereto furnishes progress reports, if requested by the
4 employer or insurance carrier, at intervals of not less than 3
5 weeks apart or at less frequent intervals if requested on
6 forms prescribed by the department division.

7 (b) Upon the request of the division of ~~Workers'~~
8 ~~Compensation~~, each medical report or bill obtained or received
9 by the employer, the carrier, or the injured employee, or the
10 attorney for the employer, carrier, or injured employee, with
11 respect to the remedial treatment, care, and attendance of the
12 injured employee, including any report of an examination,
13 diagnosis, or disability evaluation, must be filed with the
14 department ~~Division of Workers' Compensation~~ pursuant to rules
15 adopted by the department in consultation with the agency
16 ~~division~~. The health care provider shall also furnish to the
17 injured employee or to his or her attorney, on demand, a copy
18 of his or her office chart, records, and reports, and may
19 charge the injured employee an amount authorized by the
20 department ~~division~~ for the copies. Each such health care
21 provider shall provide to the agency or department ~~division~~
22 information about the remedial treatment, care, and attendance
23 which the agency or department ~~division~~ reasonably requests.

24 (c) It is the policy for the administration of the
25 workers' compensation system that there be reasonable access
26 to medical information by all parties to facilitate the
27 self-executing features of the law. Notwithstanding the
28 limitations in s. 456.057 and subject to the limitations in s.
29 381.004, upon the request of the employer, the carrier, an
30 authorized qualified rehabilitation provider, or the attorney
31 for the employer or carrier, the medical records of an injured

1 employee must be furnished to those persons and the medical
2 condition of the injured employee must be discussed with those
3 persons, if the records and the discussions are restricted to
4 conditions relating to the workplace injury. Any such
5 discussions may be held before or after the filing of a claim
6 without the knowledge, consent, or presence of any other party
7 or his or her agent or representative. A health care provider
8 who willfully refuses to provide medical records or to discuss
9 the medical condition of the injured employee, after a
10 reasonable request is made for such information pursuant to
11 this subsection, shall be subject by the agency ~~division~~ to
12 one or more of the penalties set forth in paragraph (8)(b).

13 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

14 (a) In any dispute concerning overutilization, medical
15 benefits, compensability, or disability under this chapter,
16 the carrier or the employee may select an independent medical
17 examiner. The examiner may be a health care provider treating
18 or providing other care to the employee. An independent
19 medical examiner may not render an opinion outside his or her
20 area of expertise, as demonstrated by licensure and applicable
21 practice parameters.

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

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

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

30
31

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

4 4. The parties agree to an alternate examiner.

5
6 Any party may request, or a judge of compensation claims may
7 require, designation of an agency ~~a division~~ medical advisor
8 as an independent medical examiner. The opinion of the
9 advisors acting as examiners shall not be afforded the
10 presumption set forth in paragraph (9)(c).

11 (c) The carrier may, at its election, contact the
12 claimant directly to schedule a reasonable time for an
13 independent medical examination. The carrier must confirm the
14 scheduling agreement in writing within 5 days and notify
15 claimant's counsel, if any, at least 7 days before the date
16 upon which the independent medical examination is scheduled to
17 occur. An attorney representing a claimant is not authorized
18 to schedule independent medical evaluations under this
19 subsection.

20 (d) If the employee fails to appear for the
21 independent medical examination without good cause and fails
22 to advise the physician at least 24 hours before the scheduled
23 date for the examination that he or she cannot appear, the
24 employee is barred from recovering compensation for any period
25 during which he or she has refused to submit to such
26 examination. Further, the employee shall reimburse the carrier
27 50 percent of the physician's cancellation or no-show fee
28 unless the carrier that schedules the examination fails to
29 timely provide to the employee a written confirmation of the
30 date of the examination pursuant to paragraph (c) which
31 includes an explanation of why he or she failed to appear. The

1 employee may appeal to a judge of compensation claims for
2 reimbursement when the carrier withholds payment in excess of
3 the authority granted by this section.

4 (e) No medical opinion other than the opinion of a
5 medical advisor appointed by the judge of compensation claims
6 or agency division, an independent medical examiner, or an
7 authorized treating provider is admissible in proceedings
8 before the judges of compensation claims.

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

13 (6) UTILIZATION REVIEW.--Carriers shall review all
14 bills, invoices, and other claims for payment submitted by
15 health care providers in order to identify overutilization and
16 billing errors, and may hire peer review consultants or
17 conduct independent medical evaluations. Such consultants,
18 including peer review organizations, are immune from liability
19 in the execution of their functions under this subsection to
20 the extent provided in s. 766.101. If a carrier finds that
21 overutilization of medical services or a billing error has
22 occurred, it must disallow or adjust payment for such services
23 or error without order of a judge of compensation claims or
24 the agency division, if the carrier, in making its
25 determination, has complied with this section and rules
26 adopted by the agency division.

27 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

28 (a) Any health care provider, carrier, or employer who
29 elects to contest the disallowance or adjustment of payment by
30 a carrier under subsection (6) must, within 30 days after
31 receipt of notice of disallowance or adjustment of payment,

1 petition the agency ~~division~~ to resolve the dispute. The
2 petitioner must serve a copy of the petition on the carrier
3 and on all affected parties by certified mail. The petition
4 must be accompanied by all documents and records that support
5 the allegations contained in the petition. Failure of a
6 petitioner to submit such documentation to the agency ~~division~~
7 results in dismissal of the petition.

8 (b) The carrier must submit to the agency ~~division~~
9 within 10 days after receipt of the petition all documentation
10 substantiating the carrier's disallowance or adjustment.
11 Failure of the carrier to submit the requested documentation
12 to the agency ~~division~~ within 10 days constitutes a waiver of
13 all objections to the petition.

14 (c) Within 60 days after receipt of all documentation,
15 the agency ~~division~~ must provide to the petitioner, the
16 carrier, and the affected parties a written determination of
17 whether the carrier properly adjusted or disallowed payment.
18 The agency ~~division~~ must be guided by standards and policies
19 set forth in this chapter, including all applicable
20 reimbursement schedules, in rendering its determination.

21 (d) If the agency ~~division~~ finds an improper
22 disallowance or improper adjustment of payment by an insurer,
23 the insurer shall reimburse the health care provider,
24 facility, insurer, or employer within 30 days, subject to the
25 penalties provided in this subsection.

26 (e) The agency ~~division~~ shall adopt rules to carry out
27 this subsection. The rules may include provisions for
28 consolidating petitions filed by a petitioner and expanding
29 the timetable for rendering a determination upon a
30 consolidated petition.

31

1 (f) Any carrier that engages in a pattern or practice
2 of arbitrarily or unreasonably disallowing or reducing
3 payments to health care providers may be subject to one or
4 more of the following penalties imposed by the agency
5 ~~division~~:

6 1. Repayment of the appropriate amount to the health
7 care provider.

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

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

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

15 (a) Carriers must report to the agency ~~division~~ all
16 instances of overutilization including, but not limited to,
17 all instances in which the carrier disallows or adjusts
18 payment. The agency ~~division~~ shall determine whether a pattern
19 or practice of overutilization exists.

20 (b) If the agency ~~division~~ determines that a health
21 care provider has engaged in a pattern or practice of
22 overutilization or a violation of this chapter or rules
23 adopted by the agency ~~division~~, it may impose one or more of
24 the following penalties:

25 1. An order of the agency ~~division~~ barring the
26 provider from payment under this chapter;

27 2. Deauthorization of care under review;

28 3. Denial of payment for care rendered in the future;

29 4. Decertification of a health care provider certified
30 as an expert medical advisor under subsection (9) or of a
31 rehabilitation provider certified under s. 440.49;

1 5. An administrative fine assessed by the agency
2 ~~division~~ in an amount not to exceed \$5,000 per instance of
3 overutilization or violation; and

4 6. Notification of and review by the appropriate
5 licensing authority pursuant to s. 440.106(3).

6 (9) EXPERT MEDICAL ADVISORS.--

7 (a) The agency ~~division~~ shall certify expert medical
8 advisors in each specialty to assist the agency ~~division~~ and
9 the judges of compensation claims within the advisor's area of
10 expertise as provided in this section. The agency ~~division~~
11 shall, in a manner prescribed by rule, in certifying,
12 recertifying, or decertifying an expert medical advisor,
13 consider the qualifications, training, impartiality, and
14 commitment of the health care provider to the provision of
15 quality medical care at a reasonable cost. As a prerequisite
16 for certification or recertification, the agency ~~division~~
17 shall require, at a minimum, that an expert medical advisor
18 have specialized workers' compensation training or experience
19 under the workers' compensation system of this state and board
20 certification or board eligibility.

21 (b) The agency ~~division~~ shall contract with or employ
22 expert medical advisors to provide peer review or medical
23 consultation to the agency ~~division~~ or to a judge of
24 compensation claims in connection with resolving disputes
25 relating to reimbursement, differing opinions of health care
26 providers, and health care and physician services rendered
27 under this chapter. Expert medical advisors contracting with
28 the agency ~~division~~ shall, as a term of such contract, agree
29 to provide consultation or services in accordance with the
30 timetables set forth in this chapter and to abide by rules
31 adopted by the agency ~~division~~, including, but not limited to,

1 rules pertaining to procedures for review of the services
2 rendered by health care providers and preparation of reports
3 and recommendations for submission to the agency ~~division~~.

4 (c) If there is disagreement in the opinions of the
5 health care providers, if two health care providers disagree
6 on medical evidence supporting the employee's complaints or
7 the need for additional medical treatment, or if two health
8 care providers disagree that the employee is able to return to
9 work, the agency ~~division~~ may, and the judge of compensation
10 claims shall, upon his or her own motion or within 15 days
11 after receipt of a written request by either the injured
12 employee, the employer, or the carrier, order the injured
13 employee to be evaluated by an expert medical advisor. The
14 opinion of the expert medical advisor is presumed to be
15 correct unless there is clear and convincing evidence to the
16 contrary as determined by the judge of compensation claims.
17 The expert medical advisor appointed to conduct the evaluation
18 shall have free and complete access to the medical records of
19 the employee. An employee who fails to report to and cooperate
20 with such evaluation forfeits entitlement to compensation
21 during the period of failure to report or cooperate.

22 (d) The expert medical advisor must complete his or
23 her evaluation and issue his or her report to the agency
24 ~~division~~ or to the judge of compensation claims within 45 days
25 after receipt of all medical records. The expert medical
26 advisor must furnish a copy of the report to the carrier and
27 to the employee.

28 (e) An expert medical advisor is not liable under any
29 theory of recovery for evaluations performed under this
30 section without a showing of fraud or malice. The protections
31 of s. 766.101 apply to any officer, employee, or agent of the

1 ~~agency division~~ and to any officer, employee, or agent of any
2 entity with which the ~~agency division~~ has contracted under
3 this subsection.

4 (f) If the ~~agency division~~ or a judge of compensation
5 claims determines that the services of a certified expert
6 medical advisor are required to resolve a dispute under this
7 section, the carrier must compensate the advisor for his or
8 her time in accordance with a schedule adopted by the agency
9 ~~division~~. The ~~agency division~~ may assess a penalty not to
10 exceed \$500 against any carrier that fails to timely
11 compensate an advisor in accordance with this section.

12 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION
13 AND THE DEPARTMENT OF INSURANCE ~~DIVISION~~; JURISDICTION.--

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

1 refunded within 30 days after notification of overpayment by
2 the agency division or carrier.

3 (b) The department division shall monitor and audit
4 carriers, as provided in s. 624.3161, to determine if medical
5 bills are paid in accordance with this section and department
6 division rules. ~~Any employer, if self-insured, or carrier~~
7 ~~found by the division not to be within 90 percent compliance~~
8 ~~as to the payment of medical bills after July 1, 1994, must be~~
9 ~~assessed a fine not to exceed 1 percent of the prior year's~~
10 ~~assessment levied against such entity under s. 440.51 for~~
11 ~~every quarter in which the entity fails to attain 90-percent~~
12 ~~compliance.~~ The department division shall fine or otherwise
13 discipline an employer or carrier, pursuant to this chapter,
14 the insurance code, or rules adopted by the department
15 division, for each late payment of compensation that is below
16 the minimum 90-percent performance standard. Any carrier that
17 is found to be not in compliance in subsequent consecutive
18 quarters must implement a medical-bill review program approved
19 by the division, and the carrier is subject to disciplinary
20 action by the Department of Insurance.

21 (c) The agency division has exclusive jurisdiction to
22 decide any matters concerning reimbursement, to resolve any
23 overutilization dispute under subsection (7), and to decide
24 any question concerning overutilization under subsection (8),
25 which question or dispute arises after January 1, 1994.

26 (d) The following agency division actions do not
27 constitute agency action subject to review under ss. 120.569
28 and 120.57 and do not constitute actions subject to s. 120.56:
29 referral by the entity responsible for utilization review; a
30 decision by the agency division to refer a matter to a peer
31 review committee; establishment by a health care provider or

1 entity of procedures by which a peer review committee reviews
2 the rendering of health care services; and the review
3 proceedings, report, and recommendation of the peer review
4 committee.

5 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
6 REIMBURSEMENT ALLOWANCES.--

7 (a) A three-member panel is created, consisting of the
8 Insurance Commissioner, or the Insurance Commissioner's
9 designee, and two members to be appointed by the Governor,
10 subject to confirmation by the Senate, one member who, on
11 account of present or previous vocation, employment, or
12 affiliation, shall be classified as a representative of
13 employers, the other member who, on account of previous
14 vocation, employment, or affiliation, shall be classified as a
15 representative of employees. The panel shall determine
16 statewide schedules of maximum reimbursement allowances for
17 medically necessary treatment, care, and attendance provided
18 by physicians, hospitals, ambulatory surgical centers,
19 work-hardening programs, pain programs, and durable medical
20 equipment. The maximum reimbursement allowances for inpatient
21 hospital care shall be based on a schedule of per diem rates,
22 to be approved by the three-member panel no later than March
23 1, 1994, to be used in conjunction with a precertification
24 manual as determined by the agency ~~division~~. All compensable
25 charges for hospital outpatient care shall be reimbursed at 75
26 percent of usual and customary charges. Until the three-member
27 panel approves a schedule of per diem rates for inpatient
28 hospital care and it becomes effective, all compensable
29 charges for hospital inpatient care must be reimbursed at 75
30 percent of their usual and customary charges. Annually, the
31 three-member panel shall adopt schedules of maximum

1 reimbursement allowances for physicians, hospital inpatient
2 care, hospital outpatient care, ambulatory surgical centers,
3 work-hardening programs, and pain programs. However, the
4 maximum percentage of increase in the individual reimbursement
5 allowance may not exceed the percentage of increase in the
6 Consumer Price Index for the previous year. An individual
7 physician, hospital, ambulatory surgical center, pain program,
8 or work-hardening program shall be reimbursed either the usual
9 and customary charge for treatment, care, and attendance, the
10 agreed-upon contract price, or the maximum reimbursement
11 allowance in the appropriate schedule, whichever is less.

12 (b) As to reimbursement for a prescription medication,
13 the reimbursement amount for a prescription shall be the
14 average wholesale price times 1.2 plus \$4.18 for the
15 dispensing fee, except where the carrier has contracted for a
16 lower amount. Fees for pharmaceuticals and pharmaceutical
17 services shall be reimbursable at the applicable fee schedule
18 amount. Where the employer or carrier has contracted for such
19 services and the employee elects to obtain them through a
20 provider not a party to the contract, the carrier shall
21 reimburse at the schedule, negotiated, or contract price,
22 whichever is lower.

23 (c) Reimbursement for all fees and other charges for
24 such treatment, care, and attendance, including treatment,
25 care, and attendance provided by any hospital or other health
26 care provider, ambulatory surgical center, work-hardening
27 program, or pain program, must not exceed the amounts provided
28 by the uniform schedule of maximum reimbursement allowances as
29 determined by the panel or as otherwise provided in this
30 section. This subsection also applies to independent medical
31 examinations performed by health care providers under this

1 chapter. Until the three-member panel approves a uniform
2 schedule of maximum reimbursement allowances and it becomes
3 effective, all compensable charges for treatment, care, and
4 attendance provided by physicians, ambulatory surgical
5 centers, work-hardening programs, or pain programs shall be
6 reimbursed at the lowest maximum reimbursement allowance
7 across all 1992 schedules of maximum reimbursement allowances
8 for the services provided regardless of the place of service.
9 In determining the uniform schedule, the panel shall first
10 approve the data which it finds representative of prevailing
11 charges in the state for similar treatment, care, and
12 attendance of injured persons. Each health care provider,
13 health care facility, ambulatory surgical center,
14 work-hardening program, or pain program receiving workers'
15 compensation payments shall maintain records verifying their
16 usual charges. In establishing the uniform schedule of maximum
17 reimbursement allowances, the panel must consider:

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

21 2. The impact upon cost to employers for providing a
22 level of reimbursement for treatment, care, and attendance
23 which will ensure the availability of treatment, care, and
24 attendance required by injured workers;

25 3. The financial impact of the reimbursement
26 allowances upon health care providers and health care
27 facilities, including trauma centers as defined in s.
28 395.4001, and its effect upon their ability to make available
29 to injured workers such medically necessary remedial
30 treatment, care, and attendance. The uniform schedule of
31 maximum reimbursement allowances must be reasonable, must

1 promote health care cost containment and efficiency with
2 respect to the workers' compensation health care delivery
3 system, and must be sufficient to ensure availability of such
4 medically necessary remedial treatment, care, and attendance
5 to injured workers; and

6 4. The most recent average maximum allowable rate of
7 increase for hospitals determined by the Health Care Board
8 under chapter 408.

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

15 (a) Engaged in professional or other misconduct or
16 incompetency in connection with medical services rendered
17 under this chapter;

18 (b) Exceeded the limits of his or her or its
19 professional competence in rendering medical care under this
20 chapter, or to have made materially false statements regarding
21 his or her or its qualifications in his or her application;

22 (c) Failed to transmit copies of medical reports to
23 the employer or carrier, or failed to submit full and truthful
24 medical reports of all his or her or its findings to the
25 employer or carrier as required under this chapter;

26 (d) Solicited, or employed another to solicit for
27 himself or herself or itself or for another, professional
28 treatment, examination, or care of an injured employee in
29 connection with any claim under this chapter;

30 (e) Refused to appear before, or to answer upon
31 request of, the agency ~~division~~ or any duly authorized officer

1 of the state, any legal question, or to produce any relevant
2 book or paper concerning his or her conduct under any
3 authorization granted to him or her under this chapter;

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

6 (g) Engaged in a pattern of practice of
7 overutilization or a violation of this chapter or rules
8 adopted by the agency division.

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

12 440.15 Compensation for disability.--Compensation for
13 disability shall be paid to the employee, subject to the
14 limits provided in s. 440.12(2), as follows:

15 (2) TEMPORARY TOTAL DISABILITY.--

16 (c) Temporary total disability benefits paid pursuant
17 to this subsection shall include such period as may be
18 reasonably necessary for training in the use of artificial
19 members and appliances, and shall include such period as the
20 employee may be receiving training and education under a
21 program pursuant to s. 440.491. Notwithstanding s. 440.02 ~~s.~~
22 ~~440.02(9)~~, the date of maximum medical improvement for
23 purposes of paragraph (3)(b) shall be no earlier than the last
24 day for which such temporary disability benefits are paid.

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

26 (a) Impairment benefits.--

27 1. Once the employee has reached the date of maximum
28 medical improvement, impairment benefits are due and payable
29 within 20 days after the carrier has knowledge of the
30 impairment.

31

1 2. The three-member panel, in cooperation with the
2 division, shall establish and use a uniform permanent
3 impairment rating schedule. This schedule must be based on
4 medically or scientifically demonstrable findings as well as
5 the systems and criteria set forth in the American Medical
6 Association's Guides to the Evaluation of Permanent
7 Impairment; the Snellen Charts, published by American Medical
8 Association Committee for Eye Injuries; and the Minnesota
9 Department of Labor and Industry Disability Schedules. The
10 schedule should be based upon objective findings. The schedule
11 shall be more comprehensive than the AMA Guides to the
12 Evaluation of Permanent Impairment and shall expand the areas
13 already addressed and address additional areas not currently
14 contained in the guides. On August 1, 1979, and pending the
15 adoption, by rule, of a permanent schedule, Guides to the
16 Evaluation of Permanent Impairment, copyright 1977, 1971,
17 1988, by the American Medical Association, shall be the
18 temporary schedule and shall be used for the purposes hereof.
19 For injuries after July 1, 1990, pending the adoption by
20 division rule of a uniform disability rating schedule, the
21 Minnesota Department of Labor and Industry Disability Schedule
22 shall be used unless that schedule does not address an injury.
23 In such case, the Guides to the Evaluation of Permanent
24 Impairment by the American Medical Association shall be used.
25 Determination of permanent impairment under this schedule must
26 be made by a physician licensed under chapter 458, a doctor of
27 osteopathic medicine licensed under chapters 458 and 459, a
28 chiropractic physician licensed under chapter 460, a podiatric
29 physician licensed under chapter 461, an optometrist licensed
30 under chapter 463, or a dentist licensed under chapter 466, as
31 appropriate considering the nature of the injury. No other

1 persons are authorized to render opinions regarding the
2 existence of or the extent of permanent impairment.

3 3. All impairment income benefits shall be based on an
4 impairment rating using the impairment schedule referred to in
5 subparagraph 2. Impairment income benefits are paid weekly at
6 the rate of 50 percent of the employee's average weekly
7 temporary total disability benefit not to exceed the maximum
8 weekly benefit under s. 440.12. An employee's entitlement to
9 impairment income benefits begins the day after the employee
10 reaches maximum medical improvement or the expiration of
11 temporary benefits, whichever occurs earlier, and continues
12 until the earlier of:

13 a. The expiration of a period computed at the rate of
14 3 weeks for each percentage point of impairment; or
15 b. The death of the employee.

16 4. After the employee has been certified by a doctor
17 as having reached maximum medical improvement or 6 weeks
18 before the expiration of temporary benefits, whichever occurs
19 earlier, the certifying doctor shall evaluate the condition of
20 the employee and assign an impairment rating, using the
21 impairment schedule referred to in subparagraph 2.
22 Compensation is not payable for the mental, psychological, or
23 emotional injury arising out of depression from being out of
24 work. If the certification and evaluation are performed by a
25 doctor other than the employee's treating doctor, the
26 certification and evaluation must be submitted to the treating
27 doctor, and the treating doctor must indicate agreement or
28 disagreement with the certification and evaluation. The
29 certifying doctor shall issue a written report to the
30 division, the employee, and the carrier certifying that
31 maximum medical improvement has been reached, stating the

1 impairment rating, and providing any other information
2 required by the division. If the employee has not been
3 certified as having reached maximum medical improvement before
4 the expiration of 102 weeks after the date temporary total
5 disability benefits begin to accrue, the carrier shall notify
6 the treating doctor of the requirements of this section.

7 5. The carrier shall pay the employee impairment
8 income benefits for a period based on the impairment rating.

9 6. The agency ~~division~~ may by rule specify forms and
10 procedures governing the method of payment of wage loss and
11 impairment benefits for dates of accidents before January 1,
12 1994, and for dates of accidents on or after January 1, 1994.

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

16 (b) The independent medical examiner's opinion on the
17 date of the employee's maximum medical improvement and degree
18 or permanent impairment differs from the opinion of the
19 employee's treating physician on either of those issues, or
20 from the opinion of the expert medical advisor appointed by
21 the agency ~~division~~ on the degree of permanent impairment; or

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

25 (4) Only opinions of the employee's treating
26 physician, an agency ~~a division~~ medical advisor, or an
27 independent medical examiner are admissible in proceedings
28 before a judge of compensation claims to resolve maximum
29 medical improvement or impairment disputes.

30
31

1 Section 8. Subsections (3), (6), (8), (9), (10), (11),
2 (12), (15), (16), and (17) of section 440.20, Florida
3 Statutes, are amended to read:

4 440.20 Time for payment of compensation; penalties for
5 late payment.--

6 (3) Upon making payment, or upon suspension or
7 cessation of payment for any reason, the carrier shall
8 immediately notify the department ~~division~~ that it has
9 commenced, suspended, or ceased payment of compensation. The
10 department ~~division~~ may require such notification in any
11 format and manner it deems necessary to obtain accurate and
12 timely reporting.

13 (6) If any installment of compensation for death or
14 dependency benefits, disability, permanent impairment, or wage
15 loss payable without an award is not paid within 7 days after
16 it becomes due, as provided in subsection (2), subsection (3),
17 or subsection (4), there shall be added to such unpaid
18 installment a punitive penalty of an amount equal to 20
19 percent of the unpaid installment or \$5, which shall be paid
20 at the same time as, but in addition to, such installment of
21 compensation, unless notice is filed under subsection (4) or
22 unless such nonpayment results from conditions over which the
23 employer or carrier had no control. When any installment of
24 compensation payable without an award has not been paid within
25 7 days after it became due and the claimant concludes the
26 prosecution of the claim before a judge of compensation claims
27 without having specifically claimed additional compensation in
28 the nature of a penalty under this section, the claimant will
29 be deemed to have acknowledged that, owing to conditions over
30 which the employer or carrier had no control, such installment
31 could not be paid within the period prescribed for payment and

1 to have waived the right to claim such penalty. However,
2 during the course of a hearing, the judge of compensation
3 claims shall on her or his own motion raise the question of
4 whether such penalty should be awarded or excused. The
5 department ~~division~~ may assess without a hearing the punitive
6 penalty against either the employer or the insurance carrier,
7 depending upon who was at fault in causing the delay. The
8 insurance policy cannot provide that this sum will be paid by
9 the carrier if the department ~~division~~ or the judge of
10 compensation claims determines that the punitive penalty
11 should be made by the employer rather than the carrier. Any
12 additional installment of compensation paid by the carrier
13 pursuant to this section shall be paid directly to the
14 employee.

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

24 (a) Within 30 days after final payment of compensation
25 has been made, the employer, carrier, or servicing agent shall
26 send to the department ~~division~~ a notice, in accordance with a
27 format and manner ~~form~~ prescribed by the department ~~division~~,
28 stating that such final payment has been made and stating the
29 total amount of compensation paid, the name of the employee
30 and of any other person to whom compensation has been paid,
31

1 the date of the injury or death, and the date to which
2 compensation has been paid.

3 (b) If the employer, carrier, or servicing agent fails
4 to so notify the department ~~division~~ within such time, the
5 department ~~division~~ shall assess against such employer,
6 carrier, or servicing agent a civil penalty in an amount not
7 over \$100.

8 (c) In order to ensure carrier compliance under this
9 chapter and provisions of the insurance code, the department
10 ~~division~~ shall monitor the performance of carriers by
11 conducting market conduct examinations, as provided in s.
12 624.3161, and conducting investigations, as provided in s.
13 624.317. The department ~~division~~ shall impose penalties on
14 ~~establish by rule minimum performance standards for carriers~~
15 ~~to ensure that a minimum of 90 percent of all compensation~~
16 ~~benefits are timely paid. The division shall fine a carrier as~~
17 ~~provided in s. 440.13(11)(b) up to \$50 for each late payment~~
18 ~~of compensation pursuant to s. 624.4211 that is below the~~
19 ~~minimum 90 percent performance standard. This paragraph does~~
20 ~~not affect the imposition of any penalties or interest due to~~
21 ~~the claimant. If a carrier contracts with a servicing agent to~~
22 ~~fulfill its administrative responsibilities under this~~
23 ~~chapter, the payment practices of the servicing agent are~~
24 ~~deemed the payment practices of the carrier for the purpose of~~
25 ~~assessing penalties against the carrier.~~

26 (9) The department ~~division~~ may upon its own
27 initiative at any time in a case in which payments are being
28 made without an award investigate same and shall, in any case
29 in which the right to compensation is controverted, or in
30 which payments of compensation have been stopped or suspended,
31 upon receipt of notice from any person entitled to

1 compensation or from the employer that the right to
2 compensation is controverted or that payments of compensation
3 have been stopped or suspended, make such investigations,
4 cause such medical examination to be made, or hold such
5 hearings, and take such further action as it considers will
6 properly protect the rights of all parties.

7 (10) Whenever the department ~~division~~ deems it
8 advisable, it may require any employer to make a deposit with
9 the Treasurer to secure the prompt and convenient payments of
10 such compensation; and payments therefrom upon any awards
11 shall be made upon order of the department ~~division~~ or judge
12 of compensation claims.

13 (11)(a) When a claimant is not represented by counsel,
14 upon joint petition of all interested parties, a lump-sum
15 payment in exchange for the employer's or carrier's release
16 from liability for future medical expenses, as well as future
17 payments of compensation expenses and any other benefits
18 provided under this chapter, shall be allowed at any time in
19 any case in which the employer or carrier has filed a written
20 notice of denial within 120 days after the employer receives
21 notice of the injury, and the judge of compensation claims at
22 a hearing to consider the settlement proposal finds a
23 justiciable controversy as to legal or medical compensability
24 of the claimed injury or the alleged accident. The employer
25 or carrier may not pay any attorney's fees on behalf of the
26 claimant for any settlement under this section unless
27 expressly authorized elsewhere in this chapter. Upon the joint
28 petition of all interested parties and after giving due
29 consideration to the interests of all interested parties, the
30 judge of compensation claims may enter a compensation order
31 approving and authorizing the discharge of the liability of

1 the employer for compensation and remedial treatment, care,
2 and attendance, as well as rehabilitation expenses, by the
3 payment of a lump sum. Such a compensation order so entered
4 upon joint petition of all interested parties is not subject
5 to modification or review under s. 440.28. If the settlement
6 proposal together with supporting evidence is not approved by
7 the judge of compensation claims, it shall be considered void.
8 Upon approval of a lump-sum settlement under this subsection,
9 the judge of compensation claims shall send a report to the
10 Chief Judge of the amount of the settlement and a statement of
11 the nature of the controversy. The Chief Judge shall keep a
12 record of all such reports filed by each judge of compensation
13 claims and shall submit to the Legislature a summary of all
14 such reports filed under this subsection annually by September
15 15.

16 (b) When a claimant is not represented by counsel,
17 upon joint petition of all interested parties, a lump-sum
18 payment in exchange for the employer's or carrier's release
19 from liability for future medical expenses, as well as future
20 payments of compensation and rehabilitation expenses, and any
21 other benefits provided under this chapter, may be allowed at
22 any time in any case after the injured employee has attained
23 maximum medical improvement. An employer or carrier may not
24 pay any attorney's fees on behalf of the claimant for any
25 settlement, unless expressly authorized elsewhere in this
26 chapter. A compensation order so entered upon joint petition
27 of all interested parties shall not be subject to modification
28 or review under s. 440.28. However, a judge of compensation
29 claims is not required to approve any award for lump-sum
30 payment when it is determined by the judge of compensation
31 claims that the payment being made is in excess of the value

1 of benefits the claimant would be entitled to under this
2 chapter. The judge of compensation claims shall make or cause
3 to be made such investigations as she or he considers
4 necessary, in each case in which the parties have stipulated
5 that a proposed final settlement of liability of the employer
6 for compensation shall not be subject to modification or
7 review under s. 440.28, to determine whether such final
8 disposition will definitely aid the rehabilitation of the
9 injured worker or otherwise is clearly for the best interests
10 of the person entitled to compensation and, in her or his
11 discretion, may have an investigation made by the Department
12 of Education Rehabilitation Section of the Division of
13 ~~Workers' Compensation~~. The joint petition and the report of
14 any investigation so made will be deemed a part of the
15 proceeding. An employer shall have the right to appear at any
16 hearing pursuant to this subsection which relates to the
17 discharge of such employer's liability and to present
18 testimony at such hearing. The carrier shall provide
19 reasonable notice to the employer of the time and date of any
20 such hearing and inform the employer of her or his rights to
21 appear and testify. The probability of the death of the
22 injured employee or other person entitled to compensation
23 before the expiration of the period during which such person
24 is entitled to compensation shall, in the absence of special
25 circumstances making such course improper, be determined in
26 accordance with the most recent United States Life Tables
27 published by the National Office of Vital Statistics of the
28 United States Department of Health and Human Services. The
29 probability of the happening of any other contingency
30 affecting the amount or duration of the compensation, except
31 the possibility of the remarriage of a surviving spouse, shall

1 be disregarded. As a condition of approving a lump-sum payment
2 to a surviving spouse, the judge of compensation claims, in
3 the judge of compensation claims' discretion, may require
4 security which will ensure that, in the event of the
5 remarriage of such surviving spouse, any unaccrued future
6 payments so paid may be recovered or recouped by the employer
7 or carrier. Such applications shall be considered and
8 determined in accordance with s. 440.25.

9 (c) Notwithstanding s. 440.21(2), when a claimant is
10 represented by counsel, the claimant may waive all rights to
11 any and all benefits under this chapter by entering into a
12 settlement agreement releasing the employer and the carrier
13 from liability for workers' compensation benefits in exchange
14 for a lump-sum payment to the claimant. The settlement
15 agreement requires approval by the judge of compensation
16 claims only as to the attorney's fees paid to the claimant's
17 attorney by the claimant. The parties need not submit any
18 information or documentation in support of the settlement,
19 except as needed to justify the amount of the attorney's fees.
20 Neither the employer nor the carrier is responsible for any
21 attorney's fees relating to the settlement and release of
22 claims under this section. Payment of the lump-sum settlement
23 amount must be made within 14 days after the date the judge of
24 compensation claims mails the order approving the attorney's
25 fees. Any order entered by a judge of compensation claims
26 approving the attorney's fees as set out in the settlement
27 under this subsection is not considered to be an award and is
28 not subject to modification or review. The judge of
29 compensation claims shall report these settlements to the
30 Deputy Chief Judge in accordance with the requirements set
31 forth in paragraphs (a) and (b). Settlements entered into

1 under this subsection are valid and apply to all dates of
2 accident.

3 (d)1. With respect to any lump-sum settlement under
4 this subsection, a judge of compensation claims must consider
5 at the time of the settlement, whether the settlement
6 allocation provides for the appropriate recovery of child
7 support arrearages.

8 2. When reviewing any settlement of lump-sum payment
9 pursuant to this subsection, judges of compensation claims
10 shall consider the interests of the worker and the worker's
11 family when approving the settlement, which must consider and
12 provide for appropriate recovery of past due support.

13 (e) This section applies to all claims that the
14 parties have not previously settled, regardless of the date of
15 accident.

16 (12)(a) Liability of an employer for future payments
17 of compensation may not be discharged by advance payment
18 unless prior approval of a judge of compensation claims or the
19 department ~~division~~ has been obtained as hereinafter provided.
20 The approval shall not constitute an adjudication of the
21 claimant's percentage of disability.

22 (b) When the claimant has reached maximum recovery and
23 returned to her or his former or equivalent employment with no
24 substantial reduction in wages, such approval of a reasonable
25 advance payment of a part of the compensation payable to the
26 claimant may be given informally by letter by a judge of
27 compensation claims or, by the department ~~division~~ ~~director~~,
28 ~~or by the administrator of claims of the division.~~

29 (c) In the event the claimant has not returned to the
30 same or equivalent employment with no substantial reduction in
31

1 wages or has suffered a substantial loss of earning capacity
2 or a physical impairment, actual or apparent:
3 1. An advance payment of compensation not in excess of
4 \$2,000 may be approved informally by letter, without hearing,
5 by any judge of compensation claims or the Chief Judge.
6 2. An advance payment of compensation not in excess of
7 \$2,000 may be ordered by any judge of compensation claims
8 after giving the interested parties an opportunity for a
9 hearing thereon pursuant to not less than 10 days' notice by
10 mail, unless such notice is waived, and after giving due
11 consideration to the interests of the person entitled thereto.
12 When the parties have stipulated to an advance payment of
13 compensation not in excess of \$2,000, such advance may be
14 approved by an order of a judge of compensation claims, with
15 or without hearing, or informally by letter by any such judge
16 of compensation claims, or by the department division
17 ~~director~~, if such advance is found to be for the best
18 interests of the person entitled thereto.
19 3. When the parties have stipulated to an advance
20 payment in excess of \$2,000, subject to the approval of the
21 department division, such payment may be approved by a judge
22 of compensation claims by order if the judge finds that such
23 advance payment is for the best interests of the person
24 entitled thereto and is reasonable under the circumstances of
25 the particular case. The judge of compensation claims shall
26 make or cause to be made such investigations as she or he
27 considers necessary concerning the stipulation and, in her or
28 his discretion, may have an investigation of the matter made
29 by the Department of Education Rehabilitation Section of the
30 ~~division~~. The stipulation and the report of any investigation
31 shall be deemed a part of the record of the proceedings.

1 (d) When an application for an advance payment in
2 excess of \$2,000 is opposed by the employer or carrier, it
3 shall be heard by a judge of compensation claims after giving
4 the interested parties not less than 10 days' notice of such
5 hearing by mail, unless such notice is waived. In her or his
6 discretion, the judge of compensation claims may have an
7 investigation of the matter made by the Department of
8 Education Rehabilitation Section of the division, in which
9 event the report and recommendation of that section will be
10 deemed a part of the record of the proceedings. If the judge
11 of compensation claims finds that such advance payment is for
12 the best interests of the person entitled to compensation,
13 will not materially prejudice the rights of the employer and
14 carrier, and is reasonable under the circumstances of the
15 case, she or he may order the same paid. However, in no event
16 may any such advance payment under this paragraph be granted
17 in excess of \$7,500 or 26 weeks of benefits in any 48-month
18 period, whichever is greater, from the date of the last
19 advance payment.

20 (15)(a) The department ~~division~~ shall examine on an
21 ongoing basis claims files in accordance with ss. 624.3161 and
22 624.310(5) and this chapter in order to identify questionable
23 claims-handling techniques, questionable patterns or practices
24 of claims, or a pattern of repeated unreasonably controverted
25 claims by employers, carriers as defined in s. 440.02, and
26 ~~self-insurers, health care providers, health care facilities,~~
27 ~~training and education providers, or any others~~ providing
28 services to employees pursuant to this chapter ~~and may certify~~
29 ~~its findings to the Department of Insurance.~~ If the department
30 finds such questionable techniques, patterns, or repeated
31 unreasonably controverted claims as constitute a general

1 ~~business practice of a carrier, as defined in s. 440.02 in the~~
2 ~~judgment of the division shall be certified in its findings by~~
3 ~~the division to the Department of Insurance or such other~~
4 ~~appropriate licensing agency. Such certification by the~~
5 ~~division is exempt from the provisions of chapter 120. Upon~~
6 ~~receipt of any such certification, the department of Insurance~~
7 shall take appropriate action so as to bring such general
8 business practices to a halt pursuant to s. 440.38(3)~~(a)~~or
9 may impose penalties pursuant to s. 624.4211. The department
10 division may initiate investigations of questionable
11 techniques, patterns, practices, or repeated unreasonably
12 controverted claims. The department division may by rule
13 establish penalties for violations and forms and procedures
14 for corrective action plans and for auditing carriers.

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

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

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

25 (c) If any person refuses to comply with any such
26 subpoena or to testify as to any matter concerning which she
27 or he may be lawfully interrogated, the Circuit Court of Leon
28 County or of the county wherein such examination,
29 investigation, or hearing is being conducted, or of the county
30 wherein such person resides, may, on the application of the
31

1 department, issue an order requiring such person to comply
2 with the subpoena and to testify.

3 (d) Subpoenas shall be served, and proof of such
4 service made, in the same manner as if issued by a circuit
5 court. Witness fees, costs, and reasonable travel expenses, if
6 claimed, shall be allowed the same as for testimony in a
7 circuit court.

8 (e) ~~The division shall publish annually a report which~~
9 ~~indicates the promptness of first payment of compensation~~
10 ~~records of each carrier or self-insurer so as to focus~~
11 ~~attention on those carriers or self-insurers with poor payment~~
12 ~~records for the preceding year. A copy of such report shall be~~
13 ~~certified to The department of Insurance which shall take~~
14 appropriate steps so as to cause such poor carrier payment
15 practices to halt pursuant to s. 440.38(3)(a). In addition,
16 the department ~~division~~ shall take appropriate action so as to
17 halt such poor payment practices of self-insurers. "Poor
18 payment practice" means a practice of late payment sufficient
19 to constitute a general business practice.

20 (f) The department ~~division~~ shall promulgate rules
21 providing guidelines to carriers as defined in s. 440.02,
22 self-insurers, and employers to indicate behavior that may be
23 construed as questionable claims-handling techniques,
24 questionable patterns of claims, repeated unreasonably
25 controverted claims, or poor payment practices.

26 (16) No penalty assessed under this section may be
27 recouped by any carrier or self-insurer in the rate base, the
28 premium, or any rate filing. ~~In the case of carriers, The~~
29 Department of Insurance shall enforce this subsection; ~~and in~~
30 ~~the case of self-insurers, the division shall enforce this~~
31 subsection.

1 (17) The department ~~division~~ may by rule establish
2 audit procedures and set standards for the Automated Carrier
3 Performance System.

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

6 440.207 Workers' compensation system guide.--

7 (1) The Division of Workers' Compensation of the
8 Department of Insurance ~~Labor and Employment Security~~ shall
9 educate all persons providing or receiving benefits pursuant
10 to this chapter as to their rights and responsibilities under
11 this chapter.

12 Section 10. Subsections (5) and (7) of section 440.25,
13 Florida Statutes, are amended to read:

14 440.25 Procedures for mediation and hearings.--

15 (5)(a) Procedures with respect to appeals from orders
16 of judges of compensation claims shall be governed by rules
17 adopted by the Supreme Court. Such an order shall become final
18 30 days after mailing of copies of such order to the parties,
19 unless appealed pursuant to such rules.

20 (b) An appellant may be relieved of any necessary
21 filing fee by filing a verified petition of indigency for
22 approval as provided in s. 57.081(1) and may be relieved in
23 whole or in part from the costs for preparation of the record
24 on appeal if, within 15 days after the date notice of the
25 estimated costs for the preparation is served, the appellant
26 files with the judge of compensation claims a copy of the
27 designation of the record on appeal, and a verified petition
28 to be relieved of costs. A verified petition filed prior to
29 the date of service of the notice of the estimated costs shall
30 be deemed not timely filed. The verified petition relating to
31 record costs shall contain a sworn statement that the

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

1 ~~department division~~ to pay record costs and filing fees from
2 the Workers' Compensation Administrative Trust Fund pending
3 final disposition of the costs of appeal. The department
4 ~~division~~ may transcribe or arrange for the transcription of
5 the record in any proceeding for which it is ordered to pay
6 the cost of the record.

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

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

1 have the right in any case of death to require an autopsy, the
2 cost thereof to be borne by the party requesting it; and the
3 judge of compensation claims shall have authority to order and
4 require an autopsy and may, in her or his discretion, withhold
5 her or his findings and award until an autopsy is held.

6 Section 11. Section 440.271, Florida Statutes, is
7 amended to read:

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

18 Section 12. 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 13. Subsection (8) and paragraph (e) of
8 subsection (9) of section 440.49, Florida Statutes, are
9 amended to read:

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

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

27 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

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

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

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

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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. 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 39. 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.

1 Section 40. Sections 20.171, 440.4416, and 440.59,
2 Florida Statutes, are repealed.

3 Section 41. If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 invalidity does not affect other provisions or applications of
6 the act which can be given effect without the invalid
7 provision or application, and to this end the provisions of
8 this act are severable.

9 Section 42. Except as otherwise provided herein, this
10 act shall take effect July 1, 2002.

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13 LEGISLATIVE SUMMARY

14 Transfers various divisions, offices, and functions from
15 the Department of Labor and Employment Security to the
16 Department of Insurance, the Agency for Health Care
17 Administration, the Department of Education, the
18 Department of Business and Professional Regulation, and
19 the State Technology Office. Transfers the Unemployment
20 Appeals Commission to the Agency for Workforce
21 Innovation. Makes other revisions, to conform. See bill
22 for details.

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