

By Representative Ross

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; revising definitions;
4 amending s. 440.05, F.S.; revising exemptions
5 from the requirement for employers to obtain
6 workers' compensation coverage; specifying who
7 may be exempt and the conditions for an
8 exemption; specifying the effect of an
9 exemption; requiring businesses, sole
10 proprietors, and partners to maintain certain
11 records; amending s. 440.06, F.S.; requiring
12 employers to secure compensation; amending s.
13 440.09, F.S.; requiring certain evidence or
14 findings for certain purposes; providing
15 construction; requiring certain entities
16 actively engaged in the construction industry
17 to secure payment of compensation under ch.
18 440, F.S., after a certain date; amending s.
19 440.10, F.S.; clarifying liability for
20 compensation; amending s. 440.107, F.S.;
21 authorizing the Division of Workers'
22 Compensation to issue stop-work orders in
23 certain circumstances; amending s. 440.11,
24 F.S.; revising exclusiveness of liability
25 provisions to provide carriers or employers an
26 offset against certain benefits under certain
27 circumstances; specifying absence of vicarious
28 liability for employers; amending s. 440.13,
29 F.S.; specifying governance of costs for
30 independent medical examinations; revising a
31 limitation on certain chiropractic services;

1 providing an additional criterion for
2 determining certain value of nonprofessional
3 attendant care provided by a family member;
4 requiring carriers to allow employees to change
5 physicians under certain circumstances;
6 specifying payments for independent medical
7 examinations; deleting selection of independent
8 medical examiner criteria; specifying the
9 number of medical opinions admissible into
10 evidence; requiring the division to impose
11 certain penalties under certain circumstances;
12 specifying certain guides for reimbursement
13 allowances; deleting provisions creating a
14 three-member panel; deleting certain provisions
15 relating to establishing uniform schedules of
16 maximum reimbursement allowances; amending s.
17 440.134, F.S.; revising a definition; revising
18 certain grievance procedures for workers'
19 compensation managed care arrangements;
20 amending s. 440.14, F.S.; providing for
21 determination of pay; amending s. 440.15, F.S.;
22 revising criteria for payment of compensation
23 for permanent total disability; revising
24 criteria for payment of permanent impairment
25 benefits; amending s. 440.185, F.S.; revising
26 certain information that must be included in a
27 report of injury; amending s. 440.191, F.S.;
28 including managed care arrangements under
29 provisions relating to the Employee Assistance
30 and Ombudsman Office; revising procedures for
31 petitions for benefits under the office;

1 amending s. 440.192, F.S.; revising procedures
2 for resolving benefit disputes; amending s.
3 440.20, F.S.; prohibiting approval of
4 settlement proposals providing for attorney's
5 fees in excess of certain amounts; providing
6 for judges of compensation claims to approve
7 settlement agreements under certain
8 circumstances; authorizing a judge of
9 compensation claims to require additional
10 information; providing for mediation
11 conferences; providing requirements; providing
12 a judge of compensation claims jurisdiction to
13 require compliance; amending s. 440.25, F.S.;
14 revising procedures and requirements for
15 mediation and hearings; providing for private
16 mediation under certain circumstances;
17 providing limitations; providing construction;
18 limiting continuances; providing for selections
19 of mediators by the Deputy Chief Judge;
20 providing for holding mediation conferences
21 instead of mediation hearings under certain
22 circumstances; providing a limitation on
23 mediation conferences; providing for completion
24 of pretrial stipulations; authorizing a judge
25 of compensation claims to sanction certain
26 parties under certain circumstances; requiring
27 a judge of compensation claims to order a
28 pretrial hearing for certain purposes under
29 certain circumstances; revising final hearing
30 time limitations and procedures; providing for
31 dismissal of certain petitions for lack of

1 prosecution under certain circumstances;
2 providing for voluntary binding dispute
3 resolution; providing procedures and
4 requirements; providing for entering binding
5 orders; providing for enforcement; amending s.
6 440.29, F.S.; providing for receipt into
7 evidence of medical reports from independent
8 medical examiners; amending s. 440.34, F.S.;
9 revising limitations on attorney's fees;
10 authorizing judges of compensation claims to
11 approve additional attorney's fees under
12 certain circumstances; providing limitations;
13 prohibiting award of attorney's fees in excess
14 of certain amounts; deleting criteria for
15 determining certain attorney's fees; amending
16 s. 440.345, F.S.; requiring a summary report of
17 attorney's fees to the Governor and the
18 Legislature; amending s. 440.39, F.S.;
19 specifying duties of carriers with respect to
20 certain evidence; amending s. 440.45, F.S.;
21 specifying salaries of judges of compensation
22 claims; amending s. 440.491, F.S., to conform;
23 providing that determinations under ss. 112.18,
24 112.181, and 112.19, F.S., are not affected;
25 providing severability; providing an effective
26 date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (b) of subsection (14), paragraph
2 (b) of subsection (16), and subsection (37) of section 440.02,
3 Florida Statutes, are amended to read:

4 440.02 Definitions.--When used in this chapter, unless
5 the context clearly requires otherwise, the following terms
6 shall have the following meanings:

7 (14)

8 (b) "Employee" includes any person who is an officer
9 of a corporation and who performs services for remuneration
10 for such corporation within this state, whether or not such
11 services are continuous.

12 1. Any officer of a corporation may elect to be exempt
13 from this chapter by filing written notice of the election
14 with the division as provided in s. 440.05.

15 2. As to officers of a corporation who are actively
16 engaged in the construction industry, no more than two ~~three~~
17 officers may elect to be exempt from this chapter by filing
18 written notice of the election with the division as provided
19 in s. 440.05; however,

20 a. Such election is valid only with respect to an
21 officer who is the president, vice president, secretary, or
22 treasurer of the corporation.

23 b. Such election is valid only with respect to an
24 officer who owns not less than 10 percent of the stock of the
25 corporation.

26 3. An officer of a corporation who elects to be exempt
27 from this chapter by filing a written notice of the election
28 with the division as provided in s. 440.05 is not an employee.

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1 Services are presumed to have been rendered to the corporation
2 if the officer is compensated by other than dividends upon
3 shares of stock of the corporation which the officer owns.
4 (16)
5 (b) "Employment" includes:
6 1. Employment by the state and all political
7 subdivisions thereof and all public and quasi-public
8 corporations therein, including officers elected at the polls.
9 2. All private employments in which two ~~four~~ or more
10 employees are employed by the same employer or, with respect
11 to the construction industry, all private employment in which
12 one or more employees are employed by the same employer.
13 3. Volunteer firefighters responding to or assisting
14 with fire or medical emergencies whether or not the
15 firefighters are on duty.
16 (37) "Catastrophic injury" means a permanent
17 impairment constituted by:
18 (a) Spinal cord injury involving severe paralysis of
19 an arm, a leg, or the trunk;
20 (b) Amputation of an arm, a hand, a foot, or a leg
21 involving the effective loss of use of that appendage;
22 (c) Severe brain or closed-head injury as evidenced
23 by:
24 1. Severe sensory or motor disturbances;
25 2. Severe communication disturbances;
26 3. Severe complex integrated disturbances of cerebral
27 function;
28 4. Severe episodic neurological disorders; or
29 5. Other severe brain and closed-head injury
30 conditions at least as severe in nature as any condition
31 provided in subparagraphs 1.-4.;

1 (d) Second-degree or third-degree burns of 25 percent
2 or more of the total body surface or third-degree burns of 5
3 percent or more to the face and hands; or

4 (e) Total or industrial blindness; ~~or~~

5 ~~(f) Any other injury that would otherwise qualify~~
6 ~~under this chapter of a nature and severity that would qualify~~
7 ~~an employee to receive disability income benefits under Title~~
8 ~~II or supplemental security income benefits under Title XVI of~~
9 ~~the federal Social Security Act as the Social Security Act~~
10 ~~existed on July 1, 1992, without regard to any time~~
11 ~~limitations provided under that act.~~

12 Section 2. Subsections (10), (11), (12), and (13) are
13 added to section 440.05, Florida Statutes, to read:

14 440.05 Election of exemption; revocation of election;
15 notice; certification.--

16 (10) Any person exempted from this chapter under this
17 section who secures, or whose employer secures for him or her,
18 workers' compensation insurance coverage is considered to have
19 waived the right to such an exemption and is subject to the
20 provisions of this chapter.

21 (11) Every enterprise conducting business in this
22 state shall maintain business records as specified by the
23 division by rule, which rules must include the provision that
24 any corporation with exempt officers, and any partnership with
25 exempt partners must maintain written statements of those
26 exempted persons affirmatively acknowledging each such
27 individual's exempt status.

28 (12) Any sole proprietor or partner claiming an
29 exemption under this section shall maintain a copy of his or
30 her federal income tax records for each of the immediately
31 preceding 3 years in which he or she claims an exemption. Such

1 federal income tax records shall include a complete copy of
2 the following for each year in which an exemption is claimed:
3 (a) For sole proprietors, a copy of Federal Income Tax
4 Form 1040 and its accompanying Schedule C.
5 (b) For partners, a copy of the partner's Federal
6 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
7 Form 1040 and its accompanying Schedule E.
8
9 The sole proprietor or partner in question shall produce, upon
10 request by the division, a copy of those documents together
11 with a statement by the sole proprietor that the tax records
12 provided are true and accurate copies of what the sole
13 proprietor or partner has filed with the federal Internal
14 Revenue Service. The statement shall be signed under oath by
15 the sole proprietor or partner in question and must be
16 notarized. The division shall issue a stop-work order under s.
17 440.107(5) to any sole proprietor or partner who fails or
18 refuses to produce a copy of the tax records and affidavit
19 required under this paragraph to the division within 3
20 business days after the request is made.
21 (13) Any corporate officer claiming an exemption under
22 this section must be listed on the records of this state's
23 Secretary of State, Division of Corporations, as a corporate
24 officer. If the person who claims an exemption as a corporate
25 officer is not listed as such on the records of the Secretary
26 of State, the individual shall provide to the division, upon
27 request by the division, a notarized affidavit stating that
28 the individual is a bona fide officer of the corporation and
29 stating the date his or her appointment or election as a
30 corporate officer became or will become effective. The
31 statement shall be signed under oath by both the officer in

1 question and the president or chief operating officer of the
2 corporation and must be notarized. The division shall issue a
3 stop-work order under s. 440.107(1) to any person who claims
4 to be exempt as a corporate officer but who fails or refuses
5 to produce the documents required under this subsection to the
6 division within 3 business days after the request is made.

7 Section 3. Section 440.06, Florida Statutes, is
8 amended to read:

9 440.06 Failure to secure compensation; effect.--Every
10 employer who fails to secure the payment of compensation, as
11 provided in s. 440.10, by failing to meet the requirements of
12 ~~under this chapter as provided in s. 440.38~~ may not, in any
13 suit brought against him or her by an employee subject to this
14 chapter to recover damages for injury or death, defend such a
15 suit on the grounds that the injury was caused by the
16 negligence of a fellow servant, that the employee assumed the
17 risk of his or her employment, or that the injury was due to
18 the comparative negligence of the employee.

19 Section 4. Subsection (1) of section 440.09, Florida
20 Statutes, is amended, and subsection (9) is added to said
21 section, to read:

22 440.09 Coverage.--

23 (1) The employer shall pay compensation or furnish
24 benefits required by this chapter if the employee suffers an
25 accidental compensable injury or death arising out of work
26 performed in the course and the scope of employment. The
27 injury, its occupational cause, and any resulting
28 manifestations or disability shall be established to a
29 reasonable degree of medical certainty and by objective
30 medical findings. Mental or nervous injuries occurring as a
31 manifestation of an injury compensable under this section

1 shall be demonstrated by clear and convincing evidence. Cases
2 involving occupational disease or repetitive trauma shall be
3 proven by clear and convincing evidence and supported by
4 accepted scientific methods.

5 (a) This chapter does not require any compensation or
6 benefits for any subsequent injury the employee suffers as a
7 result of an original injury arising out of and in the course
8 of employment unless the original injury is the major
9 contributing cause of the subsequent injury. For purposes of
10 this paragraph, the term "major contributing cause" means
11 that, within a reasonable degree of medical certainty and
12 supported by objective medical findings, the original injury
13 is more than 50 percent of the cause of disability or need for
14 treatment.

15 (b) If an injury arising out of and in the course of
16 employment combines with a preexisting disease or condition to
17 cause or prolong disability or need for treatment, the
18 employer must pay compensation or benefits required by this
19 chapter only to the extent that the injury arising out of and
20 in the course of employment is and remains the major
21 contributing cause of the disability or need for treatment.
22 For purposes of this paragraph, the term "major contributing
23 cause" means that, within a reasonable degree of medical
24 certainty and supported by objective medical findings, the
25 injury arising out of and in the course of employment is more
26 than 50 percent of the cause of disability or need for
27 treatment.

28 (c) Death resulting from an operation by a surgeon
29 furnished by the employer for the cure of hernia as required
30 in s. 440.15(6) shall for the purpose of this chapter be
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1 considered to be a death resulting from the accident causing
2 the hernia.

3 (d) If an accident happens while the employee is
4 employed elsewhere than in this state, which would entitle the
5 employee or his or her dependents to compensation if it had
6 happened in this state, the employee or his or her dependents
7 are entitled to compensation if the contract of employment was
8 made in this state, or the employment was principally
9 localized in this state. However, if an employee receives
10 compensation or damages under the laws of any other state, the
11 total compensation for the injury may not be greater than is
12 provided in this chapter.

13 (9) Notwithstanding any other provision of this
14 chapter, effective January 1, 2005, all corporations,
15 partnerships, and sole proprietorships who are actively
16 engaged in the construction industry shall secure the payment
17 of compensation under this chapter.

18 Section 5. Paragraph (a) of subsection (1) of section
19 440.10, Florida Statutes, is amended to read:

20 440.10 Liability for compensation.--

21 (1)(a) Every employer coming within the provisions of
22 this chapter, including any brought within the chapter by
23 waiver of exclusion or of exemption, shall be liable for, and
24 shall secure, in accordance with s. 440.38, the payment to his
25 or her employees, or any physician, surgeon, or pharmacist
26 providing services under the provisions of s. 440.13, of the
27 compensation payable under ss. 440.13, 440.15, and 440.16. Any
28 contractor or subcontractor who engages in any public or
29 private construction in the state shall secure and maintain
30 compensation for his or her employees under this chapter as
31 provided in s. 440.38.

1 Section 6. Subsection (5) of section 440.107, Florida
2 Statutes, is amended to read:

3 440.107 Division powers to enforce employer compliance
4 with coverage requirements.--

5 (5) Whenever the division determines that an employer
6 who is required to secure the payment to his or her employees
7 of the compensation provided for by this chapter has failed to
8 do so or the division determines that an employer has
9 misrepresented to a carrier the size or classification of the
10 employer's payroll, such failure or misrepresentation shall be
11 deemed an immediate serious danger to public health, safety,
12 or welfare sufficient to justify service by the division of a
13 stop-work order on the employer, requiring the cessation of
14 all business operations within this state at the place of
15 employment or job site. The order shall take effect upon the
16 date of service upon the employer, unless the employer
17 provides evidence satisfactory to the division of having
18 secured any necessary insurance or self-insurance and pays a
19 civil penalty to the division, to be deposited by the division
20 into the Workers' Compensation Administration Trust Fund, in
21 the amount of \$100 per day for each day the employer was not
22 in compliance with this chapter.

23 Section 7. Subsection (1) of section 440.11, Florida
24 Statutes, is amended to read:

25 440.11 Exclusiveness of liability.--

26 (1) Except if an employer acts with the intent to
27 cause injury or death, the liability of an employer prescribed
28 in s. 440.10 shall be exclusive and in place of all other
29 liability, including any vicarious liability, of such employer
30 to any third-party tortfeasor and to the employee, the legal
31 representative thereof, husband or wife, parents, dependents,

1 next of kin, and anyone otherwise entitled to recover damages
2 from such employer at law or in admiralty on account of such
3 injury or death, except that if an employer fails to secure
4 payment of compensation in accordance with s. 440.38 ~~as~~
5 ~~required by this chapter~~, an injured employee, or the legal
6 representative thereof in case death results from the injury,
7 may elect to claim compensation under this chapter or to
8 maintain an action at law or in admiralty for damages on
9 account of such injury or death. In such action the defendant
10 may not plead as a defense that the injury was caused by
11 negligence of a fellow employee, that the employee assumed the
12 risk of the employment, or that the injury was due to the
13 comparative negligence of the employee. The same immunities
14 from liability enjoyed by an employer shall extend as well to
15 each employee of the employer when such employee is acting in
16 furtherance of the employer's business and the injured
17 employee is entitled to receive benefits under this chapter.
18 Such fellow-employee immunities shall not be applicable to an
19 employee who acts, with respect to a fellow employee, with
20 willful and wanton disregard or unprovoked physical aggression
21 or with gross negligence when such acts result in injury or
22 death or such acts proximately cause such injury or death, ~~nor~~
23 ~~shall such immunities be applicable to employees of the same~~
24 ~~employer when each is operating in the furtherance of the~~
25 ~~employer's business but they are assigned primarily to~~
26 ~~unrelated works within private or public employment~~. The same
27 immunity provisions enjoyed by an employer shall also apply to
28 any ~~sole proprietor~~, partner, corporate officer or director,
29 supervisor, or other person who in the course and scope of his
30 or her duties acts in a managerial or policymaking capacity
31 and the conduct which caused the alleged injury arose within

1 the course and scope of said managerial or policymaking duties
2 and was not a violation of a law, whether or not a violation
3 was charged, for which the maximum penalty which may be
4 imposed does not exceed 60 days' imprisonment as set forth in
5 s. 775.082. The immunity from liability provided in this
6 subsection extends to county governments with respect to
7 employees of county constitutional officers whose offices are
8 funded by the board of county commissioners. If an employee
9 recovers damages from an employer either by judgment or
10 settlement under this subsection, the workers' compensation
11 carrier for the employer or the employer, if self-insured,
12 shall have an offset against any workers' compensation
13 benefits to which the employee would be entitled under this
14 chapter. Nothing in this subsection shall create or result in
15 vicarious liability on the part of the employer.

16 Section 8. Paragraph (j) of subsection (1), paragraphs
17 (a) and (b) of subsection (2), paragraphs (a), (b), (e), and
18 (f) of subsection (5), paragraph (b) of subsection (8),
19 paragraph (c) of subsection (9), and paragraphs (a) and (c) of
20 subsection (12) of section 440.13, Florida Statutes, are
21 amended, and paragraph (f) is added to subsection (2) of said
22 section, to read:

23 440.13 Medical services and supplies; penalty for
24 violations; limitations.--

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

26 (j) "Independent medical examiner" means a physician
27 selected by either an employee or a carrier to render one or
28 more independent medical examinations in connection with a
29 dispute arising under this chapter. Notwithstanding rules
30 adopted by the division, costs for independent medical
31 examinations shall be governed by this chapter.

1 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--
2 (a) Subject to the limitations specified elsewhere in
3 this chapter, the employer shall furnish to the employee such
4 medically necessary remedial treatment, care, and attendance
5 for such period as the nature of the injury or the process of
6 recovery may require, including medicines, medical supplies,
7 durable medical equipment, orthoses, prostheses, and other
8 medically necessary apparatus. Remedial treatment, care, and
9 attendance, including work-hardening programs or
10 pain-management programs accredited by the Commission on
11 Accreditation of Rehabilitation Facilities or Joint Commission
12 on the Accreditation of Health Organizations or
13 pain-management programs affiliated with medical schools,
14 shall be considered as covered treatment only when such care
15 is given based on a referral by a physician as defined in this
16 chapter. Each facility shall maintain outcome data, including
17 work status at discharges, total program charges, total number
18 of visits, and length of stay. The department shall utilize
19 such data and report to the President of the Senate and the
20 Speaker of the House of Representatives regarding the efficacy
21 and cost-effectiveness of such program, no later than October
22 1, 1994. Medically necessary treatment, care, and attendance
23 does not include chiropractic services in excess of 36 ~~48~~
24 treatments or rendered 16 ~~8~~ weeks beyond the date of the
25 initial chiropractic treatment, whichever comes first, unless
26 the carrier authorizes additional treatment or the employee is
27 catastrophically injured.

28 (b) The employer shall provide appropriate
29 professional or nonprofessional attendant care performed only
30 at the direction and control of a physician when such care is
31 medically necessary. The value of nonprofessional attendant

1 care provided by a family member must be determined as
2 follows:

3 1. If the family member is not employed, the per-hour
4 value equals the federal minimum hourly wage.

5 2. If the family member is employed and elects to
6 leave that employment to provide attendant or custodial care,
7 the per-hour value of that care equals the per-hour value of
8 the family member's former employment, not to exceed the
9 per-hour value of such care available in the community at
10 large.

11 3. If the family member remains employed while
12 providing attendant or custodial care, the per-hour value of
13 that care equals the per-hour value of the family member's
14 employment, not to exceed the per-hour value of such care
15 available in the community at large.

16 4. A family member or a combination of family members
17 providing nonprofessional attendant care under this paragraph
18 may not be compensated for more than a total of 12 hours per
19 day.

20 (f) Upon the written request of the employee, the
21 carrier shall give the employee the opportunity for only a
22 single change of physician during the course of treatment, for
23 any medical specialty which has either been previously
24 authorized by the carrier or which specialty has been found by
25 a judge of compensation claims to be medically necessary as a
26 result of the accident, for any one accident. The employee
27 shall be entitled to select another physician from among not
28 fewer than three carrier-authorized physicians who are not
29 professionally affiliated. If the selected physician ceases to
30 practice in this state or relocates his or her office to a
31 location that is more than 50 miles from the employee's

1 residence, the employee is entitled to select another
2 physician from among not fewer than three physicians who are
3 authorized by the carrier and who are not professionally
4 affiliated.

5 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

6 (a) In any dispute concerning overutilization, medical
7 benefits, compensability, or disability under this chapter,
8 the carrier or the employee may select an independent medical
9 examiner. The examiner may be a health care provider treating
10 or providing other care to the employee. An independent
11 medical examiner may not render an opinion outside his or her
12 area of expertise, as demonstrated by licensure and applicable
13 practice parameters. Upon the written request of the employee,
14 the carrier shall pay the cost of only a single independent
15 medical examination per accident. The cost of any additional
16 independent medical examination shall be borne by the party
17 requesting the additional independent medical examination.
18 Only the costs of independent medical examinations expressly
19 relied upon by the judge of compensation claims to award
20 benefits in the final compensation order shall be taxable
21 costs under s. 440.34(3).

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;~~

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 a division medical advisor as an
8 independent medical examiner. The opinion of the advisors
9 acting as examiners shall not be afforded the presumption set
10 forth in paragraph (9)(c).

11 (e) No medical opinion other than the opinion of a
12 medical advisor appointed by the judge of compensation claims
13 or division, an independent medical examiner, or an authorized
14 treating provider is admissible in proceedings before the
15 judges of compensation claims. The employee and the carrier
16 may each submit into evidence, and the judge of compensation
17 claims shall admit, the medical opinion of no more than one
18 independent medical examiner per specialty. In cases involving
19 occupational disease or repetitive trauma, no medical opinions
20 are admissible unless based on reliable scientific principles
21 sufficiently established to have gained general acceptance in
22 the pertinent area of specialty.

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

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

28 (b) If the division determines that a health care
29 provider has engaged in a pattern or practice of
30 overutilization or a violation of this chapter or rules

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1 adopted by the division, it shall ~~may~~ impose one or more of
2 the following penalties:

3 1. An order of the division barring the provider from
4 payment under this chapter;

5 2. Deauthorization of care under review;

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

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

10 5. An administrative fine assessed by the division in
11 an amount not to exceed \$5,000 per instance of overutilization
12 or violation; and

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

15 (9) EXPERT MEDICAL ADVISORS.--

16 (c) If there is disagreement in the opinions of the
17 health care providers, if two health care providers disagree
18 on medical evidence supporting the employee's complaints or
19 the need for additional medical treatment, or if two health
20 care providers disagree that the employee is able to return to
21 work, the division may, and the judge of compensation claims
22 may shall, upon his or her own motion or within 15 days after
23 receipt of a written request by either the injured employee,
24 the employer, or the carrier, order the injured employee to be
25 evaluated by an expert medical advisor. The opinion of the
26 expert medical advisor is presumed to be correct unless there
27 is clear and convincing evidence to the contrary as determined
28 by the judge of compensation claims. The expert medical
29 advisor appointed to conduct the evaluation shall have free
30 and complete access to the medical records of the employee. An
31 employee who fails to report to and cooperate with such

1 evaluation forfeits entitlement to compensation during the
2 period of failure to report or cooperate.

3 (12) ~~CREATION OF THREE-MEMBER PANEL~~ GUIDES OF MAXIMUM
4 REIMBURSEMENT ALLOWANCES.--

5 (a) The most current American Medical Association
6 Current Procedural Terminology codes with associated modified
7 relative values as published by the Centers for Medicare and
8 Medicaid shall be adopted and updated annually no later than
9 45 days after the Centers for Medicare and Medicaid notices
10 the annual update in the Federal Register. The reimbursement
11 allowances for medically necessary treatment, care, and
12 attendance for health care providers shall be no less than 125
13 percent of the applicable Medicare reimbursement allowance for
14 nonsurgical codes and 150 percent of the applicable Medicare
15 reimbursement allowance for surgical codes for such services
16 in the locality in which the treatment is received. The
17 initial fee schedule shall be based upon the 2001 conversion
18 factor and shall change annually at the time of the annual
19 Medicare upgrade. Increases or decreases shall be equal to the
20 National Medical Price Index. For services not covered by
21 Medicare reimbursement allowances, maximum reimbursement
22 allowances shall be set by the median 75 percentile for this
23 state as determined by Medicode on an annual basis. National
24 relative values for pathology shall be adopted from the
25 relative values for physicians and for dentistry shall be
26 adopted from the relative values for dentists.~~A three-member~~
27 ~~panel is created, consisting of the Insurance Commissioner, or~~
28 ~~the Insurance Commissioner's designee, and two members to be~~
29 ~~appointed by the Governor, subject to confirmation by the~~
30 ~~Senate, one member who, on account of present or previous~~
31 ~~vocation, employment, or affiliation, shall be classified as a~~

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

1 ~~(c) Reimbursement for all fees and other charges for~~
2 ~~such treatment, care, and attendance, including treatment,~~
3 ~~care, and attendance provided by any hospital or other health~~
4 ~~care provider, ambulatory surgical center, work-hardening~~
5 ~~program, or pain program, must not exceed the amounts provided~~
6 ~~by the uniform schedule of maximum reimbursement allowances as~~
7 ~~determined by the panel or as otherwise provided in this~~
8 ~~section. This subsection also applies to independent medical~~
9 ~~examinations performed by health care providers under this~~
10 ~~chapter. Until the three-member panel approves a uniform~~
11 ~~schedule of maximum reimbursement allowances and it becomes~~
12 ~~effective, all compensable charges for treatment, care, and~~
13 ~~attendance provided by physicians, ambulatory surgical~~
14 ~~centers, work-hardening programs, or pain programs shall be~~
15 ~~reimbursed at the lowest maximum reimbursement allowance~~
16 ~~across all 1992 schedules of maximum reimbursement allowances~~
17 ~~for the services provided regardless of the place of service.~~
18 ~~In determining the uniform schedule, the panel shall first~~
19 ~~approve the data which it finds representative of prevailing~~
20 ~~charges in the state for similar treatment, care, and~~
21 ~~attendance of injured persons. Each health care provider,~~
22 ~~health care facility, ambulatory surgical center,~~
23 ~~work-hardening program, or pain program receiving workers'~~
24 ~~compensation payments shall maintain records verifying their~~
25 ~~usual charges. In establishing the uniform schedule of maximum~~
26 ~~reimbursement allowances, the panel must consider:~~
27 ~~1. The levels of reimbursement for similar treatment,~~
28 ~~care, and attendance made by other health care programs or~~
29 ~~third-party providers;~~
30 ~~2. The impact upon cost to employers for providing a~~
31 ~~level of reimbursement for treatment, care, and attendance~~

1 ~~which will ensure the availability of treatment, care, and~~
2 ~~attendance required by injured workers;~~

3 ~~3. The financial impact of the reimbursement~~
4 ~~allowances upon health care providers and health care~~
5 ~~facilities, including trauma centers as defined in s.~~
6 ~~395.4001, and its effect upon their ability to make available~~
7 ~~to injured workers such medically necessary remedial~~
8 ~~treatment, care, and attendance. The uniform schedule of~~
9 ~~maximum reimbursement allowances must be reasonable, must~~
10 ~~promote health care cost containment and efficiency with~~
11 ~~respect to the workers' compensation health care delivery~~
12 ~~system, and must be sufficient to ensure availability of such~~
13 ~~medically necessary remedial treatment, care, and attendance~~
14 ~~to injured workers; and~~

15 ~~4. The most recent average maximum allowable rate of~~
16 ~~increase for hospitals determined by the Health Care Board~~
17 ~~under chapter 408.~~

18 Section 9. Paragraph (d) of subsection (1) and
19 paragraphs (c) and (d) of subsection (15) of section 440.134,
20 Florida Statutes, are amended to read:

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

23 (1) As used in this section, the term:

24 (d) "Grievance" means a written complaint filed by an
25 injured worker expressing dissatisfaction with the insurer's
26 workers' compensation managed care arrangement's refusal to
27 provide medical care provided by an insurer's workers'
28 compensation managed care arrangement health care providers,
29 expressed in writing by an injured worker.

30 (15)
31

1 (c) At the time the workers' compensation managed care
2 arrangement is implemented, the insurer must provide detailed
3 information to workers and health care providers describing
4 how a grievance may be registered with the insurer. Within 15
5 days after the date the request for medical care is received
6 by the insurer or by the insurer's workers' compensation
7 managed care arrangement, whichever date is earlier, the
8 insurer shall grant or deny the request. If the insurer denies
9 the request, the insurer shall notify the injured worker or
10 the injured worker's attorney in writing of the injured
11 worker's right to file a grievance.

12 (d) Grievances must be considered in a timely manner
13 and must be transmitted to appropriate decisionmakers who have
14 the authority to fully investigate the issue and take
15 corrective action. If the insurer or the insurer's workers'
16 compensation managed care arrangement fails to notify the
17 injured worker of the outcome of the grievance in writing
18 within 15 days after the date of receiving the grievance, the
19 grievance shall be presumed to be resolved against the injured
20 worker and the grievance procedures shall be presumed to be
21 exhausted for purposes of s. 440.192(3).

22 Section 10. Paragraph (a) of subsection (1) of section
23 440.14, Florida Statutes, is amended to read:

24 440.14 Determination of pay.--

25 (1) Except as otherwise provided in this chapter, the
26 average weekly wages of the injured employee at the time of
27 the injury shall be taken as the basis upon which to compute
28 compensation and shall be determined, subject to the
29 limitations of s. 440.12(2), as follows:

30 (a) If the injured employee has worked in the
31 employment in which she or he was working at the time of the

1 injury, whether for the same or another employer, during
2 substantially the whole of 13 weeks immediately preceding the
3 injury, her or his average weekly wage shall be one-thirteenth
4 of the total amount of wages earned in such employment during
5 the 13 weeks. As used in this paragraph, the term
6 "substantially the whole of 13 weeks" means an actual ~~shall be~~
7 ~~deemed to mean and refer to a constructive~~ period of 13 weeks
8 as a whole, which shall be defined as the 13 complete weeks
9 before the date of the accident, excluding the week the injury
10 occurs. ~~a consecutive period of 91 days, and~~ The term "during
11 substantially the whole of 13 weeks" shall be deemed to mean
12 during not less than 90 percent of the total customary
13 full-time hours of employment within such period considered as
14 a whole.

15 Section 11. Paragraphs (b) and (f) of subsection (1)
16 and subsection (3) of section 440.15, Florida Statutes, are
17 amended to read:

18 440.15 Compensation for disability.--Compensation for
19 disability shall be paid to the employee, subject to the
20 limits provided in s. 440.12(2), as follows:

21 (1) PERMANENT TOTAL DISABILITY.--

22 (b) Any compensable injury eligible for permanent
23 total benefits must be of a nature and severity that prevents
24 the employee from being able to perform at least sedentary
25 employment. If the employee is engaged in or is capable of
26 being engaged in at least sedentary employment, he or she is
27 not entitled to permanent total disability. The burden is on
28 the employee to establish that he or she is unable to perform
29 even sedentary work if such work is available within a 50-mile
30 radius of the employee's residence or such greater distance as
31 the judge determines to be reasonable under the circumstances.

1 ~~In addition, Only~~ a catastrophic injury as defined in s.
2 440.02 shall, in the absence of conclusive proof of a
3 substantial earning capacity, constitute permanent total
4 disability. ~~Only claimants with catastrophic injuries are~~
5 ~~eligible for permanent total benefits.~~In no other case may
6 permanent total disability benefits be awarded.

7 (f)1. If permanent total disability results from
8 injuries that occurred subsequent to June 30, 1955, and for
9 which the liability of the employer for compensation has not
10 been discharged under s. 440.20(11), the injured employee
11 shall receive additional weekly compensation benefits equal to
12 5 percent of her or his weekly compensation rate, as
13 established pursuant to the law in effect on the date of her
14 or his injury, multiplied by the number of calendar years
15 since the date of injury. The weekly compensation payable and
16 the additional benefits payable under this paragraph, when
17 combined, may not exceed the maximum weekly compensation rate
18 in effect at the time of payment as determined pursuant to s.
19 440.12(2). Entitlement to these supplemental payments shall
20 cease at age 62 if the employee is eligible for social
21 security benefits under 42 U.S.C. s. ss-402 or s. and 423,
22 whether or not the employee has applied for such benefits.
23 These supplemental benefits shall be paid by the division out
24 of the Workers' Compensation Administration Trust Fund when
25 the injury occurred subsequent to June 30, 1955, and before
26 July 1, 1984. These supplemental benefits shall be paid by the
27 employer when the injury occurred on or after July 1, 1984.
28 Supplemental benefits are not payable for any period prior to
29 October 1, 1974.

30 2.a. The division shall provide by rule for the
31 periodic reporting to the division of all earnings of any

1 nature and social security income by the injured employee
2 entitled to or claiming additional compensation under
3 subparagraph 1. Neither the division nor the employer or
4 carrier shall make any payment of those additional benefits
5 provided by subparagraph 1. for any period during which the
6 employee willfully fails or refuses to report upon request by
7 the division in the manner prescribed by such rules.

8 b. The division shall provide by rule for the periodic
9 reporting to the employer or carrier of all earnings of any
10 nature and social security income by the injured employee
11 entitled to or claiming benefits for permanent total
12 disability. The employer or carrier is not required to make
13 any payment of benefits for permanent total disability for any
14 period during which the employee willfully fails or refuses to
15 report upon request by the employer or carrier in the manner
16 prescribed by such rules or if any employee who is receiving
17 permanent total disability benefits refuses to apply for or
18 cooperate with the employer or carrier in applying for social
19 security benefits.

20 3. When an injured employee receives a full or partial
21 lump-sum advance of the employee's permanent total disability
22 compensation benefits, the employee's benefits under this
23 paragraph shall be computed on the employee's weekly
24 compensation rate as reduced by the lump-sum advance.

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 and shall be paid in accordance with this section.
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 a the rate equal to 100 of 50 percent of the employee's
7 compensation rate,~~average weekly temporary total disability~~
8 ~~benefit~~ not to exceed the maximum weekly benefit under s.
9 440.12, however, such benefits shall be reduced by 50 percent
10 for each week in which the employee has earned income equal to
11 or in excess of the employee's average weekly wage or the
12 employee has unjustifiably refused employment in which the
13 employee would have earned such income. An employee's
14 entitlement to impairment income benefits begins the day after
15 the employee reaches maximum medical improvement or the
16 expiration of temporary benefits, whichever occurs earlier,
17 and continues until the earlier of:

18 a. The expiration of a period computed at the rate of
19 3 weeks for each percentage point of impairment; or
20 b. The death of the employee.

21 4. After the employee has been certified by a doctor
22 as having reached maximum medical improvement or 6 weeks
23 before the expiration of temporary benefits, whichever occurs
24 earlier, the certifying doctor shall evaluate the condition of
25 the employee and assign an impairment rating, using the
26 impairment schedule referred to in subparagraph 2.
27 Compensation is not payable for the mental, psychological, or
28 emotional injury arising out of depression from being out of
29 work or from any preexisting mental, psychological, or
30 emotional condition. If the certification and evaluation are
31 performed by a doctor other than the employee's treating

1 doctor, the certification and evaluation must be submitted to
2 the treating doctor, and the treating doctor must indicate
3 agreement or disagreement with the certification and
4 evaluation. The certifying doctor shall issue a written report
5 to the division, the employee, and the carrier certifying that
6 maximum medical improvement has been reached, stating the
7 impairment rating, and providing any other information
8 required by the division. If the employee has not been
9 certified as having reached maximum medical improvement before
10 the expiration of 102 weeks after the date temporary total
11 disability benefits begin to accrue, the carrier shall notify
12 the treating doctor of the requirements of this section.

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

15 6. The division may by rule specify forms and
16 procedures governing the method of payment of wage loss and
17 impairment benefits for dates of accidents before January 1,
18 1994, and for dates of accidents on or after January 1, 1994.

19 (b) Supplemental benefits.--

20 1. All supplemental benefits must be paid in
21 accordance with this subsection. An employee is entitled to
22 supplemental benefits as provided in this paragraph as of the
23 expiration of the impairment period, if:

24 a. The employee has an impairment rating from the
25 compensable injury of 20 percent or more as determined
26 pursuant to this chapter;

27 b. The employee has not returned to work or has
28 returned to work earning less than 80 percent of the
29 employee's average weekly wage as a direct result of the
30 employee's impairment; and

31

1 c. The employee has in good faith attempted to obtain
2 employment commensurate with the employee's ability to work.

3 2. If an employee is not entitled to supplemental
4 benefits at the time of payment of the final weekly impairment
5 income benefit because the employee is earning at least 80
6 percent of the employee's average weekly wage, the employee
7 may become entitled to supplemental benefits at any time
8 within 1 year after the impairment income benefit period ends
9 if:

10 a. The employee earns wages that are less than 80
11 percent of the employee's average weekly wage for a period of
12 at least 90 days;

13 b. The employee meets the other requirements of
14 subparagraph 1.; and

15 c. The employee's decrease in earnings is a direct
16 result of the employee's impairment from the compensable
17 injury.

18 3. If an employee earns wages that are at least 80
19 percent of the employee's average weekly wage for a period of
20 at least 90 days during which the employee is receiving
21 supplemental benefits, the employee ceases to be entitled to
22 supplemental benefits for the filing period. Supplemental
23 benefits that have been terminated shall be reinstated when
24 the employee satisfies the conditions enumerated in
25 subparagraph 2. and files the statement required under
26 subparagraph 5. Notwithstanding any other provision, if an
27 employee is not entitled to supplemental benefits for 12
28 consecutive months, the employee ceases to be entitled to any
29 additional income benefits for the compensable injury. If the
30 employee is discharged within 12 months after losing
31 entitlement under this subsection, benefits may be reinstated

1 if the employee was discharged at that time with the intent to
2 deprive the employee of supplemental benefits.

3 4. During the period that impairment income benefits
4 or supplemental income benefits are being paid, the carrier
5 has the affirmative duty to determine at least annually
6 whether any extended unemployment or underemployment is a
7 direct result of the employee's impairment. To accomplish this
8 purpose, the division may require periodic reports from the
9 employee and the carrier, and it may, at the carrier's
10 expense, require any physical or other examinations,
11 vocational assessments, or other tests or diagnoses necessary
12 to verify that the carrier is performing its duty. Not more
13 than once in each 12 calendar months, the employee and the
14 carrier may each request that the division review the status
15 of the employee and determine whether the carrier has
16 performed its duty with respect to whether the employee's
17 unemployment or underemployment is a direct result of
18 impairment from the compensable injury.

19 5. After the initial determination of supplemental
20 benefits, the employee must file a statement with the carrier
21 stating that the employee has earned less than 80 percent of
22 the employee's average weekly wage as a direct result of the
23 employee's impairment, stating the amount of wages the
24 employee earned in the filing period, and stating that the
25 employee has in good faith sought employment commensurate with
26 the employee's ability to work. The statement must be filed
27 quarterly on a form and in the manner prescribed by the
28 division. The division may modify the filing period as
29 appropriate to an individual case. Failure to file a statement
30 relieves the carrier of liability for supplemental benefits
31 for the period during which a statement is not filed.

1 6. The carrier shall begin payment of supplemental
2 benefits not later than the seventh day after the expiration
3 date of the impairment income benefit period and shall
4 continue to timely pay those benefits. The carrier may request
5 a mediation conference for the purpose of contesting the
6 employee's entitlement to or the amount of supplemental income
7 benefits.

8 7. Supplemental benefits are calculated quarterly and
9 paid monthly. For purposes of calculating supplemental
10 benefits, 80 percent of the employee's average weekly wage and
11 the average wages the employee has earned per week are
12 compared quarterly. For purposes of this paragraph, if the
13 employee is offered a bona fide position of employment that
14 the employee is capable of performing, given the physical
15 condition of the employee and the geographic accessibility of
16 the position, the employee's weekly wages are considered
17 equivalent to the weekly wages for the position offered to the
18 employee.

19 8. Supplemental benefits are payable at the rate of 80
20 percent of the difference between 80 percent of the employee's
21 average weekly wage determined pursuant to s. 440.14 and the
22 weekly wages the employee has earned during the reporting
23 period, not to exceed the maximum weekly income benefit under
24 s. 440.12.

25 9. The division may by rule define terms that are
26 necessary for the administration of this section and forms and
27 procedures governing the method of payment of supplemental
28 benefits for dates of accidents before January 1, 1994, and
29 for dates of accidents on or after January 1, 1994.

30 (c) Duration of temporary impairment and supplemental
31 income benefits.--The employee's eligibility for temporary

1 benefits, impairment income benefits, and supplemental
2 benefits terminates on the expiration of 401 weeks after the
3 date of injury. At no time shall an employee be eligible to
4 receive both permanent and total disability and impairment
5 benefits. If an employee is either adjudicated by a judge of
6 compensation claims or accepted by a carrier as permanently
7 and totally disabled, the carrier shall be entitled to a
8 credit for any impairment benefits previously paid.

9 Section 12. Subsection (2) of section 440.185, Florida
10 Statutes, is amended to read:

11 440.185 Notice of injury or death; reports; penalties
12 for violations.--

13 (2) Within 7 days after actual knowledge of injury or
14 death, the employer shall report such injury or death to its
15 carrier, in a format prescribed by the division, and shall
16 provide a copy of such report to the employee or the
17 employee's estate. The report of injury shall contain the
18 following information:

19 (a) The name, address, and business of the employer;

20 (b) The name, social security number, street, mailing
21 address, telephone number, and occupation of the employee;

22 (c) The cause and nature of the injury or death;

23 (d) The year, month, day, and hour when, and the
24 particular locality where, the injury or death occurred; ~~and~~

25 (e) A record of the employee's earnings for the 13
26 weeks before the date of injury; and

27 (f)~~(e)~~ Such other information as the division may
28 require by rule.

29
30 The carrier shall, within 14 days after the employer's receipt
31 of the form reporting the injury, file the information

1 required by this subsection with the division in Tallahassee.
2 However, the division may by rule provide for a different
3 reporting system for those types of injuries which it
4 determines should be reported in a different manner and for
5 those cases which involve minor injuries requiring
6 professional medical attention in which the employee does not
7 lose more than 7 days of work as a result of the injury and is
8 able to return to the job immediately after treatment and
9 resume regular work.

10 Section 13. Section 440.191, Florida Statutes, is
11 amended to read:

12 440.191 Employee Assistance and Ombudsman Office.--

13 (1)(a) In order to effect the self-executing features
14 of the Workers' Compensation Law, this chapter shall be
15 construed to permit injured employees and employers or the
16 employer's carrier to resolve disagreements without undue
17 expense, costly litigation, or delay in the provisions of
18 benefits. It is the duty of all who participate in the
19 workers' compensation system, including, but not limited to,
20 carriers, service providers, health care providers, managed
21 care arrangements, attorneys, employers, and employees, to
22 attempt to resolve disagreements in good faith and to
23 cooperate with the division's efforts to resolve disagreements
24 between the parties. The division may by rule prescribe
25 definitions ~~that are~~ necessary for the effective
26 administration of this section.

27 (b) An Employee Assistance and Ombudsman Office is
28 created within the Division of Workers' Compensation to inform
29 and assist injured workers, employers, carriers, ~~and~~ health
30 care providers, and managed care arrangements in fulfilling
31 their responsibilities under this chapter. The division may by

1 rule specify forms and procedures for administering ~~requests~~
2 ~~for assistance provided by~~ this section.

3 (c) The Employee Assistance and Ombudsman Office,
4 ~~Division of Workers' Compensation,~~ shall be a resource
5 available to all employees who participate in the workers'
6 compensation system and shall take all steps necessary to
7 educate and disseminate information to employees and
8 employers. Upon receiving a notice of injury or death, the
9 Employee Assistance and Ombudsman Office is authorized to
10 initiate contact with the injured employee or employee's
11 representative to discuss rights and responsibilities of the
12 employee under this chapter and the services available through
13 the Employee Assistance and Ombudsman Office.

14 (2)(a) ~~An employee may not file a petition requesting~~
15 ~~any benefit under this chapter unless the employee has~~
16 ~~exhausted the procedures for informal dispute resolution under~~
17 ~~this section.~~

18 (a)(b) If at any time the employer or its carrier
19 fails to provide benefits to which the employee believes she
20 or he is entitled, the employee may ~~shall~~ contact the office
21 to request assistance in resolving the dispute. The office may
22 ~~shall investigate the dispute and shall attempt to facilitate~~
23 an agreement between the employee and the employer or carrier.
24 The employee, the employer, and the carrier shall cooperate
25 with the office and shall timely provide the office with any
26 documents or other information that it may require in
27 connection with its efforts under this section.

28 (b)(c) The office may request ~~compel~~ parties to attend
29 conferences in person or by telephone in an attempt to resolve
30 disputes quickly and in the most efficient manner possible.
31 Settlement agreements resulting from such conferences must be

1 submitted to the Office of the Judges of Compensation Claims
2 for approval.

3 (c)~~(d)~~ The Employee Assistance and Ombudsman Office
4 may assign an ombudsman to assist the employee in resolving
5 the dispute. ~~If the dispute is not resolved within 30 days~~
6 ~~after the employee contacts the office,~~The ombudsman may
7 ~~shall~~, at the employee's request, assist the employee in
8 drafting a petition for benefits and explain the procedures
9 for filing petitions. ~~The division may by rule determine the~~
10 ~~method used to calculate the 30-day period.~~The Employee
11 Assistance and Ombudsman Office may not represent employees
12 before the judges of compensation claims. An employer or
13 carrier may not pay any attorneys' fees on behalf of the
14 employee for services rendered or costs incurred in connection
15 with this section, unless expressly authorized elsewhere in
16 this chapter.

17 Section 14. Subsections (1), (2), (5), (7), and (8) of
18 section 440.192, Florida Statutes, are amended, and subsection
19 (9) is added to said section, to read:

20 440.192 Procedure for resolving benefit disputes.--

21 (1) Subject to s. 440.191, any employee who has not
22 received a benefit to which the employee believes she or he is
23 entitled under this chapter shall file by certified mail, or
24 by electronic means approved by the Deputy Chief Judge, with
25 the Office of the Judges of Compensation Claims a petition for
26 benefits which meets the requirements of this section. The
27 division shall inform employees of the location of the Office
28 of the Judges of Compensation Claims for purposes of filing a
29 petition for benefits. The employee shall also serve copies
30 of the petition for benefits by certified mail, or by
31 electronic means approved by the Deputy Chief Judge, upon the

1 employer, and the employer's carrier, and the Office of the
2 Judges of Compensation Claims. The Deputy Chief Judge shall
3 refer the petitions to the judges of compensation claims.

4 (2) Upon receipt of a petition, the Office of the
5 Judges of Compensation Claims shall review each petition and
6 shall dismiss each petition or any portion of such a petition,
7 upon the judge's own motion or upon the motion of any party,
8 that does not on its face specifically identify or itemize the
9 following:

10 (a) Name, address, telephone number, and social
11 security number of the employee.

12 (b) Name, address, and telephone number of the
13 employer.

14 (c) A detailed description of the injury and cause of
15 the injury, including the location of the occurrence and the
16 date or dates of the accident.

17 (d) A detailed description of the employee's job, work
18 responsibilities, and work the employee was performing when
19 the injury occurred.

20 (e) The time period for which compensation and the
21 specific classification of compensation were not timely
22 provided.

23 (f) Date of maximum medical improvement, character of
24 disability, and specific statement of all benefits or
25 compensation that the employee is seeking.

26 (g) All specific travel costs to which the employee
27 believes she or he is entitled, including dates of travel and
28 purpose of travel, means of transportation, and mileage and
29 including the date the request for mileage was filed with the
30 carrier and a copy of the request filed with the carrier.
31

1 (h) Specific listing of all medical charges alleged
2 unpaid, including the name and address of the medical
3 provider, the amounts due, and the specific dates of
4 treatment.

5 (i) The type or nature of treatment care or attendance
6 sought and the justification for such treatment. If the
7 employee is under the care of a physician for the injury
8 identified under paragraph (c), a copy of the physician's
9 request, authorization, or recommendation for treatment, care,
10 or attendance must accompany the petition.

11 (j) Specific explanation of any other disputed issue
12 that a judge of compensation claims will be called to rule
13 upon.

14 (k) Any other information and documentation the Deputy
15 Chief Judge may require by rule.

16
17 The dismissal of any petition or portion of such a petition
18 under this section is without prejudice and does not require a
19 hearing.

20 (5) All motions to dismiss must state with
21 particularity the basis for the motion. The judge of
22 compensation claims shall enter an order upon such motions
23 without hearing, unless good cause for hearing is shown. When
24 any petition or portion of a petition is dismissed for lack of
25 specificity under this subsection, the claimant must be
26 allowed 20 days after the date of the order of dismissal in
27 which to file an amended petition. Any grounds for dismissal
28 for lack of specificity under this section which are not
29 asserted within 45 ~~30~~ days after receipt of the petition for
30 benefits are thereby waived.

31

1 (7) Notwithstanding the provisions of s. 440.34, a
2 judge of compensation claims may not award attorney's fees
3 payable by the carrier for services expended or costs incurred
4 prior to the filing of a petition ~~that does not~~ meeting meet
5 the requirements of this section.

6 (8) Within 30 ~~14~~ days after receipt of a petition for
7 benefits by certified mail, the carrier must either pay the
8 requested benefits without prejudice to its right to deny
9 within 120 days from receipt of the petition or file a
10 response to petition with the Office of the Judges of
11 Compensation Claims. The carrier must list all benefits
12 requested but not paid and explain its justification for
13 nonpayment in the response to petition. A carrier that does
14 not deny compensability in accordance with s. 440.20(4) is
15 deemed to have accepted the employee's injuries as
16 compensable, unless it can establish material facts relevant
17 to the issue of compensability that could not have been
18 discovered through reasonable investigation within the 120-day
19 period. The carrier shall provide copies of the response to
20 the filing party, employer, and claimant by certified mail.

21 (9) Unless stipulated to in writing by the parties,
22 only claims which have been properly raised by a petition for
23 benefits and have undergone mediation may be considered for
24 adjudication by a judge of compensation claims.

25 Section 15. Subsection (11) of section 440.20, Florida
26 Statutes, is amended to read:

27 440.20 Time for payment of compensation; penalties for
28 late payment.--

29 (11)(a) When a claimant is not represented by counsel,
30 upon joint petition of all interested parties, a lump-sum
31 payment in exchange for the employer's or carrier's release

1 from liability for future medical expenses, as well as future
2 payments of compensation expenses and any other benefits
3 provided under this chapter, shall be allowed at any time in
4 any case in which the employer or carrier has filed a written
5 notice of denial within 120 days after the employer receives
6 notice of the injury, and the judge of compensation claims at
7 a hearing to consider the settlement proposal finds a
8 justiciable controversy as to legal or medical compensability
9 of the claimed injury or the alleged accident. The employer
10 or carrier may not pay any attorney's fees on behalf of the
11 claimant for any settlement under this section unless
12 expressly authorized elsewhere in this chapter. Upon the joint
13 petition of all interested parties and after giving due
14 consideration to the interests of all interested parties, the
15 judge of compensation claims may enter a compensation order
16 approving and authorizing the discharge of the liability of
17 the employer for compensation and remedial treatment, care,
18 and attendance, as well as rehabilitation expenses, by the
19 payment of a lump sum. The judge of compensation claims shall
20 not approve settlement proposals, including any stipulations
21 or agreements between the parties or between a claimant and
22 his or her attorney related to a settlement, which provide for
23 an attorney's fee in excess of the amount permitted in s.
24 440.34.Such a compensation order so entered upon joint
25 petition of all interested parties is not subject to
26 modification or review under s. 440.28. If the settlement
27 proposal together with supporting evidence is not approved by
28 the judge of compensation claims, it shall be considered void.
29 Upon approval of a lump-sum settlement under this subsection,
30 the judge of compensation claims shall send a report to the
31 Chief Judge of the amount of the settlement and a statement of

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

6 (b) When a claimant is not represented by counsel,
7 upon joint petition of all interested parties, a lump-sum
8 payment in exchange for the employer's or carrier's release
9 from liability for future medical expenses, as well as future
10 payments of compensation and rehabilitation expenses, and any
11 other benefits provided under this chapter, may be allowed at
12 any time in any case after the injured employee has attained
13 maximum medical improvement. An employer or carrier may not
14 pay any attorney's fees on behalf of the claimant for any
15 settlement, unless expressly authorized elsewhere in this
16 chapter. The judge of compensation claims shall not approve
17 settlement proposals, including any stipulations or agreements
18 between the parties or between a claimant and his or her
19 attorney related to the settlement proposal, which provide for
20 an attorney's fee in excess of the amount permitted in s.
21 440.34.A A compensation order so entered upon joint petition of
22 all interested parties shall not be subject to modification or
23 review under s. 440.28. However, a judge of compensation
24 claims is not required to approve any award for lump-sum
25 payment when it is determined by the judge of compensation
26 claims that the payment being made is in excess of the value
27 of benefits the claimant would be entitled to under this
28 chapter. The judge of compensation claims shall make or cause
29 to be made such investigations as she or he considers
30 necessary, in each case in which the parties have stipulated
31 that a proposed final settlement of liability of the employer

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

1 by the employer or carrier. Such applications shall be
2 considered and determined in accordance with s. 440.25.
3 (c) Notwithstanding s. 440.21(2), when a claimant is
4 represented by counsel, the claimant may waive all rights to
5 any and all benefits under this chapter by entering into a
6 settlement agreement releasing the employer and the carrier
7 from liability for workers' compensation benefits in exchange
8 for a lump-sum payment to the claimant. Upon written request
9 of the claimant, the judge of compensation claims shall
10 approve the settlement agreement if, in the discretion of the
11 judge of compensation claims, the settlement agreement is in
12 the best interest of the claimant. If the claimant does not
13 request in writing the approval of the settlement agreement by
14 the judge of compensation claims, the settlement agreement
15 requires approval by the judge of compensation claims only as
16 to the attorney's fees paid to the claimant's attorney by the
17 claimant. If the claimant has requested in writing approval of
18 the settlement by the judge of compensation claims, the judge
19 of compensation claims may require additional information from
20 the parties in support of the settlement to determine that the
21 settlement is in the best interest of the claimant. If the
22 claimant has not requested in writing approval by the judge of
23 compensation claims, the parties need not submit any
24 information or documentation in support of the settlement,
25 except as needed to justify the amount of the attorney's fees.
26 Neither the employer nor the carrier is responsible for any
27 attorney's fees relating to the settlement and release of
28 claims under this section. Payment of the lump-sum settlement
29 amount must be made within 14 days after the date the judge of
30 compensation claims mails the order approving the attorney's
31 fees. Any order entered by a judge of compensation claims

1 approving the attorney's fees as set out in the settlement
2 under this subsection is not considered to be an award and is
3 not subject to modification or review. The judge of
4 compensation claims shall report these settlements to the
5 Deputy Chief Judge in accordance with the requirements set
6 forth in paragraphs (a) and (b). Settlements entered into
7 under this subsection are valid and apply to all dates of
8 accident.

9 (d)1. With respect to any lump-sum settlement under
10 this subsection, a judge of compensation claims must consider
11 at the time of the settlement, whether the settlement
12 allocation provides for the appropriate recovery of child
13 support arrearages. Neither the employer nor the carrier has a
14 duty to investigate or collect information regarding child
15 support arrearages.

16 2. When reviewing any settlement of lump-sum payment
17 pursuant to this subsection, judges of compensation claims
18 shall consider the interests of the worker and the worker's
19 family when approving the settlement, which must consider and
20 provide for appropriate recovery of past due support.

21 (e) This section applies to all claims that the
22 parties have not previously settled, regardless of the date of
23 accident.

24 Section 16. Subsections (1), (3), and (4) of section
25 440.25, Florida Statutes, are amended to read:

26 440.25 Procedures for mediation and hearings.--

27 (1) Within 90 ~~21~~ days after a petition for benefits is
28 filed under s. 440.192, a mediation conference concerning such
29 petition shall be held. Within 7 days after such petition is
30 filed, the judge of compensation claims shall notify the
31 interested parties by order requiring mediation that a

1 mediation conference concerning such petition will be held
2 unless the parties have provided the Office of the Judges of
3 Compensation Claims with a copy of the private mediation
4 report showing that a mediation pursuant to subparagraph
5 (3)(b)1. or subparagraph (3)(b)2. has been held concerning
6 such petition. Such order requiring mediation notice shall
7 give the date by which, time, and location of the mediation
8 conference must be held and shall. Such notice may be served
9 personally upon the interested parties or may be sent to the
10 interested parties by mail. Continuances may be granted only
11 if the requesting party demonstrates to the judge of
12 compensation claims that the reason for requesting the
13 continuance arises from circumstances beyond the party's
14 control. Any order granting a continuance must set forth the
15 date of the rescheduled mediation conference. A mediation
16 conference may not be used solely to mediate attorney's fees.
17 Claimants residing 60 or more miles from the site of the
18 mediation, or the claimant or the adjuster of the employer or
19 carrier whose principal place of employment is 60 or more
20 miles from the site of the mediation, may, at the mediator's
21 discretion, attend the mediation conference by telephone or,
22 if agreed to by the parties, other electronic means. Claimants
23 residing less than 60 miles from the site of the mediation, or
24 the adjuster of the employer or carrier whose principal place
25 of employment is less than 60 miles from the site of the
26 mediation, may attend the mediation conference only by
27 telephone or, if agreed to by the parties, other electronic
28 means at the mediator's discretion and for good cause shown.
29 (3)(a) Such mediation conference shall be conducted
30 informally and shall ~~does~~ not require the use of formal rules
31 of evidence or procedure. Any information from the files,

1 reports, case summaries, mediator's notes, or other
2 communications or materials, oral or written, relating to a
3 mediation conference under this section obtained by any person
4 performing mediation duties is privileged and confidential and
5 may not be disclosed without the written consent of all
6 parties to the conference. Any research or evaluation effort
7 directed at assessing the mediation program activities or
8 performance must protect the confidentiality of such
9 information. Each party to a mediation conference has a
10 privilege during and after the conference to refuse to
11 disclose and to prevent another from disclosing communications
12 made during the conference whether or not the contested issues
13 are successfully resolved. This subsection and paragraphs
14 (4)(a) and (b) shall not be construed to prevent or inhibit
15 the discovery or admissibility of any information ~~that is~~
16 otherwise subject to discovery or ~~that is~~ admissible under
17 applicable law or rule of procedure, except that any conduct
18 or statements made during a mediation conference or in
19 negotiations concerning the conference are inadmissible in any
20 proceeding under this chapter.

21 (b)1. Unless the parties conduct a private mediation
22 under subparagraph 2., mediation shall be conducted by a
23 mediator selected by the Deputy Chief Judge from among
24 mediators ~~The Director of the Division of Administrative~~
25 ~~Hearings shall select a mediator. The mediator shall be~~
26 employed on a full-time basis by the Office of the Judges of
27 Compensation Claims. A mediator must be a member of The
28 Florida Bar for at least 5 years and must complete a mediation
29 training program approved by the Director of the Division of
30 Administrative Hearings. Adjunct mediators may be employed by
31 the Office of the Judges of Compensation Claims on an

1 as-needed basis and shall be selected from a list prepared by
2 the Director of the Division of Administrative Hearings. An
3 adjunct mediator must be independent of all parties
4 participating in the mediation conference. An adjunct mediator
5 must be a member of The Florida Bar for at least 5 years and
6 must complete a mediation training program approved by the
7 Director of the Division of Administrative Hearings. An
8 adjunct mediator shall have access to the office, equipment,
9 and supplies of the judge of compensation claims in each
10 district.

11 2. If the parties agree or if no mediators under
12 subparagraph 1. are available to conduct the required
13 mediation within the period specified in this section, the
14 parties shall hold a mediation conference at the employer's or
15 carrier's expense within the 90-day period set for mediation.
16 The mediation conference shall be conducted by a mediator
17 certified under s. 44.106 as a circuit court mediator under
18 Rule 10.100(c) of the Florida Rules of Certified and Court
19 Appointed Mediators. If the parties do not agree upon a
20 mediator or a date of mediation within 10 days after the date
21 of the order requiring mediation as set forth in subsection
22 (1), the claimant shall notify the judge in writing and the
23 judge shall appoint a mediator meeting the requirements of
24 this subparagraph within 7 days.

25 3. Mediations under subparagraph 2. are considered a
26 private mediation substituting for a state mediation and the
27 private mediator and parties are bound by the applicable rules
28 and laws regarding initial mandatory state mediation,
29 including the filing of a mediation report under Rule 4.370 of
30 the Florida Rules of Certified and Court Appointed Mediators
31 by the mediator and the rules concerning continuances under

1 subsection (1). Nothing in this section shall be construed to
2 restrict the rights of parties to voluntarily mediate cases
3 privately, with or without a pending petition for benefits,
4 with no intention to substitute for the initial mandatory
5 mediation, in which case the requirements of this subparagraph
6 do not apply and an impasse does not trigger the setting of a
7 hearing.

8 4. In the event both parties agree to the results of
9 the mediation conference, the results of the mediation
10 ~~conference~~ shall be binding and neither party shall have a
11 right to appeal the results. In the event either party refuses
12 to agree to the results of the mediation conference, the
13 results of the mediation conference as well as the testimony,
14 witnesses, and evidence presented at the conference shall not
15 be admissible at any subsequent proceeding on the claim. The
16 mediator shall not be called in to testify or give deposition
17 to resolve any claim for any hearing before the judge of
18 compensation claims. The employer may be represented by an
19 attorney at the mediation conference if the employee is also
20 represented by an attorney at the mediation conference.

21 (c) The parties shall complete and file the pretrial
22 stipulations at the conclusion of the mediation conference if
23 any claims in any filed petition, except for attorney's fees
24 and costs, have not been settled and remain unresolved. It is
25 the responsibility of the parties, not the mediator, to file
26 the pretrial stipulation. If the mediation conference is not
27 conducted at the Office of the Judges of Compensation Claims,
28 the parties shall mail the pretrial stipulations to the
29 judge's office on the same day the conference is held
30 following the mediation conference. The judge of compensation
31 claims may sanction a party or both parties for failure to

1 complete the pretrial stipulations before the conclusion of
2 the mediation conference.

3 (4)(a) If the parties fail to agree upon written
4 submission of pretrial stipulations at the mediation
5 conference, on the 10th day following commencement of
6 mediation, the questions in dispute have not been resolved,
7 the judge of compensation claims shall order ~~hold~~ a pretrial
8 hearing to occur within 14 days after the date of the
9 mediation. The judge of compensation claims shall give the
10 interested parties at least 7 days' advance notice of the
11 pretrial hearing by mail. At the pretrial hearing, the judge
12 of compensation claims shall, subject to paragraph (b), set a
13 date for the final hearing that allows the parties at least 30
14 days to conduct discovery unless the parties consent to an
15 earlier hearing date.

16 (b) The final hearing must be held and concluded
17 within 90 ~~45~~ days after the mediation conference is held
18 ~~pretrial hearing~~. Continuances may be granted only if the
19 requesting party demonstrates to the judge of compensation
20 claims that the reason for requesting the continuance arises
21 from circumstances beyond the party's control. Any order
22 granting a continuance must set forth the date and time of the
23 rescheduled hearing. If a judge of compensation claims grants
24 two or more continuances to a requesting party, the judge of
25 compensation claims shall report such continuances to the
26 Deputy Chief Judge.The written consent of the claimant must
27 be obtained before any request is granted for an additional
28 continuance after the initial continuance has been granted.

29 (c) The judge of compensation claims shall give the
30 interested parties at least 7 days' advance notice of the
31 final hearing, served upon the interested parties by mail.

1 (d) The final hearing shall be held within 210 days
2 after receipt of the petition for benefits in the county where
3 the injury occurred, if the injury occurred in this state,
4 unless otherwise agreed to between the parties and authorized
5 by the judge of compensation claims in the county where the
6 injury occurred. If the injury occurred outside ~~without~~ the
7 state and is one for which compensation is payable under this
8 chapter, ~~then~~ the final hearing ~~above referred to~~ may be held
9 in the county of the employer's residence or place of
10 business, or in any other county of the state that ~~which~~ will,
11 in the discretion of the Deputy Chief Judge, be the most
12 convenient for a hearing. The final hearing shall be conducted
13 by a judge of compensation claims, who shall, within 30 days
14 after final hearing or closure of the hearing record, unless
15 otherwise agreed by the parties, enter a final order on the
16 merits of the disputed issues. The judge of compensation
17 claims may enter an abbreviated final order in cases in which
18 compensability is not disputed. Either party may request
19 separate findings of fact and conclusions of law. At the final
20 ~~such~~ hearing, the claimant and employer may each present
21 evidence in respect of the claims presented by the petition
22 for benefits ~~such claim~~ and may be represented by any attorney
23 authorized in writing for such purpose. When there is a
24 conflict in the medical evidence submitted at the hearing, the
25 provisions of s. 440.13 shall apply. The report or testimony
26 of the expert medical advisor shall be made a part of the
27 record of the proceeding and shall be given the same
28 consideration by the judge of compensation claims as is
29 accorded other medical evidence submitted in the proceeding;
30 and all costs incurred in connection with such examination and
31 testimony may be assessed as costs in the proceeding, subject

1 to the provisions of s. 440.13. No judge of compensation
2 claims may make a finding of a degree of permanent impairment
3 that is greater than the greatest permanent impairment rating
4 given the claimant by any examining or treating physician,
5 except upon stipulation of the parties.

6 (e) The order making an award or rejecting the claim,
7 referred to in this chapter as a "compensation order," shall
8 set forth the findings of ultimate facts and the mandate; and
9 the order need not include any other reason or justification
10 for such mandate. The compensation order shall be filed in the
11 Office of the Judges of Compensation Claims at Tallahassee. A
12 copy of such compensation order shall be sent by mail to the
13 parties and attorneys of record at the last known address of
14 each, with the date of mailing noted thereon.

15 (f) Each judge of compensation claims is required to
16 submit a special report to the Deputy Chief Judge in each
17 contested workers' compensation case in which the case is not
18 determined within 30 days of final hearing or closure of the
19 hearing record. Said form shall be provided by the director of
20 the Division of Administrative Hearings and shall contain the
21 names of the judge of compensation claims and of the attorneys
22 involved and a brief explanation by the judge of compensation
23 claims as to the reason for such a delay in issuing a final
24 order.

25 (g) Notwithstanding any other provision of this
26 section, the judge of compensation claims may require the
27 appearance of the parties and counsel before her or him
28 without written notice for an emergency conference where there
29 is a bona fide emergency involving the health, safety, or
30 welfare of an employee. An emergency conference under this
31

1 section may result in the entry of an order or the rendering
2 of an adjudication by the judge of compensation claims.

3 (h) To expedite dispute resolution and to enhance the
4 self-executing features of the Workers' Compensation Law, the
5 Deputy Chief Judge shall make provision by rule or order for
6 the resolution of appropriate motions by judges of
7 compensation claims without oral hearing upon submission of
8 brief written statements in support and opposition, and for
9 expedited discovery and docketing.

10 (i) To further expedite dispute resolution and to
11 enhance the self-executing features of the system, those
12 petitions filed in accordance with s. 440.192 that involve a
13 claim for benefits of \$5,000 or less shall, in the absence of
14 compelling evidence to the contrary, be presumed to be
15 appropriate for expedited resolution under this paragraph; and
16 any other claim filed in accordance with s. 440.192, upon the
17 written agreement of both parties and application by either
18 party, may similarly be resolved under this paragraph. For
19 purposes of expedited resolution pursuant to this paragraph,
20 the Deputy Chief Judge shall make provision by rule or order
21 for expedited and limited discovery and expedited docketing in
22 such cases. At least 15 days prior to hearing, the parties
23 shall exchange and file with the judge of compensation claims
24 a pretrial outline of all issues, defenses, and witnesses on a
25 form adopted by the Deputy Chief Judge; provided, in no event
26 shall such hearing be held without 15 days' written notice to
27 all parties. No pretrial hearing shall be held. The judge of
28 compensation claims shall limit all argument and presentation
29 of evidence at the hearing to a maximum of 30 minutes, and
30 such hearings shall not exceed 30 minutes in length. Neither
31 party shall be required to be represented by counsel. The

1 employer or carrier may be represented by an adjuster or other
2 qualified representative. The employer or carrier and any
3 witness may appear at such hearing by telephone. The rules of
4 evidence shall be liberally construed in favor of allowing
5 introduction of evidence.

6 (j) A judge of compensation claims, either upon the
7 motion of a party or the judge's own motion, may dismiss a
8 petition for lack of prosecution if no petitions, responses,
9 motions, orders, requests for hearings, or notices of
10 deposition have been filed for a period of 12 months, unless
11 good cause is shown. Dismissals for lack of prosecution are
12 without prejudice and do not require a hearing.

13 (k) A judge of compensation claims may not award
14 interest on unpaid medical bills, nor may the amount of such
15 bills be used to calculate the amount of interest awarded.

16 (l)1. Two or more opposing parties who are involved in
17 a workers' compensation dispute may agree in writing to submit
18 the controversy to voluntary binding dispute resolution in
19 lieu of litigation of the issues involved after the filing of
20 the petition for benefits, provided no constitutional issue is
21 involved.

22 2. If the parties have entered into an agreement which
23 provides, in the voluntary binding dispute resolution, a
24 method for appointing a member of The Florida Bar, in good
25 standing for more than 5 years, to act as a judge in the
26 voluntary binding dispute resolution, the judge of
27 compensation claims shall proceed with the appointment as
28 prescribed. The judge in the voluntary binding dispute
29 resolution shall be compensated by the parties according to
30 the parties' agreement and may administer oaths or
31 affirmations and conduct the proceedings as provided by the

1 rules of court. At the request of any party, the judge in the
2 voluntary binding dispute resolution shall issue subpoenas for
3 the attendance of witnesses and for the production of books,
4 records, documents, and other evidence which may apply to the
5 court for orders compelling attendance and production.
6 Subpoenas shall be served and shall be enforced in the manner
7 provided by law. The judge in the voluntary binding dispute
8 resolution shall notify the parties of the time and the place
9 for the voluntary binding dispute resolution hearing, shall
10 conduct the hearing, may determine any questions or issues,
11 and shall render a final decision.

12 3. The workers' compensation rules of procedure shall
13 apply to all proceedings under this paragraph.

14 4. Filing the agreement and application for voluntary
15 binding dispute resolution does toll the running of the
16 applicable statutes of limitation.

17 5. Notwithstanding any other provisions of this
18 section, disputes submitted to voluntary binding dispute
19 resolution under this paragraph are not subject to mandatory
20 mediation.

21 6. The judge in the voluntary binding dispute
22 resolution shall render a compensation order as defined in s.
23 440.25(4)(e) determining the disputed issues. The compensation
24 order is subject to enforcement and appeal in the same manner
25 as a compensation order entered by a judge of compensation
26 claims.

27
28 Regardless of the date benefits were initially requested,
29 attorney's fees do not attach under this subsection until 30
30 days from the date the carrier or employer, if self-insured,
31 receives the petition.

1 Section 17. Subsection (4) of section 440.29, Florida
2 Statutes, is amended to read:

3 440.29 Procedure before the judge of compensation
4 claims.--

5 (4) All medical reports of authorized treating health
6 care providers or independent medical examiners, whose medical
7 opinion is submitted under s. 440.13(5)(e), relating to the
8 claimant and subject accident shall be received into evidence
9 by the judge of compensation claims upon proper motion.

10 However, such records must be served on the opposing party at
11 least 30 days before the final hearing. This section does not
12 limit any right of further discovery, including, but not
13 limited to, depositions.

14 Section 18. Subsections (1) and (3) of section 440.34,
15 Florida Statutes, are amended to read:

16 440.34 Attorney's fees; costs.--

17 (1) A fee, gratuity, or other consideration may not be
18 paid for services rendered for a claimant in connection with
19 any proceedings arising under this chapter, unless approved as
20 reasonable by the judge of compensation claims or court having
21 jurisdiction over such proceedings. Except as provided by this
22 subsection, any attorney's fee approved by a judge of
23 compensation claims for services rendered to a claimant shall
24 be must equal to 20 percent of the first ~~\$5,000~~ of the amount
25 of the benefits secured, ordered, or agreed to by the parties,
26 ~~15 percent of the next \$5,000 of the amount of the benefits~~
27 ~~secured, 10 percent of the remaining amount of the benefits~~
28 ~~secured to be provided during the first 10 years after the~~
29 ~~date the claim is filed, and 5 percent of the benefits secured~~
30 ~~after 10 years. However,~~The judge of compensation claims may
31 approve an additional attorney's fee not to exceed \$2,000,

1 based upon a reasonable hourly rate, if the judge of
2 compensation claims expressly finds that the fee, based upon
3 the total benefits secured, fails to fairly compensate the
4 attorney and the benefits secured are less than \$10,000. Only
5 in proceedings in which a carrier or employer denies that an
6 injury occurred for which compensation benefits are payable,
7 and the claimant prevails on the issue of compensability, in
8 addition to an attorney's fee equal to 20 percent of the
9 benefits secured, the judge of compensation claims may award a
10 reasonable hourly rate attorney's fee, not to exceed \$5,000,
11 if the judge of compensation claims expressly finds that the
12 attorney's fee, based on the benefits secured, fails to fairly
13 compensate the attorney and ~~shall consider the following~~
14 ~~factors in each case and may increase or decrease the~~
15 ~~attorney's fee if, in her or his judgment, the circumstances~~
16 ~~of the particular case warrant such action. The judge of~~
17 compensation claims shall not approve a compensation order, a
18 joint stipulation for lump-sum settlement, a stipulation or
19 agreement between a claimant and his or her attorney, or any
20 other agreement related to benefits under this chapter that
21 provides for an attorney's fee in excess of the amount
22 permitted by this section.+

23 ~~(a) The time and labor required, the novelty and~~
24 ~~difficulty of the questions involved, and the skill requisite~~
25 ~~to perform the legal service properly.~~

26 ~~(b) The fee customarily charged in the locality for~~
27 ~~similar legal services.~~

28 ~~(c) The amount involved in the controversy and the~~
29 ~~benefits resulting to the claimant.~~

30 ~~(d) The time limitation imposed by the claimant or the~~
31 ~~circumstances.~~

1 ~~(e) The experience, reputation, and ability of the~~
2 ~~lawyer or lawyers performing services.~~

3 ~~(f) The contingency or certainty of a fee.~~

4 (3) If any party ~~the claimant~~ should prevail in any
5 proceedings before a judge of compensation claims or court,
6 there shall be taxed against the nonprevailing party ~~employer~~
7 the reasonable costs of such proceedings, not to include ~~the~~
8 attorney's fees ~~of the claimant~~. A claimant shall be
9 responsible for the payment of her or his own attorney's fees,
10 except that a claimant shall be entitled to recover a
11 reasonable attorney's fee from a carrier or employer:

12 (a) Against whom she or he successfully asserts a
13 petition claim for medical benefits only, if the claimant has
14 not filed or is not entitled to file at such time a claim for
15 disability, permanent impairment, wage-loss, or death
16 benefits, arising out of the same accident; or

17 (b) In any case in which the employer or carrier files
18 a response to petition denying benefits with the Office of the
19 Judges of Compensation Claims and the injured person has
20 employed an attorney in the successful prosecution of the
21 claim; or

22 (c) In a proceeding in which a carrier or employer
23 denies that an injury occurred for which compensation benefits
24 are payable, and the claimant prevails on the issue of
25 compensability; or

26 (d) In cases where the claimant successfully prevails
27 in proceedings filed under s. 440.24 or s. 440.28.

28
29 Regardless of the date benefits were initially requested,
30 attorney's fees shall not attach under this subsection until
31 30 days from the date the carrier or employer, if

1 ~~self-insured, receives the petition. In applying the factors~~
2 ~~set forth in subsection (1) to cases arising under paragraphs~~
3 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
4 ~~only consider only such benefits and the time reasonably spent~~
5 ~~in obtaining them as were secured for the claimant within the~~
6 ~~scope of paragraphs (a), (b), (c), and (d).~~

7 Section 19. Section 440.345, Florida Statutes, is
8 amended to read:

9 440.345 Reporting of attorney's fees.--All fees paid
10 to attorneys for services rendered under this chapter shall be
11 reported to the Office of the Judges of Compensation Claims as
12 the Office of the Judges of Compensation Claims requires by
13 rule. The Office of the Judges of Compensation Claims shall
14 annually summarize the such data in a report to the Governor,
15 the President of the Senate, the Speaker of the House of
16 Representatives, and the Workers' Compensation Oversight
17 Board.

18 Section 20. Subsection (8) is added to section 440.39,
19 Florida Statutes, to read:

20 440.39 Compensation for injuries when third persons
21 are liable.--

22 (8) This section does not impose on the carrier a duty
23 to preserve evidence pertaining to the industrial accident or
24 to injuries arising from such accident.

25 Section 21. Effective July 1, 2002, subsection (6) is
26 added to section 440.45, Florida Statutes, to read:

27 440.45 Office of the Judges of Compensation Claims.--

28 (6) Each full-time judge of compensation claims shall
29 receive a salary in an amount equal to \$5,000 less than the
30 salary paid to a county court judge. The Deputy Chief Judge
31 shall receive a salary of \$1,000 more per year than the salary

1 paid to a full-time judge of compensation claims. These
2 salaries shall be paid out of the fund established in s.
3 440.50.

4 Section 22. Paragraph (b) of subsection (6) of section
5 440.491, Florida Statutes, is amended to read:

6 440.491 Reemployment of injured workers;
7 rehabilitation.--

8 (6) TRAINING AND EDUCATION.--
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 division from the Workers' Compensation
25 Administration Trust Fund established by s. 440.50. An
26 employee who refuses to accept training and education that is
27 recommended by the vocational evaluator and considered
28 necessary by the division is subject to a 50-percent reduction
29 in weekly compensation benefits, ~~including wage loss benefits,~~
30 ~~as determined under s. 440.15(3)(b).~~

31

1 Section 23. The amendments to ss. 440.02 and 440.15,
2 Florida Statutes, in this act shall not be construed to affect
3 any determination of disability under s. 112.18, s. 112.181,
4 or s. 112.19, Florida Statutes.

5 Section 24. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of
8 the act which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 this act are declared severable.

11 Section 25. Except as otherwise provided herein, this
12 act shall take effect January 1, 2003.

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15 HOUSE SUMMARY

16 Revises various workers' compensation provisions relating
17 to the duty of an employer to furnish medical treatment,
18 workers' compensation managed care arrangements, and
19 compensation for disability, notice of injury or death,
20 the Employee Assistance and Ombudsman Office, procedures
21 for resolving benefit disputes, penalties for late
22 payment of compensation, procedures for mediation and
23 hearings, procedures before judges of compensation
24 claims, attorney's fees and costs, reporting of
25 attorney's fees, and rate filings. See bill for details.
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