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1 A bill to be entitled

2 An act relating to workers' compensation; amending s.
3 440.02, F.S.; revising and adding definitions; amending s.
4 440.021, F.S.; correcting a cross reference; creating s.
5 440.115, F.S.; providing for employer's and carrier's
6 responsibilities for production of documents; requiring a
7 written explanation if benefits are denied; amending s.
8 440.125, F.S.; providing for waiver of employee
9 confidentiality with regard to medical records and reports
10 under certain circumstances; requiring the employee to
11 complete a prior injury questionnaire; amending s. 440.13,
12 F.S.; requiring certain medical reports to include
13 specified information; providing conditions for
14 independent medical examinations; providing for claims and
15 termination or suspension of claims for medical benefits
16 in compensability admitted cases; providing for requests
17 for authorization of medical treatment or testing in such
18 cases; providing procedures and sanctions when an
19 employee fails or refuses to attend a medical
20 appointment; creating s. 440.131, F.S.; transferring
21 provisions relating to utilization review, utilization
22 reimbursement disputes, and overutilization from s.
23 440.13, F.S., to s. 440.131, F.S.; creating s. 440.1312,
24 F.S.; transferring provisions relating to audits by and
25 jurisdiction of the Agency for Health Care Administration
26 and Department of Insurance from s. 440.13, F.S., to s.
27 440.1312, F.S.; creating s. 440.1313, F.S.; transferring
28 provisions relating to the three-member panel, maximum
29 reimbursement, physician removal, and payment of medical
30 fees from s. 440.13, F.S., to s. 440.1313, F.S.; revising



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31 membership of panel to include the Chief Financial
32 Officer; creating s. 440.1314, F.S.; transferring
33 provisions relating to practice parameters from s. 440.13,
34 F.S., to s. 440.1314, F.S.; creating s. 440.1315, F.S.;
35 transferring provisions relating to attendant care
36 services from s. 440.13, F.S., to s. 440.1315, F.S.;
37 requiring the employee to provide certain information in a
38 petition for benefits; specifying circumstances under
39 which attendant care services may be suspended or
40 terminated and providing for notice thereof; providing for
41 hearings; creating s. 440.145, F.S.; establishing
42 procedures for disputes regarding average weekly wage and
43 corresponding compensation rate; amending s. 440.15, F.S.;
44 revising provisions relating to temporary total disability
45 benefits; providing for notice of termination of benefits
46 and objections thereto; creating s. 440.1501, F.S.;
47 transferring provisions relating to compensation for
48 catastrophic temporary total disability from s. 440.15,
49 F.S., to s. 440.1501, F.S.; providing conditions for
50 suspension or termination of catastrophic temporary total
51 disability benefits and objections thereto; providing for
52 hearings; requiring earned income reports to the
53 Department of Insurance, employer, and carrier; creating
54 s. 440.15015, F.S.; transferring provisions requiring
55 earned income reports to the Department of Insurance,
56 employer, and carrier from s. 440.15, F.S., to s.
57 440.15015, F.S.; creating s. 440.1502, F.S.; transferring
58 provisions relating to compensation for temporary partial
59 disability from s. 440.15, F.S., to s. 440.1502, F.S.;
60 providing conditions for an employee's return to work;



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61 providing conditions for termination of temporary partial
62 disability benefits and objections thereto; providing for
63 hearings; creating s. 440.1503, F.S.; transferring
64 provisions relating to compensation for impairment from s.
65 440.15, F.S., to s. 440.1503, F.S.; providing conditions
66 for termination of permanent impairment benefits and
67 objections thereto; providing for hearings; creating s.
68 440.1504, F.S.; transferring provisions relating to
69 supplemental benefits from s. 440.15, F.S., to s.
70 440.1504, F.S.; providing conditions for termination of
71 supplemental benefits and objections thereto; providing
72 for hearings; creating s. 440.1505, F.S.; transferring
73 provisions relating to compensation for permanent total
74 disability from s. 440.15, F.S., to s. 440.1505, F.S.;
75 providing conditions for termination of permanent total
76 disability benefits and objections thereto; providing for
77 hearings; creating s. 440.1506, F.S.; transferring
78 provisions relating to compensation for subsequent injury
79 from s. 440.15, F.S., to s. 440.1506, F.S.; creating s.
80 440.1507, F.S.; transferring provisions relating to
81 eligibility for benefits from s. 440.15, F.S., to s.
82 440.1507, F.S.; requiring an employee who has applied for
83 social security benefits to notify the employer or carrier
84 within a specified time period; creating s. 440.1508,
85 F.S.; transferring provisions relating to repayment of
86 benefits from s. 440.15, F.S., to s. 440.1508, F.S.;
87 providing procedures in circumstances when a
88 miscalculation of benefits is alleged; amending s. 440.16,
89 F.S.; transferring provisions relating to compensation for
90 death from s. 440.25, F.S., to s. 440.16, F.S.; requiring



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91 certain information to be provided with a petition for
92 benefits in cases of death; providing conditions for
93 denial of death benefits; providing for hearings; creating
94 s. 440.1855, F.S.; providing circumstances for denial of
95 benefits as a result of the tolling of the statute of
96 limitations; repealing s. 440.191, F.S., relating to the
97 Employee Assistance and Ombudsman Office; creating s.
98 440.1915, F.S.; providing for a stay pending criminal
99 investigation and prosecution of workers' compensation
100 fraud; amending s. 440.192, F.S., relating to procedure
101 for resolving benefit disputes; requiring additional
102 information to be provided in an answer to a petition for
103 benefits; providing for extension of time by which to file
104 an answer; correcting a reference, to conform; creating s.
105 440.1927, F.S.; providing procedures for expedited
106 hearings; providing for mediation conferences; amending s.
107 440.25, F.S.; revising provisions relating to procedures
108 for mediation and hearings; providing for state and
109 private mediation conferences; providing that mediators in
110 state mediation conferences be selected by the Chief Judge
111 of Compensation Claims; providing for pretrial hearings;
112 providing for consolidation of specified petitions for
113 benefits; creating s. 440.255, F.S.; transferring
114 provisions relating to procedures for appeals from s.
115 440.25, F.S., to s. 440.255, F.S.; amending s. 440.28,
116 F.S.; requiring an application for modification of an
117 order to include information specified in s. 440.192(2),
118 F.S., relating to a petition for benefits; amending s.
119 440.29, F.S.; providing sanctions for failure to comply
120 with the provisions of said section; creating s. 440.291,



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121 F.S.; providing procedures relating to discovery; creating
 122 s. 440.292, F.S.; providing for motions; creating s.
 123 440.293, F.S.; providing for agreements and stipulations;
 124 creating s. 440.295, F.S.; providing for summary judgment;
 125 amending s. 440.42, F.S.; providing procedures for
 126 resolving disputes between carriers; amending s. 440.442,
 127 F.S.; providing for applicability of the Code of Judicial
 128 Conduct to the Chief Judge of Compensation Claims and
 129 deleting references to the Deputy Chief Judge of
 130 Compensation Claims; amending s. 440.45, F.S.;
 131 reorganizing the Office of the Judges of Compensation
 132 Claims to provide for expiration of the term of the Deputy
 133 Chief Judge and the creation of the position of Chief
 134 Judge; requiring the Chief Judge to report to the
 135 Secretary of Management Services; removing an exception
 136 regarding who may serve on the nominating commission;
 137 providing responsibilities of The Florida Bar with regard
 138 to the conduct of the Chief Judge; requiring The Florida
 139 Bar Rules Committee to promulgate the Workers'
 140 Compensation Rules of Procedure; requiring a report;
 141 amending s. 440.491, F.S.; providing conditions for
 142 additional rehabilitation temporary total disability
 143 benefits, denial of said benefits, and objections thereto;
 144 providing for hearings; amending ss. 112.3145, 120.65,
 145 121.055, 216.251, 440.105, 440.134, 440.14, 440.20,
 146 440.207, 440.29, 440.44, 440.47, 440.49, 440.50, 440.51,
 147 631.929, 946.523, 948.03, 960.13, 985.21, 985.231, and
 148 985.315, F.S.; conforming references to changes made by
 149 the act; providing an effective date.

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151 Be It Enacted by the Legislature of the State of Florida:

152
 153 Section 1. Paragraph (b) of subsection (35) of section
 154 440.02, Florida Statutes, is amended, and subsection (43) is
 155 added to said section, to read:

156 440.02 Definitions.--When used in this chapter, unless the
 157 context clearly requires otherwise, the following terms shall
 158 have the following meanings:

159 (35) "Insolvency" or "insolvent" means:

160 (b) With respect to an employee claiming insolvency
 161 pursuant to s. 440.255 ~~s. 440.25(5)~~, a person is insolvent who:

162 1. Has ceased to pay his or her debts in the ordinary
 163 course of business and cannot pay his or her debts as they
 164 become due; or

165 2. Has been adjudicated insolvent pursuant to the federal
 166 bankruptcy law.

167 (43) "Certificate of mailing" means United States Postal
 168 Service form number 3817.

169 Section 2. Section 440.021, Florida Statutes, is amended
 170 to read:

171 440.021 Exemption of workers' compensation from chapter
 172 120.--Workers' compensation adjudications by judges of
 173 compensation claims are exempt from chapter 120, and no judge of
 174 compensation claims shall be considered an agency or a part
 175 thereof. Communications of the result of investigations by the
 176 department pursuant to s. 440.185(4) are exempt from chapter
 177 120. In all instances in which the department institutes action
 178 to collect a penalty or interest which may be due pursuant to
 179 this chapter, the penalty or interest shall be assessed without
 180 hearing, and the party against which such penalty or interest is



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181 assessed shall be given written notice of such assessment and
182 shall have the right to protest within 20 days of such notice.
183 Upon receipt of a timely notice of protest and after such
184 investigation as may be necessary, the department shall, if it
185 agrees with such protest, notify the protesting party that the
186 assessment has been revoked. If the department does not agree
187 with the protest, it shall refer the matter to the judge of
188 compensation claims for determination pursuant to s. 440.25(2)-
189 (5). Such action of the department is exempt from the provisions
190 of chapter 120.

191 Section 3. Section 440.115, Florida Statutes, is created
192 to read:

193 440.115 Responsibility for continuing production of
194 documents.--

195 (1) The employer and carrier shall each serve on the
196 employee, and the employee shall serve on the employer and
197 carrier, or their respective representatives, if any, the
198 information specified in paragraphs (a)-(i) within 7 days after
199 its receipt, or within 7 days after receipt of a written request
200 by certificate of mailing:

201 (a) The first report of injury.

202 (b) A 13-week wage statement, including any fringe benefit
203 and seasonal employment information.

204 (c) Payout, excluding work product information,
205 investigative information, and payment of attorney's fees.

206 (d) Medical reports or information received from any
207 source.

208 (e) Social security information.

209 (f) All offers of employment together with corresponding
210 job descriptions.



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- 211 (g) Vocational reports.
- 212 (h) A copy of any statement made or given by the employee.
- 213 (i) Post injury earnings on a biweekly basis through the
214 date of maximum medical improvement.
- 215 (2) An insurer shall provide to the employee or his or her
216 representative, if any:
- 217 (a) At the time of denial, a written statement of the
218 reasons that a claim is being denied with all supporting
219 documents in its possession or in the possession of its
220 representative, excluding work product and privileged material,
221 and including, but not limited to, medical reports, vocational
222 reports, or other material relevant to the denial. Any party's
223 failure to comply with the requirements of this paragraph shall
224 bar the use of such documents in its possession or the
225 possession of its representative at any final hearing.
- 226 (b) If the employer or carrier denies that an injury
227 occurred during the course and scope of employment or determines
228 that the employee falsified his or her employment application,
229 the employer or carrier shall furnish all pertinent records,
230 medical records, and documentation relating to the denial at the
231 time of the denial. The employer's or carrier's failure to
232 comply with the requirements of this paragraph shall bar the use
233 of the supporting documents at any final hearing.
- 234 (c) Whenever benefits requested by an employee are denied,
235 suspended, or terminated, a written explanation of the
236 employee's rights and responsibilities, including the right to a
237 hearing, shall be sent simultaneously to the employee by
238 certificate of mailing.
- 239 (d) A party who has responded to a request for discovery
240 with a response that was complete when made is under a



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241 continuing duty to supplement the response to include
242 information thereafter acquired. If, subsequent to compliance
243 with this chapter and the rules of procedure governing
244 discovery, a party discovers additional witnesses or material
245 that the party would have been under a duty to disclose or
246 produce at the time of the previous compliance, the party shall
247 promptly disclose or produce the witnesses or material in the
248 same manner as required under this chapter and the rules
249 governing discovery.

250 Section 4. Section 440.125, Florida Statutes, is amended
251 to read:

252 440.125 Medical records and reports; identifying
253 information in employee medical bills; confidentiality.--

254 (1) Any medical records and medical reports of an injured
255 employee and any information identifying an injured employee in
256 medical bills which are provided to the department, pursuant to
257 s. 440.13, are confidential and exempt from the provisions of s.
258 119.07(1) and s. 24(a), Art. I of the State Constitution, except
259 as otherwise provided by this chapter. The department may share
260 any such confidential and exempt records, reports, or
261 information received pursuant to s. 440.13 with the Agency for
262 Health Care Administration and the Department of Education in
263 furtherance of their official duties under ss. 440.13 and
264 440.134. The agency and the department shall maintain the
265 confidential and exempt status of such records, reports, and
266 information received.

267 (2) When an employee has submitted a claim for workers'
268 compensation benefits or is receiving indemnity or medical
269 benefits:



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270 (a) The employee shall have waived any privilege of
271 confidentiality concerning any medical records and reports,
272 evaluations, bills, nonprivileged communications related to the
273 claim, or treatment for any similar condition that the employee
274 has received with any physician and health care provider,
275 including, but not limited to, communications with psychiatrists
276 or psychologists. Notwithstanding any other provision of law to
277 the contrary, when requested by the employer, carrier, or
278 employee, a health care provider and physician shall provide
279 within a reasonable time period and for a reasonable charge all
280 information and records in his or her possession relating to any
281 such examination, treatment, testing, or consultation concerning
282 the employee.

283 (b) The employee shall provide the employer or carrier
284 with a signed release for all medical records and information
285 related to the claim and the history and treatment of the injury
286 arising from the incident, including information related to the
287 treatment of any mental condition or drug or alcohol abuse. The
288 release shall designate the provider and shall state that the
289 release shall expire no less than 1 year after the date the
290 release is signed. If the employer or carrier requests a release
291 of medical information, the employee must sign and return the
292 release to the employer or carrier by certificate of mailing
293 within 30 days after the employer or carrier requests the
294 information. If the employee refuses to provide a signed release
295 for medical information:

296 1. Any compensation or medical benefits being received by
297 the employee shall be suspended and no hearing on compensation
298 or medical benefits shall be scheduled until such signed release
299 is provided. The disclosure applies to all medical information



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300 relevant to the prosecution or defense of any claim for
301 compensation and medical benefits.

302 2. The employee may request a hearing before the judge of
303 compensation claims who shall determine whether this information
304 will lead to discovery of admissible evidence and enter an order
305 accordingly.

306 (c) The employee shall complete a sworn prior injury
307 questionnaire. If the employee refuses to provide a signed prior
308 injury questionnaire, as required by this section, any
309 compensation or medical benefits being received by the employee
310 shall be suspended and no hearing on compensation or medical
311 benefits shall be scheduled until such signed form is provided.
312 If the employee refuses to complete and provide the employer or
313 carrier with a prior injury questionnaire, the employee may
314 request a hearing before the judge of compensation claims who
315 shall determine whether this information will lead to discovery
316 of admissible evidence and enter an order accordingly.

317 Section 5. Paragraphs (d), (e), and (f) of subsection (2),
318 paragraph (f) of subsection (3), and subsection (4) of section
319 440.13, Florida Statutes, are amended, present subsection (5) is
320 renumbered as subsection (8) and amended, present subsections
321 (9) and (10) are renumbered as subsections (10) and (11),
322 respectively, and new subsections (5), (6), (7), and (9) are
323 added to said section, to read:

324 440.13 Medical services and supplies; penalty for
325 violations; limitations.--

326 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

327 (b)~~(d)~~ The carrier has the right to transfer the care of
328 an injured employee from the attending health care provider if



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329 an independent medical examination determines that the employee
330 is not making appropriate progress in recuperation.

331 (c)~~(e)~~ Except in emergency situations and for treatment
332 rendered by a managed care arrangement, after any initial
333 examination and diagnosis by a physician providing remedial
334 treatment, care, and attendance, and before a proposed course of
335 medical treatment begins, each insurer shall review, in
336 accordance with the requirements of this chapter, the proposed
337 course of treatment, to determine whether such treatment would
338 be recognized as reasonably prudent. The review must be in
339 accordance with all applicable workers' compensation practice
340 parameters. The insurer must accept any such proposed course of
341 treatment unless the insurer notifies the physician of its
342 specific objections to the proposed course of treatment by the
343 close of the tenth business day after notification by the
344 physician, or a supervised designee of the physician, of the
345 proposed course of treatment.

346 (d)~~(f)~~ Upon the written request of the employee, the
347 carrier shall give the employee the opportunity for one change
348 of physician during the course of treatment for any one
349 accident. The employee shall be entitled to select another
350 physician from among not fewer than three carrier-authorized
351 physicians who are not professionally affiliated.

352 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

353 (f) By accepting payment under this chapter for treatment
354 rendered to an injured employee, a health care provider consents
355 to the jurisdiction of the agency as set forth in s. 440.1312
356 ~~subsection (11)~~ and to the submission of all records and other
357 information concerning such treatment to the agency in
358 connection with a reimbursement dispute, audit, or review as



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359 provided by this section. The health care provider must further
360 agree to comply with any decision of the agency rendered under
361 this section.

362 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
363 DEPARTMENT.--

364 (a)1. Any health care provider providing necessary
365 remedial treatment, care, or attendance to any injured worker
366 shall submit treatment reports to the carrier in a format
367 prescribed by the department in consultation with the agency. A
368 claim for medical or surgical treatment is not valid or
369 enforceable against such employer or employee, unless, by the
370 close of the third business day following the first treatment,
371 the physician providing the treatment furnishes to the employer
372 or carrier a preliminary notice of the injury and treatment on
373 forms prescribed by the department in consultation with the
374 agency and, within 15 days thereafter, furnishes to the employer
375 or carrier a complete report, and subsequent thereto furnishes
376 progress reports, if requested by the employer or insurance
377 carrier, at intervals of not less than 3 weeks apart or at less
378 frequent intervals if requested on forms prescribed by the
379 department in consultation with the agency.

380 2. All narrative medical reports shall include the
381 following information unless the physician accurately and
382 completely fills out a physician's report which shall include
383 the following information, if not previously provided:

384 a. A complete history, including all prior injuries and
385 conditions, and a detailed description of the present injury.

386 b. A list of the complaints of the claimant.



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387 c. The physician's examination findings, including a
388 description of the examination and interpretation or summary of
389 any other diagnostic tests.

390 d. The date and cause of the alleged injury and whether,
391 in the physician's opinion, the claimant's accident and injuries
392 are causally related to the employee's employment with the
393 employer, and whether such employment with the employer is the
394 major contributing cause of the employee's accident and
395 injuries.

396 e. The period during which the claimant is unable to work.

397 f. Whether the claimant is capable of returning to work
398 and, if so, what physical restrictions and limitations shall be
399 imposed on the claimant, either temporarily or permanently, by
400 completing the Doctor's Estimate of Physical Capabilities form.

401 g. Whether the claimant has reached maximum medical
402 improvement.

403 h. Whether the claimant is able to return to the job held
404 as of the date of the accident or is a candidate for vocational
405 rehabilitation.

406 i. Whether the claimant is in need of continuing medical
407 care and, if so, the nature and extent of such medical care.

408 j. The nature and extent of any permanent impairment to
409 the employee's body as a whole in accordance with the Florida
410 Impairment Rating Guide, including factors upon which the
411 physician's evaluation of permanent impairment is based.

412 k. A written declaration made under penalty of perjury
413 that the report is a complete, true, and correct copy of the
414 medical records of the claimant as kept by the physician in the
415 regular course of the physician's medical practice.

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417 The report required by this subparagraph shall be submitted by
418 mail or electronically and, if the report is not submitted with
419 the bill on the proper Health Care Financing Administration form
420 within the time prescribed, the physician shall not be entitled
421 to payment at the expense of the employer, the carrier, or the
422 employee.

423 (b) Upon the request of the department or agency, each
424 medical report or bill obtained or received by the employer, the
425 carrier, or the injured employee, or the attorney for the
426 employer, carrier, or injured employee, with respect to the
427 remedial treatment, care, and attendance of the injured
428 employee, including any report of an examination, diagnosis, or
429 disability evaluation, must be filed with the department or
430 agency pursuant to rules adopted by the department in
431 consultation with the agency. The health care provider shall
432 also furnish to the injured employee or to his or her attorney,
433 on demand, a copy of his or her office chart, records, and
434 reports, and may charge the injured employee an amount
435 authorized by the department for the copies. Each such health
436 care provider shall provide to the agency or department
437 information about the remedial treatment, care, and attendance
438 which the agency or department reasonably requests.

439 (c) It is the policy for the administration of the
440 workers' compensation system that there be reasonable access to
441 medical information by all parties to facilitate the self-
442 executing features of the law. Notwithstanding the limitations
443 in s. 456.057 and subject to the limitations in s. 381.004, upon
444 the request of the employer, the carrier, an authorized
445 qualified rehabilitation provider, or the attorney for the
446 employer or carrier, the medical records of an injured employee



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447 must be furnished to those persons and the medical condition of
 448 the injured employee must be discussed with those persons, if
 449 the records and the discussions are restricted to conditions
 450 relating to the workplace injury. Any such discussions may be
 451 held before or after the filing of a claim without the
 452 knowledge, consent, or presence of any other party or his or her
 453 agent or representative. A health care provider who willfully
 454 refuses to provide medical records or to discuss the medical
 455 condition of the injured employee, after a reasonable request is
 456 made for such information pursuant to this subsection, shall be
 457 subject by the agency to one or more of the penalties set forth
 458 in s. 440.131(3)(b) ~~paragraph (8)(b)~~.

459 (5) REQUEST FOR AUTHORIZATION OF MEDICAL BENEFITS BY
 460 AUTHORIZED MEDICAL PROVIDER IN COMPENSABILITY ADMITTED CASES.--

461 (a) A request for authorization of medical benefits shall
 462 be accomplished through a Request for Authorization of Medical
 463 Benefits by Authorized Medical Provider form sent by the
 464 employee to the employer or carrier by certificate of mailing.
 465 The employer or carrier shall respond to this request, in
 466 writing by certificate of mailing, within 20 days after its
 467 receipt by certificate of mailing. A written response to this
 468 request shall be sent by the carrier directly to the requesting
 469 authorized health care provider with a copy to the employee and
 470 employee's counsel, if any, and shall advise the employee of his
 471 or her right to file a petition for benefits in the case of a
 472 response to the Request for Authorization of Medical Benefits by
 473 Authorized Medical Provider denying the request. The employer's
 474 or carrier's failure to comply with the provisions of this
 475 subsection shall result in the waiver of any time period within



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476 which the employee must file a petition for benefits on the
477 issue.

478 (b) The employee shall have 10 days after the date on
479 which the response to a petition for benefits denying the
480 request was mailed to file a petition for benefits. The employee
481 shall complete the petition for benefits and shall state the
482 reasons for the request and include any medical report from the
483 authorized physician requesting authorization for such request.
484 This matter shall be heard on an expedited basis as provided in
485 this section and the employer or carrier shall be deemed to have
486 waived any objection to an expedited hearing.

487 (6) CLAIM FOR MEDICAL BENEFITS IN COMPENSABILITY ADMITTED
488 CASES.--When the employee claims medical benefits, the employee
489 shall file a petition for benefits for medical benefits which
490 shall include a statement of the benefits in dispute, copies of
491 all medical records based on medical opinions pursuant to
492 paragraph (9)(b) to be offered at trial, and copies of any
493 medical bills, prescriptions, or mileage reimbursement forms in
494 dispute. Copies of said reports shall be sent to the employer
495 and carrier or its representative, if any, no later than 10 days
496 after the date of the filing of the petition for benefits.
497 Failure of the employee to provide all such documentation, which
498 shall constitute the basis for filing the petition for benefits,
499 within 10 days shall result in same being excluded at any trial.

500 (7) TERMINATION OR SUSPENSION OF MEDICAL BENEFITS IN
501 COMPENSABILITY ADMITTED CLAIMS.--

502 (a) Before terminating or suspending the provision of
503 medical benefits, the employer or carrier shall give the
504 employee 7 days' written notice by certificate of mailing that
505 medical benefits will be suspended or terminated, shall provide



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506 the employee with a copy of any supporting documentation for the
507 denial, and advise the employee of his or her right to request a
508 hearing on the provision of medical benefits by filing a
509 petition for benefits. The employer's or carrier's failure to
510 comply with these timeframes shall result in the waiver of any
511 time period within which the employee must file a petition for
512 benefits on the issue. The evidence of any investigator,
513 adjuster, or other witness in the nature of surveillance shall
514 be subject to discovery when such evidence will be used at
515 trial, provided the party intending to use such evidence is
516 first given a reasonable opportunity to depose the party or
517 witness who is the subject of the surveillance.

518 (b) If an employee objects to the termination or
519 suspension of medical benefits, the employee shall have 21 days
520 after the date on which the notice of termination was mailed to
521 object to the termination by filing a petition for benefits for
522 the provision of medical benefits. The claimant shall complete
523 the petition for benefits for the provision of medical benefits
524 and state the specific reason for the objection to the
525 termination or suspension of medical benefits.

526 (c) If the employee's objection to the termination or
527 suspension of medical benefits is based on medical opinions
528 pursuant to paragraph (9)(b) and is to be offered at trial, a
529 copy of the record or report containing such medical opinions
530 shall be served on the employer and carrier no later than 15
531 days after the date on which the petition for benefits was filed
532 objecting to the termination or suspension of medical benefits.
533 If the petition for benefits has been timely filed by the
534 employee and medical reports or records containing medical
535 opinions pursuant to paragraph (9)(b) is served no later than 10



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536 days after the date on which the petition for benefits was filed
537 on the employer or carrier and its counsel, the medical care
538 shall continue until further order of the judge of compensation
539 claims. If the employer or carrier fails to continue the
540 provision of medical care, the petition for benefits shall be
541 set for hearing under the procedure for expedited hearings and
542 the employer or carrier is deemed to waive any objection to said
543 procedure. If the judge of compensation claims awards the
544 medical benefits being claimed, an attorney's fee shall be due
545 and owing pursuant to s. 440.34 and shall be enhanced by an
546 additional fee of \$2,500.

547 ~~(8)(5)~~ INDEPENDENT MEDICAL EXAMINATIONS.--

548 (a)1. In any dispute concerning overutilization, medical
549 benefits, compensability, or disability under this chapter, the
550 carrier or the employee may select an independent medical
551 examiner. The examiner may be a health care provider treating or
552 providing other care to the employee. An independent medical
553 examiner may not render an opinion outside his or her area of
554 expertise, as demonstrated by licensure and applicable practice
555 parameters.

556 2. An employee shall request an independent medical
557 examination by filing a Request for an Independent Medical
558 Examination form by certificate of mailing with the carrier, who
559 shall respond in writing to this request within 20 days after
560 its receipt by certificate of mailing. A written response to
561 this request shall be sent by the carrier directly to the
562 employee and the employee's counsel and shall advise the
563 employee of his or her right to file a petition for benefits in
564 the case of a response to the Request for an Independent Medical
565 Examination denying the request. The carrier's failure to comply



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566 with the provisions of this paragraph shall result in a waiver
 567 of the time period during which to file a petition for benefits
 568 on the issue.

569 3. The employee shall have 10 days after the date of
 570 response to the Request for an Independent Medical Examination
 571 denying the request to file a petition for benefits. The
 572 employee shall complete the petition for benefits stating the
 573 reasons for the Request for an Independent Medical Examination
 574 and include any medical report from the authorized physician
 575 regarding the issue. This matter shall be heard on an expedited
 576 basis as provided in this section and the employer or carrier
 577 shall be deemed to have waived any objection to an expedited
 578 hearing.

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

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

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

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

589 4. The parties agree to an alternate examiner.

590
 591 Any party may request, or a judge of compensation claims may
 592 require, designation of an agency medical advisor as an
 593 independent medical examiner. The opinion of the advisors acting
 594 as examiners shall not be afforded the presumption set forth in
 595 paragraph (10)(c) ~~(9)(e)~~.



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596 (c) The carrier may, at its election, contact the claimant
597 directly to schedule a reasonable time for an independent
598 medical examination. The carrier must confirm the scheduling
599 agreement in writing within 5 days and notify claimant's
600 counsel, if any, at least 7 days before the date upon which the
601 independent medical examination is scheduled to occur. An
602 attorney representing a claimant is not authorized to schedule
603 independent medical evaluations under this subsection.

604 (d) If the employee fails to appear for the independent
605 medical examination without good cause and fails to advise the
606 physician at least 24 hours before the scheduled date for the
607 examination that he or she cannot appear, the employee is barred
608 from recovering compensation for any period during which he or
609 she has refused to submit to such examination. Further, the
610 employee shall reimburse the carrier 50 percent of the
611 physician's cancellation or no-show fee unless the carrier that
612 schedules the examination fails to timely provide to the
613 employee a written confirmation of the date of the examination
614 pursuant to paragraph (c) which includes an explanation of why
615 he or she failed to appear. The employee may appeal to a judge
616 of compensation claims for reimbursement when the carrier
617 withholds payment in excess of the authority granted by this
618 section.

619 (9) FAILURE OR REFUSAL TO ATTEND MEDICAL APPOINTMENT.--

620 (a) If the employee fails or refuses to attend a scheduled
621 medical appointment with an authorized treating physician, the
622 employer or carrier shall reschedule the appointment and provide
623 the employee with at least 7 days' written notice of the
624 rescheduled appointment, including the date and time of the
625 appointment. If the employee fails or refuses to attend a



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626 rescheduled appointment, the employee shall be barred from
 627 recovering compensation benefits for any period during which he
 628 or she has refused to submit to such examination. Upon the
 629 employee subsequently attending a rescheduled appointment, he or
 630 she shall advise the employer or carrier of such attendance by
 631 certificate of mailing and the employer or carrier shall
 632 thereupon reinstate benefits within 14 days after receipt,
 633 effective upon the date of such attendance.

634 ~~(b)(e)~~ No medical opinion other than the opinion of a
 635 medical advisor appointed by the judge of compensation claims or
 636 agency, an independent medical examiner, or an authorized
 637 treating provider is admissible in proceedings before the judges
 638 of compensation claims.

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

643 Section 6. Subsections (6), (7), and (8) of section
 644 440.13, Florida Statutes, are renumbered as section 440.131,
 645 Florida Statutes, and amended to read:

646 440.131 Utilization review; reimbursement disputes;
 647 overutilization.--

648 ~~(1)(6)~~ UTILIZATION REVIEW.--Carriers shall review all
 649 bills, invoices, and other claims for payment submitted by
 650 health care providers in order to identify overutilization and
 651 billing errors, and may hire peer review consultants or conduct
 652 independent medical evaluations. Such consultants, including
 653 peer review organizations, are immune from liability in the
 654 execution of their functions under this subsection to the extent
 655 provided in s. 766.101. If a carrier finds that overutilization



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656 of medical services or a billing error has occurred, it must
657 disallow or adjust payment for such services or error without
658 order of a judge of compensation claims or the agency, if the
659 carrier, in making its determination, has complied with this
660 section and rules adopted by the agency.

661 (2)~~(7)~~ UTILIZATION AND REIMBURSEMENT DISPUTES.--

662 (a) Any health care provider, carrier, or employer who
663 elects to contest the disallowance or adjustment of payment by a
664 carrier under subsection (1) ~~(6)~~ must, within 30 days after
665 receipt of notice of disallowance or adjustment of payment,
666 petition the agency to resolve the dispute. The petitioner must
667 serve a copy of the petition on the carrier and on all affected
668 parties by certified mail. The petition must be accompanied by
669 all documents and records that support the allegations contained
670 in the petition. Failure of a petitioner to submit such
671 documentation to the agency results in dismissal of the
672 petition.

673 (b) The carrier must submit to the agency within 10 days
674 after receipt of the petition all documentation substantiating
675 the carrier's disallowance or adjustment. Failure of the carrier
676 to submit the requested documentation to the agency within 10
677 days constitutes a waiver of all objections to the petition.

678 (c) Within 60 days after receipt of all documentation, the
679 agency must provide to the petitioner, the carrier, and the
680 affected parties a written determination of whether the carrier
681 properly adjusted or disallowed payment. The agency must be
682 guided by standards and policies set forth in this chapter,
683 including all applicable reimbursement schedules, in rendering
684 its determination.



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685 (d) If the agency finds an improper disallowance or
686 improper adjustment of payment by an insurer, the insurer shall
687 reimburse the health care provider, facility, insurer, or
688 employer within 30 days, subject to the penalties provided in
689 this subsection.

690 (e) The agency shall adopt rules to carry out this
691 subsection. The rules may include provisions for consolidating
692 petitions filed by a petitioner and expanding the timetable for
693 rendering a determination upon a consolidated petition.

694 (f) Any carrier that engages in a pattern or practice of
695 arbitrarily or unreasonably disallowing or reducing payments to
696 health care providers may be subject to one or more of the
697 following penalties imposed by the agency:

698 1. Repayment of the appropriate amount to the health care
699 provider.

700 2. An administrative fine assessed by the agency in an
701 amount not to exceed \$5,000 per instance of improperly
702 disallowing or reducing payments.

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

705 (3)~~(8)~~ PATTERN OR PRACTICE OF OVERUTILIZATION.--

706 (a) Carriers must report to the agency all instances of
707 overutilization including, but not limited to, all instances in
708 which the carrier disallows or adjusts payment. The agency shall
709 determine whether a pattern or practice of overutilization
710 exists.

711 (b) If the agency determines that a health care provider
712 has engaged in a pattern or practice of overutilization or a
713 violation of this chapter or rules adopted by the agency, it may
714 impose one or more of the following penalties:



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- 715 1. An order of the agency barring the provider from
 716 payment under this chapter;
- 717 2. Deauthorization of care under review;
- 718 3. Denial of payment for care rendered in the future;
- 719 4. Decertification of a health care provider certified as
 720 an expert medical advisor under s. 440.13(10) ~~subsection (9)~~ or
 721 of a rehabilitation provider certified under s. 440.49;
- 722 5. An administrative fine assessed by the agency in an
 723 amount not to exceed \$5,000 per instance of overutilization or
 724 violation; and
- 725 6. Notification of and review by the appropriate licensing
 726 authority pursuant to s. 440.106(3).

727 Section 7. Subsection (11) of section 440.13, Florida
 728 Statutes, is renumbered as section 440.1312, Florida Statutes,
 729 and amended to read:

730 440.1312 ~~(11)~~ Audits by Agency for Health Care
 731 Administration and the Department of Insurance; jurisdiction.--

732 (1) ~~(a)~~ The Agency for Health Care Administration may
 733 investigate health care providers to determine whether providers
 734 are complying with this chapter and with rules adopted by the
 735 agency, whether the providers are engaging in overutilization,
 736 and whether providers are engaging in improper billing
 737 practices. If the agency finds that a health care provider has
 738 improperly billed, overutilized, or failed to comply with agency
 739 rules or the requirements of this chapter it must notify the
 740 provider of its findings and may determine that the health care
 741 provider may not receive payment from the carrier or may impose
 742 penalties as set forth in s. 440.131(3) ~~subsection (8)~~ or other
 743 sections of this chapter. If the health care provider has
 744 received payment from a carrier for services that were



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745 improperly billed or for overutilization, it must return those
746 payments to the carrier. The agency may assess a penalty not to
747 exceed \$500 for each overpayment that is not refunded within 30
748 days after notification of overpayment by the agency or carrier.

749 (2)~~(b)~~ The department shall monitor and audit carriers as
750 provided in s. 624.3161, to determine if medical bills are paid
751 in accordance with this section and department rules. Any
752 employer, if self-insured, or carrier found by the division not
753 to be within 90 percent compliance as to the payment of medical
754 bills after July 1, 1994, must be assessed a fine not to exceed
755 1 percent of the prior year's assessment levied against such
756 entity under s. 440.51 for every quarter in which the entity
757 fails to attain 90-percent compliance. The department shall fine
758 or otherwise discipline an employer or carrier, pursuant to this
759 chapter, the insurance code, or rules adopted by the department,
760 for each late payment of compensation that is below the minimum
761 90-percent performance standard. Any carrier that is found to be
762 not in compliance in subsequent consecutive quarters must
763 implement a medical-bill review program approved by the
764 division, and the carrier is subject to disciplinary action by
765 the Department of Insurance.

766 (3)~~(e)~~ The agency has exclusive jurisdiction to decide any
767 matters concerning reimbursement, to resolve any overutilization
768 dispute under s. 440.131(2) ~~subsection (7)~~, and to decide any
769 question concerning overutilization under s. 440.131(3)
770 ~~subsection (8)~~, which question or dispute arises after January
771 1, 1994.

772 (4)~~(d)~~ The following agency actions do not constitute
773 agency action subject to review under ss. 120.569 and 120.57 and
774 do not constitute actions subject to s. 120.56: referral by the



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775 entity responsible for utilization review; a decision by the
 776 agency to refer a matter to a peer review committee;
 777 establishment by a health care provider or entity of procedures
 778 by which a peer review committee reviews the rendering of health
 779 care services; and the review proceedings, report, and
 780 recommendation of the peer review committee.

781 Section 8. Subsections (12), (13), and (14) of section
 782 440.13, Florida Statutes, are renumbered as section 440.1313,
 783 Florida Statutes, and amended to read:

784 440.1313 Panel; maximum reimbursement; physician removal;
 785 payment of medical fees.--

786 (1)(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 787 REIMBURSEMENT ALLOWANCES.--

788 (a) A three-member panel is created, consisting of the
 789 Chief Financial Officer or the Chief Financial Officer's
 790 Insurance Commissioner, or the Insurance Commissioner's
 791 designee, and two members to be appointed by the Governor,
 792 subject to confirmation by the Senate, one member who, on
 793 account of present or previous vocation, employment, or
 794 affiliation, shall be classified as a representative of
 795 employers, the other member who, on account of previous
 796 vocation, employment, or affiliation, shall be classified as a
 797 representative of employees. The panel shall determine statewide
 798 schedules of maximum reimbursement allowances for medically
 799 necessary treatment, care, and attendance provided by
 800 physicians, hospitals, ambulatory surgical centers, work-
 801 hardening programs, pain programs, and durable medical
 802 equipment. The maximum reimbursement allowances for inpatient
 803 hospital care shall be based on a schedule of per diem rates, to
 804 be approved by the three-member panel no later than March 1,



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805 1994, to be used in conjunction with a precertification manual
806 as determined by the agency. All compensable charges for
807 hospital outpatient care shall be reimbursed at 75 percent of
808 usual and customary charges. Until the three-member panel
809 approves a schedule of per diem rates for inpatient hospital
810 care and it becomes effective, all compensable charges for
811 hospital inpatient care must be reimbursed at 75 percent of
812 their usual and customary charges. Annually, the three-member
813 panel shall adopt schedules of maximum reimbursement allowances
814 for physicians, hospital inpatient care, hospital outpatient
815 care, ambulatory surgical centers, work-hardening programs, and
816 pain programs. However, the maximum percentage of increase in
817 the individual reimbursement allowance may not exceed the
818 percentage of increase in the Consumer Price Index for the
819 previous year. An individual physician, hospital, ambulatory
820 surgical center, pain program, or work-hardening program shall
821 be reimbursed either the usual and customary charge for
822 treatment, care, and attendance, the agreed-upon contract price,
823 or the maximum reimbursement allowance in the appropriate
824 schedule, whichever is less.

825 (b) As to reimbursement for a prescription medication, the
826 reimbursement amount for a prescription shall be the average
827 wholesale price times 1.2 plus \$4.18 for the dispensing fee,
828 except where the carrier has contracted for a lower amount. Fees
829 for pharmaceuticals and pharmaceutical services shall be
830 reimbursable at the applicable fee schedule amount. Where the
831 employer or carrier has contracted for such services and the
832 employee elects to obtain them through a provider not a party to
833 the contract, the carrier shall reimburse at the schedule,
834 negotiated, or contract price, whichever is lower.



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835 (c) Reimbursement for all fees and other charges for such
836 treatment, care, and attendance, including treatment, care, and
837 attendance provided by any hospital or other health care
838 provider, ambulatory surgical center, work-hardening program, or
839 pain program, must not exceed the amounts provided by the
840 uniform schedule of maximum reimbursement allowances as
841 determined by the panel or as otherwise provided in this
842 section. This subsection also applies to independent medical
843 examinations performed by health care providers under this
844 chapter. Until the three-member panel approves a uniform
845 schedule of maximum reimbursement allowances and it becomes
846 effective, all compensable charges for treatment, care, and
847 attendance provided by physicians, ambulatory surgical centers,
848 work-hardening programs, or pain programs shall be reimbursed at
849 the lowest maximum reimbursement allowance across all 1992
850 schedules of maximum reimbursement allowances for the services
851 provided regardless of the place of service. In determining the
852 uniform schedule, the panel shall first approve the data which
853 it finds representative of prevailing charges in the state for
854 similar treatment, care, and attendance of injured persons. Each
855 health care provider, health care facility, ambulatory surgical
856 center, work-hardening program, or pain program receiving
857 workers' compensation payments shall maintain records verifying
858 their usual charges. In establishing the uniform schedule of
859 maximum reimbursement allowances, the panel must consider:

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

863 2. The impact upon cost to employers for providing a level
864 of reimbursement for treatment, care, and attendance which will



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865 ensure the availability of treatment, care, and attendance
866 required by injured workers;

867 3. The financial impact of the reimbursement allowances
868 upon health care providers and health care facilities, including
869 trauma centers as defined in s. 395.4001, and its effect upon
870 their ability to make available to injured workers such
871 medically necessary remedial treatment, care, and attendance.
872 The uniform schedule of maximum reimbursement allowances must be
873 reasonable, must promote health care cost containment and
874 efficiency with respect to the workers' compensation health care
875 delivery system, and must be sufficient to ensure availability
876 of such medically necessary remedial treatment, care, and
877 attendance to injured workers; and

878 4. The most recent average maximum allowable rate of
879 increase for hospitals determined by the Health Care Board under
880 chapter 408.

881 (d) In addition to establishing the uniform schedule of
882 maximum reimbursement allowances, the panel shall:

883 1. Take testimony, receive records, and collect data to
884 evaluate the adequacy of the workers' compensation fee schedule,
885 nationally recognized fee schedules and alternative methods of
886 reimbursement to certified health care providers and health care
887 facilities for inpatient and outpatient treatment and care.

888 2. Survey certified health care providers and health care
889 facilities to determine the availability and accessibility of
890 workers' compensation health care delivery systems for injured
891 workers.

892 3. Survey carriers to determine the estimated impact on
893 carrier costs and workers' compensation premium rates by



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894 implementing changes to the carrier reimbursement schedule or
 895 implementing alternative reimbursement methods.

896 4. Submit recommendations on or before January 1, 2003,
 897 and biennially thereafter, to the President of the Senate and
 898 the Speaker of the House of Representatives on methods to
 899 improve the workers' compensation health care delivery system.

900

901 The division shall provide data to the panel, including but not
 902 limited to, utilization trends in the workers' compensation
 903 health care delivery system. The division shall provide the
 904 panel with an annual report regarding the resolution of medical
 905 reimbursement disputes and any actions pursuant to s. 440.131(3)
 906 ~~440.13(8)~~. The division shall provide administrative support and
 907 service to the panel to the extent requested by the panel.

908 (2)~~(13)~~ REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
 909 AUTHORIZED TO RENDER MEDICAL CARE.--The agency shall remove from
 910 the list of physicians or facilities authorized to provide
 911 remedial treatment, care, and attendance under this chapter the
 912 name of any physician or facility found after reasonable
 913 investigation to have:

914 (a) Engaged in professional or other misconduct or
 915 incompetency in connection with medical services rendered under
 916 this chapter;

917 (b) Exceeded the limits of his or her or its professional
 918 competence in rendering medical care under this chapter, or to
 919 have made materially false statements regarding his or her or
 920 its qualifications in his or her application;

921 (c) Failed to transmit copies of medical reports to the
 922 employer or carrier, or failed to submit full and truthful



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923 medical reports of all his or her or its findings to the
 924 employer or carrier as required under this chapter;

925 (d) Solicited, or employed another to solicit for himself
 926 or herself or itself or for another, professional treatment,
 927 examination, or care of an injured employee in connection with
 928 any claim under this chapter;

929 (e) Refused to appear before, or to answer upon request
 930 of, the agency or any duly authorized officer of the state, any
 931 legal question, or to produce any relevant book or paper
 932 concerning his or her conduct under any authorization granted to
 933 him or her under this chapter;

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

936 (g) Engaged in a pattern of practice of overutilization or
 937 a violation of this chapter or rules adopted by the agency.

938 (3)~~(14)~~ PAYMENT OF MEDICAL FEES.--

939 (a) Except for emergency care treatment, fees for medical
 940 services are payable only to a health care provider certified
 941 and authorized to render remedial treatment, care, or attendance
 942 under this chapter. A health care provider may not collect or
 943 receive a fee from an injured employee within this state, except
 944 as otherwise provided by this chapter. Such providers have
 945 recourse against the employer or carrier for payment for
 946 services rendered in accordance with this chapter.

947 (b) Fees charged for remedial treatment, care, and
 948 attendance, except for independent medical examinations, may not
 949 exceed the applicable fee schedules adopted under this chapter.

950 (c) Notwithstanding any other provision of this chapter,
 951 following overall maximum medical improvement from an injury
 952 compensable under this chapter, the employee is obligated to pay



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953 a copayment of \$10 per visit for medical services. The copayment
 954 shall not apply to emergency care provided to the employee.

955 Section 9. Subsection (15) of section 440.13, Florida
 956 Statutes, is renumbered as section 440.1314, Florida Statutes,
 957 and amended to read:

958 440.1314 ~~(15)~~ Practice parameters.--

959 (1)~~(a)~~ The Agency for Health Care Administration, in
 960 conjunction with the department and appropriate health
 961 professional associations and health-related organizations shall
 962 develop and may adopt by rule scientifically sound practice
 963 parameters for medical procedures relevant to workers'
 964 compensation claimants. Practice parameters developed under this
 965 section must focus on identifying effective remedial treatments
 966 and promoting the appropriate utilization of health care
 967 resources. Priority must be given to those procedures that
 968 involve the greatest utilization of resources either because
 969 they are the most costly or because they are the most frequently
 970 performed. Practice parameters for treatment of the 10 top
 971 procedures associated with workers' compensation injuries
 972 including the remedial treatment of lower-back injuries must be
 973 developed by December 31, 1994.

974 (2)~~(b)~~ The guidelines may be initially based on guidelines
 975 prepared by nationally recognized health care institutions and
 976 professional organizations but should be tailored to meet the
 977 workers' compensation goal of returning employees to full
 978 employment as quickly as medically possible, taking into
 979 consideration outcomes data collected from managed care
 980 providers and any other inpatient and outpatient facilities
 981 serving workers' compensation claimants.



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982 (3)~~(e)~~ Procedures must be instituted which provide for the
 983 periodic review and revision of practice parameters based on the
 984 latest outcomes data, research findings, technological
 985 advancements, and clinical experiences, at least once every 3
 986 years.

987 (4)~~(d)~~ Practice parameters developed under this section
 988 must be used by carriers and the agency in evaluating the
 989 appropriateness and overutilization of medical services provided
 990 to injured employees.

991 Section 10. Paragraphs (b) and (c) of subsection (2) of
 992 section 440.13, Florida Statutes, are redesignated as section
 993 440.1315, Florida Statutes, and amended to read:

994 440.1315 Attendant care services.--

995 (1)~~(b)~~ The employer shall provide appropriate professional
 996 or nonprofessional attendant care performed only at the
 997 direction and control of a physician when such care is medically
 998 necessary. The value of nonprofessional attendant care provided
 999 by a family member must be determined as follows:

1000 (a)~~1-~~ If the family member is not employed, the per-hour
 1001 value equals the federal minimum hourly wage.

1002 (b)~~2-~~ If the family member is employed and elects to leave
 1003 that employment to provide attendant or custodial care, the per-
 1004 hour value of that care equals the per-hour value of the family
 1005 member's former employment, not to exceed the per-hour value of
 1006 such care available in the community at large. A family member
 1007 or a combination of family members providing nonprofessional
 1008 attendant care under this subsection ~~paragraph~~ may not be
 1009 compensated for more than a total of 12 hours per day.

1010 (2)~~(e)~~ If the employer fails to provide treatment or care
 1011 required by this section after request by the injured employee,



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1012 the employee may obtain such treatment at the expense of the
1013 employer, if the treatment is compensable and medically
1014 necessary. There must be a specific request for the treatment,
1015 and the employer or carrier must be given a reasonable time
1016 period within which to provide the treatment or care. However,
1017 the employee is not entitled to recover any amount personally
1018 expended for the treatment or service unless he or she has
1019 requested the employer to furnish that treatment or service and
1020 the employer has failed, refused, or neglected to do so within a
1021 reasonable time or unless the nature of the injury requires such
1022 treatment, nursing, and services and the employer or his or her
1023 superintendent or foreman, having knowledge of the injury, has
1024 neglected to provide the treatment or service.

1025 (3)(a) When the employer or carrier has voluntarily
1026 provided attendant care services without stipulation and order
1027 of the judge of compensation claims and the employer or carrier
1028 desires to terminate the attendant care services, the employer
1029 or carrier shall give the employee 7 days' written notice of
1030 termination by certificate of mailing that the employee's
1031 eligibility for attendant care services has been terminated,
1032 provide the employee with a copy of any supporting documentation
1033 for said termination, and advise the employee of his or her
1034 right to file a petition for benefits on the issue. The
1035 employer's or carrier's failure to comply with these time
1036 provisions shall result in a waiver of any time period in which
1037 to file a petition for benefits on the issue. The evidence of
1038 any investigator, adjuster, or other witness in the nature of
1039 surveillance shall be subject to discovery when such evidence
1040 will be used at trial, provided the party intending to use such



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1041 evidence is first given a reasonable opportunity to depose the
1042 party or witness who is the subject of the surveillance.

1043 (b) If the employee objects to the employer's or carrier's
1044 termination or denial of attendant care services, the employee
1045 shall have 21 days after the date the notice of termination or
1046 notice of denial was mailed by certificate of mailing to object
1047 to the termination or denial of attendant care services by
1048 filing a petition for benefits for the provision of attendant
1049 care services. The employee's petition for benefits on the issue
1050 of attendant care services shall include a statement of the
1051 period in dispute, copies of all medical records related to the
1052 alleged need for continues attendant care based on medical
1053 opinions pursuant to s. 440.13(9)(b), employment, wage,
1054 vocational reports, unemployment records, and the records
1055 required by paragraph (c). Copies of said records and reports
1056 shall be mailed to the opposing parties no later than 10 days
1057 after the date of the filing of the petition for benefits.

1058 (c) When an employee seeks the provision of professional
1059 or nonprofessional attendant care services, the employee shall
1060 file a petition for benefits that sets forth the nature of the
1061 attendant care benefits being sought, including, but not limited
1062 to, a copy of the prescription which includes a medical opinion
1063 pursuant to s. 440.13(9)(b) indicating the time period for which
1064 services shall be provided, the nature of the services to be
1065 provided, and the length of time they are to be provided. If the
1066 employee seeks to have nonprofessional attendant care services
1067 provided by a family member, the petition for benefits shall
1068 contain the name and social security number of the family
1069 member, the number of hours of nonprofessional attendant care
1070 services being provided by the family member, and the per-hour



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1071 value of the family member's former employment. If the family
1072 member remains employed and seeks payment for nonprofessional
1073 attendant care services, the family member shall produce payroll
1074 records documenting the hours worked in other employment during
1075 the period for which nonprofessional attendant care services are
1076 claimed. Any claim for nonprofessional attendant care shall
1077 contain the fraud notice contained in s. 440.1051 and shall be
1078 personally signed and attested to by the family member providing
1079 such care.

1080 (d) When the employer or carrier denies the payment of
1081 attendant care services, the employer or carrier shall give the
1082 employee 7 days' written notice of denial by certificate of
1083 mailing that the employee's attendant care services are being
1084 denied; provide the employee with a copy of any documentation
1085 for said denial, including any medical reports, employment
1086 information, wage documentation, and unemployment records; and
1087 advise the employee of his or her right to request a hearing on
1088 the issue of attendant care services by filing a petition for
1089 benefits for the provision of attendant care services. The
1090 employer's or carrier's failure to comply with the requirements
1091 of this subsection shall result in a waiver of any time period
1092 in which to file a petition for benefits on the issue. The
1093 evidence of any investigator, adjuster, or other witness in the
1094 nature of surveillance shall be subject to discovery when such
1095 evidence will be used at trial, provided the party intending to
1096 use such evidence is first given a reasonable opportunity to
1097 depose the party or witness who is the subject of the
1098 surveillance.

1099 (4) The failure of the employer, carrier, or employee to
1100 provide the documentation required by this section shall result



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1101 in the same being excluded from evidence at any trial of this
1102 issue.

1103 Section 11. Section 440.145, Florida Statutes, is created
1104 to read:

1105 440.145 Average weekly wage; compensation rate.--

1106 (1) The employee shall prepare, sign, and return to the
1107 employer and carrier, within 14 days after receipt of a written
1108 request by the employer or carrier by certificate of mailing, a
1109 release of information allowing the employer or carrier to
1110 obtain any and all information regarding concurrent employment.

1111 No petition for benefits may be filed on the average weekly
1112 wage issue until the signed release of information is prepared
1113 and provided to the employer and carrier by the employee and the
1114 employee has produced the requisite information regarding
1115 concurrent employment and applicable fringe benefits includable
1116 in the average weekly wage and corresponding compensation rate
1117 calculation. Information regarding wages earned by the employee
1118 includable in the average weekly wage and corresponding
1119 compensation rate calculation that has not been disclosed by the
1120 employee prior to the filing of the petition for benefits on the
1121 average weekly wage issue shall not be admissible evidence.

1122 (2) If at any time after the employee's industrial
1123 accident, the fringe benefits described in s. 440.02(28) are
1124 suspended or terminated, the employer shall notify the employee,
1125 the employee's counsel, if any, and the carrier by filing an
1126 amended wage statement by certificate of mailing within 7 days
1127 after the date of the termination or suspension.

1128 (3) If the employer fails to provide an accurate and
1129 complete wage statement or notify the employee or the employee's
1130 counsel by certificate of mailing of the suspension of any



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1131 applicable fringe benefits as provided in this section, any
1132 period of compensation benefits paid to the employee during the
1133 period of such failure shall be paid at the maximum compensation
1134 rate pursuant to s. 440.12(2). Any period of compensation so
1135 paid shall not be subject to repayment by the employer or
1136 carrier pursuant to s. 440.1508(1).

1137 (4) When an employee disputes the average weekly wage and
1138 corresponding compensation rate, the employer shall, within 14
1139 days after receipt of the written request by certificate of
1140 mailing from the employee or the employee's counsel, provide the
1141 employee with a complete and accurate 13-week wage statement,
1142 including, but not limited to, gross wages as defined in s.
1143 440.02(28), wages for overtime work, vacation pay, commissions,
1144 bonuses, and gratuities. For weeks of zero earnings, the
1145 employer shall state whether work was available for the
1146 employee. If the employee received group health insurance
1147 benefits at the expense of the employer, the employer shall note
1148 the starting date of the benefits within such 13-week wage
1149 statement and the amount of the employer's contribution on a
1150 weekly basis.

1151 (5) When an employee disputes the average weekly wage, the
1152 employee shall comply with s. 440.115. The employee's petition
1153 for benefits disputing the average weekly wage shall include a
1154 wage statement of the employee's gross wages for the 13 weeks
1155 prior to the accident, including the gross value of all employer
1156 paid fringe benefits and gross wages from any concurrent
1157 employment, together with the employee's calculations as to what
1158 the correct average weekly wage and corresponding compensation
1159 rate should be. A copy of all such supporting wage and fringe
1160 benefits records shall be attached to the petition for benefits



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1161 and made a part thereof. The failure of the employer or carrier
1162 to produce a 13-week wage statement, as provided in s. 440.115,
1163 constitutes a waiver of the employer's and carrier's right to
1164 dispute the average weekly wage and corresponding compensation
1165 rate.

1166 (6) In the event an employee claims the average weekly
1167 wage and corresponding compensation rate has been miscalculated
1168 because covered concurrent or seasonal wages have not been
1169 included in the calculation, the employee's concurrent or
1170 seasonal employer shall, upon written request by certificate of
1171 mailing by the employee, employer, or carrier or their counsel,
1172 complete and provide to the requesting party a wage statement as
1173 provided by this chapter. If the concurrent or seasonal employer
1174 fails to provide the requested information within 14 days after
1175 receipt of the request and the employee prevails on the
1176 inclusion of the concurrent average weekly wage and
1177 corresponding compensation rate, the concurrent or seasonal
1178 employer's workers' compensation carrier or the employer, if
1179 self-insured, shall be liable for any employee's attorney's fee
1180 and taxable costs ordered by the judge of compensation claims
1181 attributable to the need to compel concurrent or seasonal
1182 employment information and inclusion of the concurrent or
1183 seasonal wages in the average weekly wage calculation.

1184 (7) When an employee has submitted a petition for benefits
1185 for a determination of the average weekly wage and corresponding
1186 compensation rate, the employee shall produce, within 14 days
1187 after receipt of a written request by the employer or carrier by
1188 certificate of mailing, copies of any and all documentation in
1189 the employee's possession regarding wages earned by the employee
1190 during the 13 weeks prior to the date of the accident, including



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1191 all information regarding concurrent employment and applicable
 1192 fringe benefits includable in the average weekly wage and
 1193 corresponding compensation rate calculation. If the employee is
 1194 claiming that he or she is a seasonal employee, the employee
 1195 shall produce, within 14 days after receipt of a written request
 1196 by the employer or carrier by certificate of mailing, copies of
 1197 any and all documentation in the employee's possession regarding
 1198 wages earned by the employee during the 52 weeks prior to the
 1199 date of the accident, including all information regarding
 1200 concurrent employment and applicable fringe benefits includable
 1201 in the average weekly wage and corresponding compensation rate
 1202 calculation.

1203 Section 12. Section 440.15, Florida Statutes, consisting
 1204 of paragraphs (a) and (c) of subsection (2), is amended to read:

1205 440.15 Compensation for temporary total
 1206 disability.--Compensation for temporary total disability shall
 1207 be paid to the employee, subject to the limits provided in s.
 1208 440.12(2), as follows:

1209 ~~(1)(2)~~ TEMPORARY TOTAL DISABILITY.--

1210 (a) In case of disability total in character but temporary
 1211 in quality, $66\frac{2}{3}$ percent of the average weekly wages shall be
 1212 paid to the employee during the continuance thereof, not to
 1213 exceed 104 weeks except as provided in this subsection, s.
 1214 440.12(1), and s. 440.14(3). Once the employee reaches the
 1215 maximum number of weeks allowed, or the employee reaches the
 1216 date of maximum medical improvement, whichever occurs earlier,
 1217 temporary disability benefits shall cease and the injured
 1218 worker's permanent impairment shall be determined.

1219 ~~(b)(e)~~ Temporary total disability benefits paid pursuant
 1220 to this subsection shall include such period as may be



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1221 reasonably necessary for training in the use of artificial
1222 members and appliances, and shall include such period as the
1223 employee may be receiving training and education under a program
1224 pursuant to s. 440.491. Notwithstanding s. 440.02, the date of
1225 maximum medical improvement for purposes of s. 440.1504
1226 ~~paragraph (3)(b)~~ shall be no earlier than the last day for which
1227 such temporary disability benefits are paid.

1228 (2) TERMINATION OF TEMPORARY TOTAL DISABILITY BENEFITS.--

1229 (a) Before terminating the payment of temporary total
1230 disability benefits, the employer or carrier shall give the
1231 employee 7 days' written notice by certificate of mailing that
1232 the benefits are to be terminated, provide the employee with a
1233 copy of any supporting documentation forming the basis for such
1234 termination, and advise the employee of his or her right to
1235 request a hearing on the issue of reinstatement of temporary
1236 total disability by filing a petition for benefits for the
1237 payment of temporary total disability. The employer's or
1238 carrier's failure to comply with this time provision shall
1239 result in the waiver of the 21-day period provided in paragraph
1240 (b) within which an employee must file a petition for benefits
1241 on the issue.

1242 (b) If an employee objects to the employer's termination
1243 of temporary total disability, the employee shall have 21 days
1244 after the date the notice of termination was mailed to object to
1245 the termination of temporary total disability by filing a
1246 petition for benefits for the payment of temporary total
1247 disability benefits. The employee's petition for benefits on
1248 temporary total disability issues shall include a statement of
1249 the period in dispute, and copies of all medical records and
1250 reports based on a medical opinion pursuant to s. 440.13(9)(b)



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1251 establishing that the employee remains temporarily and totally
1252 disabled. A copy of said petition for benefits and copies of
1253 supporting records and reports shall be filed pursuant to s.
1254 440.192(1) and shall also be mailed by certificate of mailing to
1255 opposing counsel, if any, no later than 7 days after the date of
1256 the filing of the petition for benefits.

1257 (c) If the petition for benefits has been filed by the
1258 employee within the time period set forth in paragraph (b) and
1259 all medical records and reports are served on the employer or
1260 carrier and its counsel, if any, no later than 7 days after the
1261 filing of the petition for benefits, temporary total disability
1262 shall continue until further order of the judge of compensation
1263 claims.

1264 (d) The employer or carrier shall be entitled to a credit
1265 pursuant to s. 440.1508(2) for any overpayment of temporary
1266 total disability as found by the judge of compensation claims.
1267 If the employer fails to continue payment of temporary total
1268 disability after the employee timely files the petition for
1269 benefits and timely mails all medical records and reports, the
1270 petition for benefits shall be heard under the procedure for
1271 expedited hearings. The employer or carrier is deemed to waive
1272 any objection to said proceedings. In addition to the
1273 requirements set forth in s. 440.20(6), a 20-percent penalty on
1274 all temporary total disability benefits paid as a result of the
1275 successful prosecution of such petition for benefits shall be
1276 assessed against the employer or carrier if the judge of
1277 compensation claims finds that temporary total disability
1278 benefits were due and owing.

1279 (e) When the employer or carrier denies the continued
1280 payment of temporary total disability benefits, the employer or



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1281 carrier shall give the employee 7 days' written notice by
 1282 certificate of mailing that the temporary total disability
 1283 benefits are being denied, provide the employee with a copy of
 1284 any documentation supporting said denial, including any medical
 1285 records and reports based on a medical opinion pursuant to s.
 1286 440.13(9)(b), and advise the employee of his or her right to
 1287 request a hearing on the payment of temporary total disability
 1288 benefits by filing a petition for benefits. The employer's or
 1289 carrier's failure to give the employee the required 7 days'
 1290 notice shall result in a waiver of any time period in which to
 1291 file a petition for benefits on this issue. The evidence of any
 1292 investigator, adjuster, or other witness in the nature of
 1293 surveillance shall be subject to discovery when such evidence
 1294 will be used at trial, provided the party intending to use such
 1295 evidence is first given a reasonable opportunity to depose the
 1296 party or witness who is the subject of the surveillance. A copy
 1297 of said petition for benefits and copies of supporting records
 1298 and reports shall be filed pursuant to s. 440.192(1) and shall
 1299 also be mailed by certificate of mailing to the employer and
 1300 carrier and its legal counsel, if represented, no later than 7
 1301 days after the date of the filing of the petition for benefits.

1302 (f) The failure of the employer or carrier or the employee
 1303 to provide the documentation required by this section shall
 1304 result in the same being excluded at trial.

1305 Section 13. Paragraph (b) of subsection (2) of section
 1306 440.15, Florida Statutes, is redesignated as section 440.1501,
 1307 Florida Statutes, and amended to read:

1308 440.1501 Compensation for catastrophic temporary total
 1309 disability.--Compensation for catastrophic temporary total



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1310 disability shall be paid to the employee, subject to the limits
 1311 provided in s. 440.12(2), as follows:

1312 (1)(b) Notwithstanding the provisions of s. 440.15(1)(a)
 1313 ~~paragraph (a)~~, an employee who has sustained the loss of an arm,
 1314 leg, hand, or foot, has been rendered a paraplegic, paraparetic,
 1315 quadriplegic, or quadriparetic, or has lost the sight of both
 1316 eyes shall be paid temporary total disability of 80 percent of
 1317 her or his average weekly wage. The increased temporary total
 1318 disability compensation provided for in this subsection
 1319 ~~paragraph~~ must not extend beyond 6 months from the date of the
 1320 accident. The compensation provided by this subsection ~~paragraph~~
 1321 is not subject to the limits provided in s. 440.12(2), but
 1322 instead is subject to a maximum weekly compensation rate of
 1323 \$700. If, at the conclusion of this period of increased
 1324 temporary total disability compensation, the employee is still
 1325 temporarily totally disabled, the employee shall continue to
 1326 receive temporary total disability compensation as set forth in
 1327 s. 440.15(1)(a) and (b) ~~paragraphs (a) and (c)~~. The period of
 1328 time the employee has received this increased compensation will
 1329 be counted as part of, and not in addition to, the maximum
 1330 periods of time for which the employee is entitled to
 1331 compensation under s. 440.15(1)(a) ~~paragraph (a)~~ but not s.
 1332 440.15(1)(b) ~~paragraph (c)~~.

1333 (2) When an injured employee has been voluntarily paid
 1334 catastrophic temporary total disability benefits by the employer
 1335 or carrier and the employer or carrier desires to suspend or
 1336 terminate the payment of catastrophic temporary total disability
 1337 benefits, the employer or carrier shall give the employee 7
 1338 days' written notice by certificate of mailing that the
 1339 employee's eligibility for catastrophic temporary total



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1340 disability benefits will be terminated, provide the employee
1341 with a copy of any supporting documentation for said
1342 termination, and advise the employee of his or her right to
1343 request a hearing on the issue of reinstatement of catastrophic
1344 temporary total disability benefits by filing a petition for
1345 benefits. The employer's or carrier's failure to comply with
1346 this time provision shall result in the waiver of the 21-day
1347 period provided in subsection (8) in which to file for a hearing
1348 on the issue. The evidence of any investigator, adjuster, or
1349 other witness in the nature of surveillance shall be subject to
1350 discovery when such evidence will be used at trial, provided the
1351 party intending to use such evidence is first given a reasonable
1352 opportunity to depose the party or witness who is the subject of
1353 the surveillance.

1354 (3) If the petition for benefits has been filed by the
1355 employee within the time period set forth in subsection (2) and
1356 all medical records and reports are served on the employer or
1357 carrier and its counsel, if any, no later than 7 days after the
1358 filing of the petition for benefits, temporary total disability
1359 shall continue until further order of the judge of compensation
1360 claims.

1361 (4) The employer or carrier shall be entitled to a credit
1362 pursuant to s. 440.1508(2) for any overpayment of temporary
1363 total disability as found by the judge of compensation claims.
1364 If the employer fails to continue payment of temporary total
1365 disability after the employee timely files the petition for
1366 benefits and timely mails all medical records and reports, the
1367 petition for benefits shall be heard under the procedure for
1368 expedited hearings. The employer or carrier is deemed to waive
1369 any objection to said proceedings. In addition to the



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1370 requirements set forth in s. 440.20(6), a 20-percent penalty on
1371 all temporary total disability benefits paid as a result of the
1372 successful prosecution of such petition for benefits shall be
1373 assessed against the employer or carrier.

1374 (5) When the employer or carrier denies the continued
1375 payment of temporary total disability benefits, the employer or
1376 carrier shall give the employee 7 days' written notice by
1377 certificate of mailing that the temporary total disability
1378 benefits are being denied, provide the employee with a copy of
1379 any documentation supporting said denial, including any medical
1380 records and reports based on a medical opinion pursuant to s.
1381 440.13(9)(b), and advise the employee of his or her right to
1382 request a hearing on the payment of temporary total disability
1383 benefits by filing a petition for benefits. The employer's or
1384 carrier's failure to give the employee the required 7 days'
1385 notice shall result in a waiver of any time period in which to
1386 file a petition for benefits on this issue. The evidence of any
1387 investigator, adjuster, or other witness in the nature of
1388 surveillance shall be subject to discovery when such evidence
1389 will be used at trial, provided the party intending to use such
1390 evidence is first given a reasonable opportunity to depose the
1391 party or witness who is the subject of the surveillance. A copy
1392 of said petition for benefits and copies of supporting records
1393 and reports shall be filed pursuant to s. 440.192(1) and shall
1394 also be mailed by certificate of mailing to the employer and
1395 carrier and its legal counsel, if any, no later than 7 days
1396 after the date of the filing of the petition for benefits.

1397 (6) The failure of the employer, carrier, or employee to
1398 provide the documentation required by this section shall result
1399 in the same being excluded at trial.



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1400 (7) When the employer or carrier denies the payment of
1401 catastrophic temporary total disability benefits, the employer
1402 or carrier shall give the employee 7 days' written notice by
1403 certificate of mailing that the catastrophic temporary total
1404 disability benefits are being denied, provide the employee with
1405 a copy of any documentation supporting said denial, including
1406 any medical records and reports based on a medical opinion
1407 pursuant to s. 440.13(9)(b), employment, wage, and vocational
1408 reports and unemployment records, and advise the employee of his
1409 or her right to request a hearing on the payment of catastrophic
1410 temporary total disability benefits by filing a petition for
1411 benefits. The employer's or carrier's failure to give the
1412 employee the required 7 days' notice shall result in a waiver of
1413 any time period in which to file a petition for benefits on this
1414 issue. The evidence of any investigator, adjuster, or other
1415 witness in the nature of surveillance shall be subject to
1416 discovery when such evidence will be used at trial, provided the
1417 party intending to use such evidence is first given a reasonable
1418 opportunity to depose the party or witness who is the subject of
1419 the surveillance.

1420 (8) If the employee objects to the employer's or carrier's
1421 denial or termination of the payment of catastrophic temporary
1422 total disability benefits, the employee shall have 21 days after
1423 the date the notice of termination was sent to object to the
1424 termination or suspension of catastrophic temporary total
1425 disability benefits by filing a petition for benefits for the
1426 payment of catastrophic temporary total disability benefits. The
1427 employee's petition for benefits on catastrophic temporary total
1428 disability issues shall include a statement of the period in
1429 dispute, copies of all medical reports based on a medical



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1430 opinion pursuant to s. 440.13(9)(b), employment, wage, and
1431 vocational reports and unemployment records. A copy of said
1432 petition for benefits and copies shall be filed pursuant to s.
1433 440.192(1) and shall also be mailed by certificate of mailing to
1434 the employer, carrier and its legal counsel, if represented, no
1435 later than 10 days after the date of the filing of the petition
1436 for benefits.

1437 (9) The failure of the employer and carrier or the
1438 employee to provide the documentation required by this section
1439 shall result in the same being excluded at trial.

1440 (10) The department shall, by rule, provide for the
1441 periodic reporting to the department, employer, and carrier of
1442 all earned income, including social security benefits, by the
1443 injured employee who is entitled to or claiming benefits for
1444 temporary total disability. The employer and carrier are not
1445 required to make any payment of benefits for temporary total
1446 disability for any period during which the employee willfully
1447 fails or refuses to report such earned income upon request by
1448 the employer or carrier in the manner prescribed by rule. The
1449 rule must require the claimant to personally sign the claim form
1450 and attest that he or she has reviewed, understands, and
1451 acknowledges the foregoing under penalty of perjury.

1452 Section 14. Paragraph (d) of subsection (2) of section
1453 440.15, Florida Statutes, is redesignated as section 440.15015,
1454 Florida Statutes, and amended to read:

1455 440.15015 Reporting of income.--

1456 ~~(d)~~ The department shall, by rule, provide for the
1457 periodic reporting to the department, employer, or carrier of
1458 all earned income, including income from social security, by the
1459 injured employee who is entitled to or claiming benefits for



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1460 temporary total disability. The employer or carrier is not
1461 required to make any payment of benefits for temporary total
1462 disability for any period during which the employee willfully
1463 fails or refuses to report upon request by the employer or
1464 carrier in the manner prescribed by the rules. The rule must
1465 require the claimant to personally sign the claim form and
1466 attest that she or he has reviewed, understands, and
1467 acknowledges the foregoing.

1468 Section 15. Subsection (4) of section 440.15, Florida
1469 Statutes, is renumbered as section 440.1502, Florida Statutes,
1470 and amended to read:

1471 440.1502 Compensation for temporary partial
1472 disability.--Compensation for temporary partial disability shall
1473 be paid to the employee, subject to the limits provided in s.
1474 440.12(2), as follows:

1475 (1)(4) TEMPORARY PARTIAL DISABILITY.--

1476 (a) In case of temporary partial disability, compensation
1477 shall be equal to 80 percent of the difference between 80
1478 percent of the employee's average weekly wage and the salary,
1479 wages, and other remuneration the employee is able to earn, as
1480 compared weekly; however, the weekly benefits may not exceed an
1481 amount equal to $66\frac{2}{3}$ percent of the employee's average weekly
1482 wage at the time of injury. In order to simplify the comparison
1483 of the preinjury average weekly wage with the salary, wages, and
1484 other remuneration the employee is able to earn, the department
1485 may by rule provide for the modification of the weekly
1486 comparison so as to coincide as closely as possible with the
1487 injured worker's pay periods. The amount determined to be the
1488 salary, wages, and other remuneration the employee is able to



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1489 earn shall in no case be less than the sum actually being earned
1490 by the employee, including earnings from sheltered employment.

1491 (b) Such benefits shall be paid during the continuance of
1492 such disability, not to exceed a period of 104 weeks, as
1493 provided by this subsection and s. 440.15(1) ~~subsection (2)~~.
1494 Once the injured employee reaches the maximum number of weeks,
1495 temporary disability benefits cease and the injured worker's
1496 permanent impairment must be determined. The department may by
1497 rule specify forms and procedures governing the method of
1498 payment of temporary disability benefits for dates of accidents
1499 before January 1, 1994, and for dates of accidents on or after
1500 January 1, 1994.

1501 (c)1. If an employee has been released to return to work
1502 based on a medical opinion pursuant to s. 440.13(9)(b), the
1503 employer shall mail by certificate of mailing a Notice to
1504 Employee of Offer of Suitable Employment to the employee and the
1505 employee's attorney, if represented, at least 7 days prior to
1506 the date the employee is expected to return to work, after which
1507 benefits shall be suspended. The employer shall furnish a
1508 written job description of the employee's job at the time of the
1509 accident or the job performed by the employee after the accident
1510 and a job description that forms the basis for the offer of
1511 suitable employment. The employer's failure to produce this
1512 material within the time period provided shall preclude its use
1513 at any final hearing on a claim for temporary partial
1514 disability.

1515 2. If the employee has returned to work for the employer
1516 prior to maximum medical improvement and seeks payment of
1517 temporary partial disability, the employer shall mail by
1518 certificate of mailing the employee's gross weekly wages to the



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1519 carrier and its legal representative within 14 days after the
1520 employee submits a written request by certificate of mailing.

1521 (2) TERMINATION OF TEMPORARY PARTIAL DISABILITY
1522 BENEFITS.--

1523 (a) When an injured employee reaches maximum medical
1524 improvement and the employer or carrier desires to terminate the
1525 payment of temporary partial disability, the employer or carrier
1526 shall give the employee 7 days' written notice by certificate of
1527 mailing that the employee's eligibility for temporary partial
1528 disability has been terminated, provide the employee with a copy
1529 of any supporting documentation for said termination, and advise
1530 the employee of his or her right to request a hearing on the
1531 issue of reinstatement of temporary partial disability benefits
1532 by filing a petition for benefits. The employer's or carrier's
1533 failure to comply with this time provision results in its waiver
1534 of the 21-day period provided in paragraph (b) in which to file
1535 a petition for benefits on the issue. The evidence of any
1536 investigator, adjuster, or other witness in the nature of
1537 surveillance shall be subject to discovery when such evidence
1538 will be used at trial, provided the party intending to use such
1539 evidence is first given a reasonable opportunity to depose the
1540 party or witness who is the subject of the surveillance.

1541 (b) If the employee objects to the employer's or carrier's
1542 termination or suspension of temporary partial disability, the
1543 employee shall have 21 days after the date the notice of
1544 termination was mailed to object to the termination or
1545 suspension of temporary partial disability benefits by filing a
1546 petition for benefits for payment of temporary partial
1547 disability benefits. The employee's petition for benefits on
1548 temporary partial disability issues shall include a statement of



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1549 the period in dispute, temporary partial disability forms for
1550 said periods with supporting wage information, copies of all
1551 medical reports establishing that the employee remains eligible
1552 for temporary partial disability benefits based on a medical
1553 opinion pursuant to s. 440.13(9)(b), and employment, wage, and
1554 vocational reports and unemployment records. Copies of said
1555 reports shall be sent to the opposing parties no later than 10
1556 days after the date of the filing of the petition for benefits.

1557 (c) When the employer or carrier denies the payment of
1558 temporary partial disability benefits for any other reason, an
1559 employer or carrier shall give the employee 7 days' written
1560 notice of denial by certificate of mailing that the employee's
1561 temporary partial disability benefits are being denied, provide
1562 the employee with a copy of any documentation for said denial,
1563 including any medical reports based on a medical opinion
1564 pursuant to s. 440.13(9)(b), employment information, wage
1565 documentation, vocational reports, or unemployment records, and
1566 advise the employee of his or her right to request a hearing on
1567 the payment of temporary partial disability by filing a petition
1568 for benefits for the payment of temporary partial disability.
1569 The employer's or carrier's failure to comply with the
1570 provisions of this section shall result in a waiver of any time
1571 period in which to file a petition for benefits on the issue of
1572 temporary partial disability benefits. The evidence of any
1573 investigator, adjuster, or other witness in the nature of
1574 surveillance shall be subject to discovery when such evidence
1575 will be used at trial, provided the party intending to use such
1576 evidence is first given a reasonable opportunity to depose the
1577 party or witness who is the subject of the surveillance.



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1578 (d) The failure of the employer, carrier, or employee to
 1579 provide the documentation required by this subsection shall
 1580 result in the same being excluded at trial.

1581 Section 16. Paragraph (a) of subsection (3) of section
 1582 440.15, Florida Statutes, is redesignated as section 440.1503,
 1583 Florida Statutes, and amended to read:

1584 440.1503 Compensation for impairment.--Compensation for
 1585 impairment shall be paid to the employee, subject to the limits
 1586 provided in s. 440.12(2), as follows:

1587 ~~(1)(3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--~~

1588 ~~(a) Impairment benefits.--~~

1589 (a)1. Once the employee has reached the date of maximum
 1590 medical improvement, impairment benefits are due and payable
 1591 within 20 days after the carrier has knowledge of the
 1592 impairment.

1593 (b)2. The three-member panel, in cooperation with the
 1594 department, shall establish and use a uniform permanent
 1595 impairment rating schedule. This schedule must be based on
 1596 medically or scientifically demonstrable findings as well as the
 1597 systems and criteria set forth in the American Medical
 1598 Association's Guides to the Evaluation of Permanent Impairment;
 1599 the Snellen Charts, published by American Medical Association
 1600 Committee for Eye Injuries; and the Minnesota Department of
 1601 Labor and Industry Disability Schedules. The schedule should be
 1602 based upon objective findings. The schedule shall be more
 1603 comprehensive than the AMA Guides to the Evaluation of Permanent
 1604 Impairment and shall expand the areas already addressed and
 1605 address additional areas not currently contained in the guides.
 1606 On August 1, 1979, and pending the adoption, by rule, of a
 1607 permanent schedule, Guides to the Evaluation of Permanent



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1608 Impairment, copyright 1977, 1971, 1988, by the American Medical
 1609 Association, shall be the temporary schedule and shall be used
 1610 for the purposes hereof. For injuries after July 1, 1990,
 1611 pending the adoption by rule of a uniform disability rating
 1612 agency schedule, the Minnesota Department of Labor and Industry
 1613 Disability Schedule shall be used unless that schedule does not
 1614 address an injury. In such case, the Guides to the Evaluation of
 1615 Permanent Impairment by the American Medical Association shall
 1616 be used. Determination of permanent impairment under this
 1617 schedule must be made by a physician licensed under chapter 458,
 1618 a doctor of osteopathic medicine licensed under chapters 458 and
 1619 459, a chiropractic physician licensed under chapter 460, a
 1620 podiatric physician licensed under chapter 461, an optometrist
 1621 licensed under chapter 463, or a dentist licensed under chapter
 1622 466, as appropriate considering the nature of the injury. No
 1623 other persons are authorized to render opinions regarding the
 1624 existence of or the extent of permanent impairment.

1625 ~~(c)3-~~ All impairment income benefits shall be based on an
 1626 impairment rating using the impairment schedule referred to in
 1627 paragraph (b) ~~subparagraph 2~~. Impairment income benefits are
 1628 paid weekly at the rate of 50 percent of the employee's average
 1629 weekly temporary total disability benefit not to exceed the
 1630 maximum weekly benefit under s. 440.12. An employee's
 1631 entitlement to impairment income benefits begins the day after
 1632 the employee reaches maximum medical improvement or the
 1633 expiration of temporary benefits, whichever occurs earlier, and
 1634 continues until the earlier of:

1635 ~~1.a-~~ The expiration of a period computed at the rate of 3
 1636 weeks for each percentage point of impairment; or

1637 ~~2.b-~~ The death of the employee.



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1638 (d)4- After the employee has been certified by a doctor as
1639 having reached maximum medical improvement or 6 weeks before the
1640 expiration of temporary benefits, whichever occurs earlier, the
1641 certifying doctor shall evaluate the condition of the employee
1642 and assign an impairment rating, using the impairment schedule
1643 referred to in paragraph (b) subparagraph 2. Compensation is not
1644 payable for the mental, psychological, or emotional injury
1645 arising out of depression from being out of work. If the
1646 certification and evaluation are performed by a doctor other
1647 than the employee's treating doctor, the certification and
1648 evaluation must be submitted to the treating doctor, and the
1649 treating doctor must indicate agreement or disagreement with the
1650 certification and evaluation. The certifying doctor shall issue
1651 a written report to the department, the employee, and the
1652 carrier certifying that maximum medical improvement has been
1653 reached, stating the impairment rating, and providing any other
1654 information required by the department by rule. If the employee
1655 has not been certified as having reached maximum medical
1656 improvement before the expiration of 102 weeks after the date
1657 temporary total disability benefits begin to accrue, the carrier
1658 shall notify the treating doctor of the requirements of this
1659 section.

1660 (e)5- The carrier shall pay the employee impairment income
1661 benefits for a period based on the impairment rating.

1662 (f)6- The department may by rule specify forms and
1663 procedures governing the method of payment of wage loss and
1664 impairment benefits for dates of accidents before January 1,
1665 1994, and for dates of accidents on or after January 1, 1994.

1666 (2) TERMINATION OF IMPAIRMENT BENEFITS.--



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1667 (a) When an injured employee reaches maximum medical
1668 improvement and the employer or carrier desires to deny the
1669 claimant's entitlement to the payment of impairment benefits or
1670 to terminate the continuing payment of impairment benefits, the
1671 employer or carrier shall give the employee 7 days' written
1672 notice by certificate of mailing that the employee's entitlement
1673 to impairment benefits has been denied or the continuing payment
1674 of impairment benefits has been terminated, provide the employee
1675 with a copy of any supporting documentation for said denial or
1676 termination, and advise the employee of his or her right to
1677 request a hearing on said issues. The employer's or carrier's
1678 failure to comply with this time provision shall result in the
1679 waiver of the 21-day period provided in paragraph (b) in which
1680 to file a petition for benefits on the issue. The evidence of
1681 any investigator, adjuster, or other witness in the nature of
1682 surveillance shall be subject to discovery when such evidence
1683 will be used at trial, provided the party intending to use such
1684 evidence is first given a reasonable opportunity to depose the
1685 party or witness who is the subject of the surveillance.

1686 (b) If the employee objects to the denial of his or her
1687 entitlement to the payment of impairment benefits or termination
1688 of the payment of impairment benefits, the employee shall have
1689 21 days after the date the notice of termination was mailed to
1690 object to the termination of the payment of impairment benefits
1691 by filing a petition for benefits for payment of impairment
1692 benefits. The employee's petition for benefits on the payment of
1693 impairment benefits shall include a statement identifying all
1694 injuries for which impairment benefits are claimed and all
1695 medical records and reports documenting any permanent impairment
1696 rating assigned pursuant to the Florida Impairment Rating Guides



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1697 based on medical opinions pursuant to s. 440.13(9)(b). Copies of
 1698 said medical records and reports shall be mailed by certificate
 1699 of mailing to the employer and carrier and its representative,
 1700 no later than 10 days after the date of the filing of the
 1701 petition for benefits for impairment benefits.

1702 (c) The failure of the employer, carrier, or employee to
 1703 provide documentation required by this subsection shall result
 1704 in the same being excluded at trial of this issue.

1705 Section 17. Paragraphs (b) and (c) of subsection (3) of
 1706 section 440.15, Florida Statutes, are redesignated as section
 1707 440.1504, Florida Statutes, and amended to read:

1708 440.1504 Supplemental benefits.--Supplemental benefits
 1709 shall be paid to the employee, subject to the limits provided in
 1710 s. 440.12(2), as follows:

1711 (1)(b) SUPPLEMENTAL BENEFITS.--

1712 (a)1. All supplemental benefits must be paid in accordance
 1713 with this subsection. An employee is entitled to supplemental
 1714 benefits as provided in this section ~~paragraph~~ as of the
 1715 expiration of the impairment period, if:

1716 1.a. The employee has an impairment rating from the
 1717 compensable injury of 20 percent or more as determined pursuant
 1718 to this chapter;

1719 2.b. The employee has not returned to work or has returned
 1720 to work earning less than 80 percent of the employee's average
 1721 weekly wage as a direct result of the employee's impairment; and

1722 3.e. The employee has in good faith attempted to obtain
 1723 employment commensurate with the employee's ability to work.

1724 (b)2. If an employee is not entitled to supplemental
 1725 benefits at the time of payment of the final weekly impairment
 1726 income benefit because the employee is earning at least 80



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1727 percent of the employee's average weekly wage, the employee may
1728 become entitled to supplemental benefits at any time within 1
1729 year after the impairment income benefit period ends if:

1730 1.a. The employee earns wages that are less than 80
1731 percent of the employee's average weekly wage for a period of at
1732 least 90 days;

1733 2.b. The employee meets the other requirements of
1734 paragraph (a) subparagraph 1.; and

1735 3.e. The employee's decrease in earnings is a direct
1736 result of the employee's impairment from the compensable injury.

1737 (c)3. If an employee earns wages that are at least 80
1738 percent of the employee's average weekly wage for a period of at
1739 least 90 days during which the employee is receiving
1740 supplemental benefits, the employee ceases to be entitled to
1741 supplemental benefits for the filing period. Supplemental
1742 benefits that have been terminated shall be reinstated when the
1743 employee satisfies the conditions enumerated in paragraph (b)
1744 subparagraph 2. and files the statement required under paragraph
1745 (d) subparagraph 4. Notwithstanding any other provision, if an
1746 employee is not entitled to supplemental benefits for 12
1747 consecutive months, the employee ceases to be entitled to any
1748 additional income benefits for the compensable injury. If the
1749 employee is discharged within 12 months after losing entitlement
1750 under this section subsection, benefits may be reinstated if the
1751 employee was discharged at that time with the intent to deprive
1752 the employee of supplemental benefits.

1753 (d)4. After the initial determination of supplemental
1754 benefits, the employee must file a statement with the carrier
1755 stating that the employee has earned less than 80 percent of the
1756 employee's average weekly wage as a direct result of the



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1757 employee's impairment, stating the amount of wages the employee
 1758 earned in the filing period, and stating that the employee has
 1759 in good faith sought employment commensurate with the employee's
 1760 ability to work. The statement must be filed quarterly on a form
 1761 and in the manner prescribed by the department. The department
 1762 may modify the filing period as appropriate to an individual
 1763 case. Failure to file a statement relieves the carrier of
 1764 liability for supplemental benefits for the period during which
 1765 a statement is not filed.

1766 (e)~~5~~-. The carrier shall begin payment of supplemental
 1767 benefits not later than the seventh day after the expiration
 1768 date of the impairment income benefit period and shall continue
 1769 to timely pay those benefits. The carrier may request a
 1770 mediation conference for the purpose of contesting the
 1771 employee's entitlement to or the amount of supplemental income
 1772 benefits.

1773 (f)~~6~~-. Supplemental benefits are calculated quarterly and
 1774 paid monthly. For purposes of calculating supplemental benefits,
 1775 80 percent of the employee's average weekly wage and the average
 1776 wages the employee has earned per week are compared quarterly.
 1777 For purposes of this section ~~paragraph~~, if the employee is
 1778 offered a bona fide position of employment that the employee is
 1779 capable of performing, given the physical condition of the
 1780 employee and the geographic accessibility of the position, the
 1781 employee's weekly wages are considered equivalent to the weekly
 1782 wages for the position offered to the employee.

1783 (g)~~7~~-. Supplemental benefits are payable at the rate of 80
 1784 percent of the difference between 80 percent of the employee's
 1785 average weekly wage determined pursuant to s. 440.14 and the
 1786 weekly wages the employee has earned during the reporting



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1787 period, not to exceed the maximum weekly income benefit under s.
 1788 440.12.

1789 ~~(h)8-~~ The department may by rule define terms that are
 1790 necessary for the administration of this section and forms and
 1791 procedures governing the method of payment of supplemental
 1792 benefits for dates of accidents before January 1, 1994, and for
 1793 dates of accidents on or after January 1, 1994.

1794 ~~(i)(c) Duration of temporary impairment and supplemental~~
 1795 ~~income benefits.~~ The employee's eligibility for temporary
 1796 benefits, impairment income benefits, and supplemental benefits
 1797 terminates on the expiration of 401 weeks after the date of
 1798 injury.

1799 (2) TERMINATION OF SUPPLEMENTAL BENEFITS.--

1800 (a) When the employer or carrier desires to contest the
 1801 employee's eligibility for supplemental benefits or to terminate
 1802 the payment of supplemental benefits, an employer or carrier
 1803 shall give the employee 7 days' written notice by certificate of
 1804 mailing that the employee's entitlement to supplemental benefits
 1805 is being contested, provide the employee with a copy of any
 1806 supporting documentation for said denial, and advise the
 1807 employee of his or her right to request a hearing on the issue
 1808 of supplemental benefits by filing a petition for benefits. The
 1809 employer's or carrier's failure to comply with this time
 1810 provision shall result in the waiver of the 21-day period
 1811 provided in paragraph (b) in which to file a petition for
 1812 benefits on the issue. The evidence of any investigator,
 1813 adjuster, or other witness in the nature of surveillance shall
 1814 be subject to discovery when such evidence will be used at
 1815 trial, provided the party intending to use such evidence is



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1816 first given a reasonable opportunity to depose the party or
1817 witness who is the subject of the surveillance.

1818 (b) If the employee objects to the employer's or carrier's
1819 denial or termination of payment of supplemental benefits, the
1820 employee shall have 21 days after the date the notice of
1821 termination was mailed to object to the denial or termination of
1822 supplemental benefits by filing a petition for benefits for
1823 payment of supplemental benefits. The employee's petition for
1824 benefits for supplemental benefits shall include a statement of
1825 the period in dispute and copies of all medical reports based on
1826 medical opinions pursuant to s. 440.13(9)(b), employment, wage,
1827 vocational reports, and unemployment records, or any other
1828 information to be offered at trial. Copies of said reports shall
1829 be sent to the employer and carrier and its representative no
1830 later than 10 days after the date of the filing of the petition
1831 for benefits.

1832 (c) When the employer or carrier denies the payment of
1833 supplemental benefits for any other reason, an employer or
1834 carrier shall give the employee 7 days' written notice of denial
1835 by certificate of mailing that the employee's supplemental
1836 benefits are being denied, provide the employee with a copy of
1837 any documentation for said denial, including any medical,
1838 employment, wages, vocational reports, and unemployment records,
1839 and advise the employee of his or her right to request a hearing
1840 on the payment of supplemental benefits by filing a petition for
1841 benefits. The employer's or carrier's failure to comply with
1842 this time provision shall result in a waiver of any time period
1843 in which to file a petition for benefits on the issue. The
1844 evidence of any investigator, adjuster, or other witness in the
1845 nature of surveillance shall be subject to discovery when such



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1846 evidence will be used at trial, provided the party intending to
1847 use such evidence is first given a reasonable opportunity to
1848 depose the party or witness who is the subject of the
1849 surveillance.

1850 (d) If the employer or carrier denies eligibility for the
1851 payment of supplemental benefits or permanent total disability
1852 benefits because the employer or carrier has a job available to
1853 the employee, the employer or carrier shall provide the
1854 information set forth in s. 440.1502(1)(c)1. within 10 days
1855 after such job becomes available. The failure of the employer or
1856 carrier to produce this information within the timeframe
1857 provided shall preclude its use at any final hearing for
1858 supplemental benefits claims.

1859 (e) The failure of the employer, carrier, or employee to
1860 provide the documentation required by this section shall result
1861 in the same being excluded from evidence at any trial of this
1862 issue.

1863 Section 18. Subsection (1) of section 440.15, Florida
1864 Statutes, is renumbered as section 440.1505, Florida Statutes,
1865 and amended to read:

1866 440.1505 Compensation for permanent total
1867 disability.--Compensation for permanent total disability shall
1868 be paid to the employee, subject to the limits provided in s.
1869 440.12(2), as follows:

1870 (1) PERMANENT TOTAL DISABILITY.--

1871 (a) In case of total disability adjudged to be permanent,
1872 $66\frac{2}{3}$ percent of the average weekly wages shall be paid to the
1873 employee during the continuance of such total disability.

1874 (b) Only a catastrophic injury as defined in s. 440.02
1875 shall, in the absence of conclusive proof of a substantial



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1876 earning capacity, constitute permanent total disability. Only
 1877 claimants with catastrophic injuries are eligible for permanent
 1878 total benefits. In no other case may permanent total disability
 1879 be awarded.

1880 (c) In cases of permanent total disability resulting from
 1881 injuries that occurred prior to July 1, 1955, such payments
 1882 shall not be made in excess of 700 weeks.

1883 (d) If an employee who is being paid compensation for
 1884 permanent total disability becomes rehabilitated to the extent
 1885 that she or he establishes an earning capacity, the employee
 1886 shall be paid, instead of the compensation provided in paragraph
 1887 (a), benefits pursuant to ss. 440.1503 and 440.1504 ~~subsection~~
 1888 ~~(3)~~. The department shall adopt rules to enable a permanently
 1889 and totally disabled employee who may have reestablished an
 1890 earning capacity to undertake a trial period of reemployment
 1891 without prejudicing her or his return to permanent total status
 1892 in the case that such employee is unable to sustain an earning
 1893 capacity.

1894 (e)1. The employer's or carrier's right to conduct
 1895 vocational evaluations or testing pursuant to s. 440.491
 1896 continues even after the employee has been accepted or
 1897 adjudicated as entitled to compensation under this chapter. This
 1898 right includes, but is not limited to, instances in which such
 1899 evaluations or tests are recommended by a treating physician or
 1900 independent medical-examination physician, instances warranted
 1901 by a change in the employee's medical condition, or instances in
 1902 which the employee appears to be making appropriate progress in
 1903 recuperation. This right may not be exercised more than once
 1904 every calendar year.



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1905 2. The carrier must confirm the scheduling of the
1906 vocational evaluation or testing in writing, and must notify
1907 employee's counsel, if any, at least 7 days before the date on
1908 which vocational evaluation or testing is scheduled to occur.

1909 3. Pursuant to an order of the judge of compensation
1910 claims, the employer or carrier may withhold payment of benefits
1911 for permanent total disability or supplements for any period
1912 during which the employee willfully fails or refuses to appear
1913 without good cause for the scheduled vocational evaluation or
1914 testing.

1915 (f)1. If permanent total disability results from injuries
1916 that occurred subsequent to June 30, 1955, and for which the
1917 liability of the employer for compensation has not been
1918 discharged under s. 440.20(11), the injured employee shall
1919 receive additional weekly compensation benefits equal to 5
1920 percent of her or his weekly compensation rate, as established
1921 pursuant to the law in effect on the date of her or his injury,
1922 multiplied by the number of calendar years since the date of
1923 injury. The weekly compensation payable and the additional
1924 benefits payable under this paragraph, when combined, may not
1925 exceed the maximum weekly compensation rate in effect at the
1926 time of payment as determined pursuant to s. 440.12(2).
1927 Entitlement to these supplemental payments shall cease at age 62
1928 if the employee is eligible for social security benefits under
1929 42 U.S.C. ss. 402 and 423, whether or not the employee has
1930 applied for such benefits. These supplemental benefits shall be
1931 paid by the department out of the Workers' Compensation
1932 Administration Trust Fund when the injury occurred subsequent to
1933 June 30, 1955, and before July 1, 1984. These supplemental
1934 benefits shall be paid by the employer when the injury occurred



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1935 on or after July 1, 1984. Supplemental benefits are not payable
 1936 for any period prior to October 1, 1974.

1937 2.a. The department shall provide by rule for the periodic
 1938 reporting to the department of all earnings of any nature and
 1939 social security income by the injured employee entitled to or
 1940 claiming additional compensation under subparagraph 1. Neither
 1941 the department nor the employer or carrier shall make any
 1942 payment of those additional benefits provided by subparagraph 1.
 1943 for any period during which the employee willfully fails or
 1944 refuses to report upon request by the department in the manner
 1945 prescribed by such rules.

1946 b. The department shall provide by rule for the periodic
 1947 reporting to the employer or carrier of all earnings of any
 1948 nature and social security income by the injured employee
 1949 entitled to or claiming benefits for permanent total disability.
 1950 The employer or carrier is not required to make any payment of
 1951 benefits for permanent total disability for any period during
 1952 which the employee willfully fails or refuses to report upon
 1953 request by the employer or carrier in the manner prescribed by
 1954 such rules or if any employee who is receiving permanent total
 1955 disability benefits refuses to apply for or cooperate with the
 1956 employer or carrier in applying for social security benefits.

1957 3. When an injured employee receives a full or partial
 1958 lump-sum advance of the employee's permanent total disability
 1959 compensation benefits, the employee's benefits under this
 1960 paragraph shall be computed on the employee's weekly
 1961 compensation rate as reduced by the lump-sum advance.

1962 (2) TERMINATION OF PERMANENT TOTAL DISABILITY BENEFITS.--

1963 (a) When an injured employee has been voluntarily accepted
 1964 as being permanently and totally disabled by the employer and



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1965 carrier without stipulation of the parties or order of the judge
 1966 of compensation claims, and the employer or carrier desires to
 1967 suspend or terminate the payment of permanent total disability
 1968 benefits, an employer or carrier shall give the employee 7 days'
 1969 written notice by certificate of mailing that the employee's
 1970 eligibility for permanent total disability benefits has been
 1971 terminated, provide the employee with a copy of any supporting
 1972 documentation for said termination, and advise the employee of
 1973 his or her right to request a hearing on the issue of
 1974 reinstatement of permanent total disability benefits by filing a
 1975 petition for benefits. The employer's or carrier's failure to
 1976 comply with this time provision shall result in the waiver of
 1977 the period provided in paragraph (d) in which to file a petition
 1978 for benefits on the issue. The evidence of any investigator,
 1979 adjuster, or other witness in the nature of surveillance shall
 1980 be subject to discovery when such evidence will be used at
 1981 trial, provided the party intending to use such evidence is
 1982 first given a reasonable opportunity to depose the party or
 1983 witness who is the subject of the surveillance.

1984 (b) If the employee objects to the employer's or carrier's
 1985 termination of payment of permanent total disability benefits,
 1986 the employee shall have 21 days after the date the notice of
 1987 termination was mailed to object to the termination of permanent
 1988 total disability by filing a petition for benefits for payment
 1989 of permanent total disability. The employee's petition for
 1990 benefits on permanent total disability issues shall include a
 1991 statement of the period in dispute, copies of all medical
 1992 records and reports based on medical opinions pursuant to s.
 1993 440.13(9)(b), and employment, wage, vocational, disability
 1994 reports, and unemployment records. Copies of said records shall



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1995 be mailed to the employer and carrier and its representative no
 1996 later than 10 days after the date of the filing of the petition
 1997 for benefits.

1998 (c) When the employer or carrier denies an employee's
 1999 eligibility for the payment of permanent total disability
 2000 benefits, an employer or carrier shall give the employee 7 days'
 2001 written notice of denial by certificate of mailing that the
 2002 employee's permanent total disability benefits are being denied,
 2003 provide the employee with a copy of any documentation for said
 2004 denial, including any medical, employment, wages, vocational
 2005 reports, and unemployment records, and advise the employee of
 2006 his or her right to request a hearing on the payment of
 2007 permanent total disability by filing a petition for benefits.

2008 The employer's or carrier's failure to comply with this time
 2009 provision shall result in a waiver of any time period in which
 2010 to file a petition for benefits on this issue. The evidence of
 2011 any investigator, adjuster, or other witness in the nature of
 2012 surveillance shall be subject to discovery when such evidence
 2013 will be used at trial, provided the party intending to use such
 2014 evidence is first given a reasonable opportunity to depose the
 2015 party or witness who is the subject of the surveillance.

2016 (d) If the employer or carrier denies the entitlement to
 2017 permanent total disability benefits because the employer or
 2018 carrier has a job available to the employee, the employer or
 2019 carrier shall provide the information set forth in s.
 2020 440.1502(1)(c)1. within 10 days after such job becomes
 2021 available. The failure of the employer or carrier to produce
 2022 this information within the timeframe provided shall preclude
 2023 its use at any final hearing for permanent total disability
 2024 claims.



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2025 (e) If the employer or carrier denies eligibility for the
 2026 payment of permanent total disability benefits because the
 2027 employer or carrier has a job available to the employee, the
 2028 employer or carrier shall provide the information set forth in
 2029 s. 440.1502(1)(c)1. within 10 days after such job becomes
 2030 available. The failure of the employer or carrier to produce
 2031 this information within the timeframe provided shall preclude
 2032 its use at any final hearing for permanent total disability
 2033 benefits claims.

2034 (f) The failure of the employer, carrier, or employee to
 2035 provide the documentation required by this subsection shall
 2036 result in the same being excluded from evidence at any trial of
 2037 this issue.

2038 Section 19. Subsections (5), (6), (7), (8), (9), and (12)
 2039 of section 440.15, Florida Statutes, are renumbered as section
 2040 440.1506, Florida Statutes, and amended to read:

2041 440.1506 Compensation for subsequent injury.--Compensation
 2042 for subsequent injury shall be paid to the employee, subject to
 2043 the limits provided in s. 440.12(2), as follows:

2044 (1)(5) SUBSEQUENT INJURY.--

2045 (a) The fact that an employee has suffered previous
 2046 disability, impairment, anomaly, or disease, or received
 2047 compensation therefor, shall not preclude her or him from
 2048 benefits for a subsequent aggravation or acceleration of the
 2049 preexisting condition nor preclude benefits for death resulting
 2050 therefrom, except that no benefits shall be payable if the
 2051 employee, at the time of entering into the employment of the
 2052 employer by whom the benefits would otherwise be payable,
 2053 falsely represents herself or himself in writing as not having
 2054 previously been disabled or compensated because of such previous



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2055 disability, impairment, anomaly, or disease and the employer
2056 detrimentally relies on the misrepresentation. Compensation for
2057 temporary disability, medical benefits, and wage-loss benefits
2058 shall not be subject to apportionment.

2059 (b) If a compensable permanent impairment, or any portion
2060 thereof, is a result of aggravation or acceleration of a
2061 preexisting condition, or is the result of merger with a
2062 preexisting impairment, an employee eligible to receive
2063 impairment benefits under s. 440.1503(1) ~~paragraph (3)(a)~~ shall
2064 receive such benefits for the total impairment found to result,
2065 excluding the degree of impairment existing at the time of the
2066 subject accident or injury or which would have existed by the
2067 time of the impairment rating without the intervention of the
2068 compensable accident or injury. The degree of permanent
2069 impairment attributable to the accident or injury shall be
2070 compensated in accordance with s. 440.1503(1) ~~paragraph (3)(a)~~.
2071 As used in this paragraph, "merger" means the combining of a
2072 preexisting permanent impairment with a subsequent compensable
2073 permanent impairment which, when the effects of both are
2074 considered together, result in a permanent impairment rating
2075 which is greater than the sum of the two permanent impairment
2076 ratings when each impairment is considered individually.

2077 (2)(6) OBLIGATION TO REHIRE.--If the employer has not in
2078 good faith made available to the employee, within a 100-mile
2079 radius of the employee's residence, work appropriate to the
2080 employee's physical limitations within 30 days after the carrier
2081 notifies the employer of maximum medical improvement and the
2082 employee's physical limitations, the employer shall pay to the
2083 department for deposit into the Workers' Compensation
2084 Administration Trust Fund a fine of \$250 for every \$5,000 of the



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2085 employer's workers' compensation premium or payroll, not to
 2086 exceed \$2,000 per violation, as the department requires by rule.
 2087 The employer is not subject to this subsection if the employee
 2088 is receiving permanent total disability benefits or if the
 2089 employer has 50 or fewer employees.

2090 (3)~~(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
 2091 employee refuses employment suitable to the capacity thereof,
 2092 offered to or procured therefor, such employee shall not be
 2093 entitled to any compensation at any time during the continuance
 2094 of such refusal unless at any time in the opinion of the judge
 2095 of compensation claims such refusal is justifiable.

2096 (4)~~(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
 2097 employee, when receiving compensation for temporary partial
 2098 disability, leaves the employment of the employer by whom she or
 2099 he was employed at the time of the accident for which such
 2100 compensation is being paid, the employee shall, upon securing
 2101 employment elsewhere, give to such former employer an affidavit
 2102 in writing containing the name of her or his new employer, the
 2103 place of employment, and the amount of wages being received at
 2104 such new employment; and, until she or he gives such affidavit,
 2105 the compensation for temporary partial disability will cease.
 2106 The employer by whom such employee was employed at the time of
 2107 the accident for which such compensation is being paid may also
 2108 at any time demand of such employee an additional affidavit in
 2109 writing containing the name of her or his employer, the place of
 2110 her or his employment, and the amount of wages she or he is
 2111 receiving; and if the employee, upon such demand, fails or
 2112 refuses to make and furnish such affidavit, her or his right to
 2113 compensation for temporary partial disability shall cease until
 2114 such affidavit is made and furnished.



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2115 ~~(5)(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
 2116 employee becomes an inmate of a public institution, then no
 2117 compensation shall be payable unless she or he has dependent
 2118 upon her or him for support a person or persons defined as
 2119 dependents elsewhere in this chapter, whose dependency shall be
 2120 determined as if the employee were deceased and to whom
 2121 compensation would be paid in case of death; and such
 2122 compensation as is due such employee shall be paid such
 2123 dependents during the time she or he remains such inmate.

2124 ~~(6)(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
 2125 OFFICERS.--Any law enforcement officer as defined in s.
 2126 943.10(1), (2), or (3) who, while acting within the course of
 2127 employment as provided by s. 440.091, is maliciously or
 2128 intentionally injured and who thereby sustains a job-connected
 2129 disability compensable under this chapter shall be carried in
 2130 full-pay status rather than being required to use sick, annual,
 2131 or other leave. Full-pay status shall be granted only after
 2132 submission to the employing agency's head of a medical report
 2133 which gives a current diagnosis of the employee's recovery and
 2134 ability to return to work. In no case shall the employee's
 2135 salary and workers' compensation benefits exceed the amount of
 2136 the employee's regular salary requirements.

2137 Section 20. Subsections (10) and (11) of section 440.15,
 2138 Florida Statutes, are renumbered as section 440.1507, Florida
 2139 Statutes, and amended to read:

2140 440.1507 Eligibility for benefits.--

2141 ~~(1)(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
 2142 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

2143 (a) Weekly compensation benefits payable under this
 2144 chapter for disability resulting from injuries to an employee



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2145 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
2146 be reduced to an amount whereby the sum of such compensation
2147 benefits payable under this chapter and such total benefits
2148 otherwise payable for such period to the employee and her or his
2149 dependents, had such employee not been entitled to benefits
2150 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
2151 exceed 80 percent of the employee's average weekly wage.
2152 However, this provision shall not operate to reduce an injured
2153 worker's benefits under this chapter to a greater extent than
2154 such benefits would have otherwise been reduced under 42 U.S.C.
2155 s. 424(a). This reduction of compensation benefits is not
2156 applicable to any compensation benefits payable for any week
2157 subsequent to the week in which the injured worker reaches the
2158 age of 62 years.

2159 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
2160 to provide for a reduction or increase of the percentage of
2161 average current earnings that the sum of compensation benefits
2162 payable under this chapter and the benefits payable under 42
2163 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
2164 benefits provided in this subsection shall be reduced or
2165 increased accordingly. The department may by rule specify forms
2166 and procedures governing the method for calculating and
2167 administering the offset of benefits payable under this chapter
2168 and benefits payable under 42 U.S.C. ss. 402 and 423. The
2169 department shall have first priority in taking any available
2170 social security offsets on dates of accidents occurring before
2171 July 1, 1984.

2172 (c) No disability compensation benefits payable for any
2173 week, including those benefits provided by s. 440.1505(1)(f)
2174 ~~paragraph (1)(f)~~, shall be reduced pursuant to this subsection



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2175 until the Social Security Administration determines the amount
2176 otherwise payable to the employee under 42 U.S.C. ss. 402 and
2177 423 and the employee has begun receiving such social security
2178 benefit payments. The employee shall, upon demand by the
2179 department, the employer, or the carrier, authorize the Social
2180 Security Administration to release disability information
2181 relating to her or him and authorize the Division of
2182 Unemployment Compensation to release unemployment compensation
2183 information relating to her or him, in accordance with rules to
2184 be adopted by the department prescribing the procedure and
2185 manner for requesting the authorization and for compliance by
2186 the employee. Neither the department nor the employer or carrier
2187 shall make any payment of benefits for total disability or those
2188 additional benefits provided by s. 440.1505(1)(f) ~~paragraph~~
2189 ~~(1)(f)~~ for any period during which the employee willfully fails
2190 or refuses to authorize the release of information in the manner
2191 and within the time prescribed by such rules. The authority for
2192 release of disability information granted by an employee under
2193 this paragraph shall be effective for a period not to exceed 12
2194 months, such authority to be renewable as the department may
2195 prescribe by rule.

2196 (d) If compensation benefits are reduced pursuant to this
2197 subsection, the minimum compensation provisions of s. 440.12(2)
2198 do not apply.

2199 (e)1. Within 30 days after any application for social
2200 security benefits, an employee who has filed a petition for
2201 benefits for workers' compensation indemnity or medical benefits
2202 or who is receiving workers' compensation indemnity or medical
2203 benefits shall notify the employer and carrier of the
2204 application and shall:



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2205 a. Provide the employer and carrier by certificate of
2206 mailing with a copy or proof of such application.

2207 b. Provide the employer and carrier with a release of
2208 information within 14 days after written request by certificate
2209 of mailing by the employer or carrier which may be utilized by
2210 the employer or carrier to obtain the employee's social security
2211 file, including, but not limited to, average current earnings,
2212 primary insurance amount, and offset taken by the Social
2213 Security Administration.

2214 2. Within 30 days after an award or adjudication of any
2215 social security benefits, the employee shall provide a copy of
2216 said award or adjudication by certificate of mailing to the
2217 employer and carrier by certificate of mailing and provide the
2218 employer and carrier with a release as outlined in sub-
2219 subparagraph 1.b. by certificate of mailing. If the employee
2220 fails to provide the information required by this subparagraph,
2221 the employer and carrier shall nevertheless be entitled to any
2222 applicable social security disability offset retroactive to the
2223 date of the social security disability award or adjudication. If
2224 the employer or carrier fails to take the social security
2225 disability offset within 120 days after receipt of all
2226 information required in sub-subparagraph 1.b., the employer or
2227 carrier shall not be entitled to any retroactive social security
2228 disability offset.

2229 3. If the employee refuses or fails to provide the
2230 employer or carrier with a copy or proof of application for
2231 social security benefits, a release of information, and a copy
2232 of any social security award or adjudication, the employer or
2233 carrier shall not make any payment of compensation benefits for
2234 any period during which the employee continues such failure or



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2235 refusal. No hearing on compensation benefits shall be scheduled
2236 at the request of the employee until the documents required by
2237 this paragraph are provided by certificate of mailing. The
2238 employer or carrier shall provide a copy of any and all
2239 information received by either the employer or carrier pursuant
2240 to sub-subparagraph 1.b. to the employee within 14 days after
2241 receipt of the information by certificate of mailing. No social
2242 security disability offset may be taken until the employer or
2243 carrier has provided a copy by certificate of mailing of all
2244 information received by it pursuant to sub-subparagraph 1.b. to
2245 the employee.

2246 4. Compensation or medical benefits withheld shall be
2247 reinstated without penalty, interest, costs, or attorney's fees
2248 when the documents required by sub-subparagraph 1.b. and
2249 subparagraph 2., have been provided.

2250 (2)(11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
2251 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
2252 COMPENSATION.--

2253 (a) No compensation benefits shall be payable for
2254 temporary total disability or permanent total disability under
2255 this chapter for any week in which the injured employee has
2256 received, or is receiving, unemployment compensation benefits.

2257 (b) If an employee is entitled to temporary partial
2258 benefits pursuant to s. 440.1502(1) ~~subsection (4)~~ and
2259 unemployment compensation benefits, such unemployment
2260 compensation benefits shall be primary and the temporary partial
2261 benefits shall be supplemental only, the sum of the two benefits
2262 not to exceed the amount of temporary partial benefits which
2263 would otherwise be payable.



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2264 Section 21. Subsection (13) of section 440.15, Florida
2265 Statutes, is renumbered as section 440.1508, Florida Statutes,
2266 and amended to read:

2267 440.1508 Repayment; miscalculation of benefits.--

2268 (1)-(13) REPAYMENT.--If an employee has received a sum as
2269 an indemnity benefit under any classification or category of
2270 benefit under this chapter to which she or he is not entitled,
2271 the employee is liable to repay that sum to the employer or the
2272 carrier or to have that sum deducted from future benefits,
2273 regardless of the classification of benefits, payable to the
2274 employee under this chapter; however, a partial payment of the
2275 total repayment may not exceed 20 percent of the amount of the
2276 biweekly payment.

2277 (2) MISCALCULATION OF BENEFITS.--

2278 (a) When an employer or carrier alleges there has been an
2279 overpayment for which it is entitled to credit, the employer or
2280 carrier shall give 7 days' written notice by certificate of
2281 mailing of an overpayment; provide the employee with a copy of
2282 any supporting documentation, including, but not limited to, the
2283 payout sheet, overpayment calculations, social security
2284 disability offset calculations and material, Average Current
2285 Earnings (ACE)/ Primary Insurance Amount (PIA) information
2286 contained within a dated DWC-14 form completed by the Social
2287 Security Administration; and advise the employee of his or her
2288 right to request a hearing by filing a petition for benefits on
2289 said issues.

2290 (b) If the employee objects, the employee shall file a
2291 petition for benefits which shall include a statement outlining
2292 the employee's objection to the credit or miscalculation of
2293 benefits, set forth the employee's calculations with a



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2294 reasonable explanation, and provide any additional documentation
 2295 in support of the employee's objection. A copy of any supporting
 2296 documentation shall be sent by certificate of mailing to the
 2297 employer and carrier and its representative no later than 10
 2298 days after the filing of the petition for benefits.

2299 Section 22. Subsection (8) is added to section 440.16,
 2300 Florida Statutes, and subsection (6) of section 440.25, Florida
 2301 Statutes, is renumbered as subsection (9) of section 440.16,
 2302 Florida Statutes, and amended, to read:

2303 440.16 Compensation for death.--

2304 (8)(a) A petition for benefits filed by or on behalf of a
 2305 dependent or person entitled to compensation under this section
 2306 shall be accompanied by a certified copy of the following:

- 2307 1. Death certificate of the deceased employee.
- 2308 2. The autopsy report, if an autopsy was performed, for
 2309 the deceased employee.
- 2310 3. The certificate of birth of the claimant, if the
 2311 claimant is a surviving child of the deceased employee.
- 2312 4. Adoption papers or other decrees and court records
 2313 establishing legal responsibility for support of dependant
 2314 children.
- 2315 5. If either the deceased employee or the surviving spouse
 2316 have been involved in prior divorce proceedings, copies of
 2317 decrees and orders of the courts.
- 2318 6. If the claimant is an illegitimate child, evidence of
 2319 the claimant's acknowledgment by the deceased employee prior to
 2320 death and evidence of dependency.

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2322 If the documentation required in subparagraphs 1.-6. is not
2323 readily available, the judge of compensation claims shall
2324 determine the adequacy of substitute documentation.

2325 (b) If death results from the accident within 1 year
2326 thereafter or follows continuous disability and results from the
2327 accident within 5 years thereafter, in addition to providing all
2328 the documentation required by paragraph (a), the petition for
2329 benefits filed by the claimant shall include any and all medical
2330 records and reports based on medical opinions pursuant to s.
2331 440.13(9)(b) establishing a causal relationship between the
2332 employee's death and the industrial accident.

2333 (c) In addition to establishing compensability of death,
2334 the claimant seeking payment of actual funeral expenses shall
2335 furnish the documentation required by paragraphs (a) and (b) and
2336 copies of any and all funeral expense bills.

2337 (d) When the employer or carrier denies the payment of
2338 death benefits or funeral expenses, the employer or carrier
2339 shall give the claimant 7 days' written notice of denial by
2340 certificate of mailing that the employee's death benefits are
2341 being denied; provide the employee with a copy of any
2342 documentation supporting said denial, including any medical,
2343 employment, wages, or unemployment records; and advise the party
2344 seeking payment of such benefits of his or her right to request
2345 a hearing on the payment of death benefits or funeral expenses
2346 by filing a petition for benefits. The employer's or carrier's
2347 failure to comply with this time provision shall result in a
2348 waiver of any time period within which the claimant must file a
2349 petition for benefits on this issue. The evidence of any
2350 investigator, adjuster, or other witness in the nature of
2351 surveillance shall be subject to discovery when such evidence



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2352 will be used at trial, provided the party intending to use such
2353 evidence is first given a reasonable opportunity to depose the
2354 party or witness who is the subject of the surveillance.

2355 (9)(6) An award of compensation for disability may be made
2356 after the death of an injured employee.

2357 Section 23. Section 440.1855, Florida Statutes, is created
2358 to read:

2359 440.1855 Statute of limitations.--

2360 (1) When the employer or carrier denies the provision of
2361 benefits on the basis that the statute of limitations has run,
2362 the employer or carrier shall give the employee 7 days' written
2363 notice of denial by certificate of mailing that the benefits are
2364 being denied based on the statute of limitations; provide the
2365 employee with copies of any supporting documentation for said
2366 denial, including any medical records and reports and carrier
2367 payout sheets; and advise the employee of his or her right to
2368 file a petition for benefits on the issue.

2369 (2) If the employee objects to the employer's or carrier's
2370 denial on the basis of the statute of limitations, the employee
2371 shall have 21 days after the date the notice of denial was
2372 mailed to object to the denial of benefits by filing a petition
2373 for benefits seeking the provision of workers' compensation
2374 benefits. The employee's petition for benefits shall include a
2375 statement outlining why the statute of limitations has not
2376 expired, set forth the nature of the benefits being sought, and
2377 provide all documentation in support of the claim. A copy of
2378 said documentation shall be mailed to the employer and carrier
2379 and its representative no later than 10 days after the date of
2380 the filing of the petition for benefits.



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2381 (3) Failure of the employer or carrier or the employee to
 2382 provide the documentation required by this section shall result
 2383 in the same being excluded from evidence at any trial of this
 2384 issue.

2385 Section 24. Section 440.191, Florida Statutes, is
 2386 repealed.

2387 Section 25. Section 440.1915, Florida Statutes, is created
 2388 to read:

2389 440.1915 Stay pending criminal investigation and
 2390 prosecution.--An employer or carrier may apply to the department
 2391 for certification of a pending criminal investigation of
 2392 workers' compensation fraud involving an employee who has filed
 2393 a petition for benefits. Once the department certifies the
 2394 existence of such investigation, said certification shall act as
 2395 an immediate and automatic stay of further workers' compensation
 2396 judicial proceedings, subject to the following provisions and
 2397 limitations:

2398 (1) During the pendency of the stay, no trial shall be
 2399 held.

2400 (2) The stay shall expire upon the occurrence of the
 2401 earliest of the following:

2402 (a) A notice of determination that no criminal prosecution
 2403 shall be instituted against the employee by the department or
 2404 the applicable state attorney.

2405 (b) A certified copy of the final disposition of the
 2406 criminal prosecution from the applicable clerk of court.

2407 Section 26. Subsections (1) and (6) of section 440.192,
 2408 Florida Statutes, are amended, present subsection (7) is
 2409 renumbered as subsection (6), present subsection (8) is



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2410 renumbered as subsection (7) and amended, and new subsections
2411 (8) and (9) are added to said section, to read:

2412 440.192 Procedure for resolving benefit disputes.--

2413 (1) ~~Subject to s. 440.191,~~ Any employee who has not
2414 received a benefit to which the employee believes she or he is
2415 entitled under this chapter shall file by certified mail, or by
2416 electronic means approved by the ~~Deputy~~ Chief Judge, with the
2417 Office of the Judges of Compensation Claims a petition for
2418 benefits which meets the requirements of this section. The
2419 department shall inform employees of the location of the Office
2420 of the Judges of Compensation Claims for purposes of filing a
2421 petition for benefits. The employee shall also serve copies of
2422 the petition for benefits by certified mail, or by electronic
2423 means approved by the ~~Deputy~~ Chief Judge, upon the employer and
2424 the employer's carrier. The ~~Deputy~~ Chief Judge shall refer the
2425 petitions to the judges of compensation claims.

2426 ~~(6) If the claimant is not represented by counsel, the~~
2427 ~~Office of the Judges of Compensation Claims may request the~~
2428 ~~Employee Assistance and Ombudsman Office to assist the claimant~~
2429 ~~in filing a petition that meets the requirements of this~~
2430 ~~section.~~

2431 (7)(8) Within 30 ~~14~~ days after receipt of a petition for
2432 benefits by certified mail, the carrier must either pay the
2433 requested benefits without prejudice to its right to deny within
2434 120 days from receipt of the petition or file a response to
2435 petition with the Office of the Judges of Compensation Claims.
2436 The carrier must list all benefits requested but not paid and
2437 explain its justification for nonpayment in the response to
2438 petition. A carrier that does not deny compensability in
2439 accordance with s. 440.20(4) is deemed to have accepted the



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2440 employee's injuries as compensable, unless it can establish
2441 material facts relevant to the issue of compensability that
2442 could not have been discovered through reasonable investigation
2443 within the 120-day period. The carrier shall provide copies of
2444 the response to the filing party, employer, and claimant by
2445 certified mail.

2446 (8)(a) The employer or carrier, by and through counsel,
2447 shall file an answer to the petition for benefits within 30 days
2448 after the receipt of the same and provide copies to the Office
2449 of the Judge of Compensation Claims, the employee, and
2450 employee's counsel, if any. The answer to the petition for
2451 benefits shall, if known, contain the following:

2452 1. The name and address of the attorney representing the
2453 employer or carrier.

2454 2. The name and address of the carrier.

2455 3. The carrier's claim number.

2456 4. The admission or denial of the employment relationship.

2457 5. The admission or denial that the accident or illness
2458 arose out of and in the course of employment.

2459 6. Average weekly wage and corresponding weekly
2460 compensation rate used by the employer or carrier.

2461 7. Period and classification of benefits paid.

2462 8. Name of authorized medical providers, if any.

2463 9. The admission or denial of jurisdiction of the judge of
2464 compensation claims.

2465 10. The admission or denial of coverage by the carrier for
2466 the date of the accident claimed.

2467 (b) The answer shall individually admit or deny each of
2468 the benefits alleged to be due and owing in the petition for
2469 benefits and shall state the contention of the employer or



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2470 carrier with reference to notice and statute of limitations
2471 defenses.

2472 (c) Each fact alleged by the petition and not specifically
2473 denied by the answer is deemed admitted, but the failure to deny
2474 such a fact does not preclude the requirement that the fact be
2475 proven at trial.

2476 (d) A copy of the answer shall be served on the employee
2477 and his or her legal counsel, if any, and the answer may be
2478 prepared by the attorney for the employer and carrier based upon
2479 knowledge, information, or belief.

2480 (9)(a) Upon the written request of counsel for the
2481 employer or carrier, the judge of compensation claims shall
2482 extend the time in which to file an answer for 7 additional
2483 days. The time to file an answer may also be extended upon
2484 agreement of the claimant or his or her attorney of record.

2485 (b) The judge of compensation claims shall be notified in
2486 writing by the employer or carrier or its counsel, no later than
2487 5 days after the time for the filing of the answer, of the fact
2488 that an agreement has been reached, including the length of the
2489 extension. When a petition for benefits received by the judge of
2490 compensation claims does not include an answer, written
2491 extension order, or written notification of the extension
2492 agreement, such petition for benefits shall be set for hearing
2493 on the judge of compensation claims' first available date.

2494 (c) A written request for extension to answer a claim
2495 shall be made to the judge of compensation claims who has venue
2496 of the case.

2497 Section 27. Section 440.1927, Florida Statutes, is created
2498 to read:

2499 440.1927 Procedures for expedited hearings.--



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2500 (1) A request for an expedited hearing when compensability
2501 has been accepted by the employer and carrier may be granted
2502 upon showing of a significant financial hardship or medical
2503 emergency directly attributable to the cessation of benefits
2504 under this chapter. In determining whether such significant
2505 financial hardship exists, the claimant shall complete and the
2506 court shall consider a motion for indigency as provided by Rule
2507 9.180(g), Florida Rules of Appellate Procedure, and
2508 consideration shall also be given to whether an employee is
2509 presently employed, the employee's preinjury and postinjury
2510 income and medical status, other financial sources available to
2511 the employee, the nature and extent of the employee's expenses
2512 and debts, whether the employee is the sole provider for
2513 dependants, whether a foreclosure or repossession of a residence
2514 or sole mode of personal transportation is imminent, and any
2515 other relevant financial documents as determined by the court.
2516 In determining whether a medical emergency exists, consideration
2517 shall be given to the nature of the medical services recommended
2518 based on medical opinions pursuant to s. 440.13(9)(b), whether
2519 the issue of causation is being contested, and any impact the
2520 medical condition has on the employee's employability.

2521 (2) Absent a stipulation by the parties, or waiver by the
2522 employer and carrier, that a significant financial hardship or
2523 medical emergency exists, if a request for an expedited hearing
2524 has been served and filed, the judge of compensation claims
2525 shall hold an evidentiary hearing. If such request is denied,
2526 the matter shall be returned to the regular calendar of cases.
2527 If the request is granted, the judge of compensation claims
2528 shall schedule the matter for expedited hearing.



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2529 (3) Upon entry of an order granting the request for an
 2530 expedited hearing, the judge of compensation claims shall,
 2531 within 10 days after entry of the order, issue a mediation and
 2532 live pretrial hearing notice scheduling a state mediation
 2533 conference on the expedited issues within 60 days after the
 2534 mediation and scheduling a live pretrial hearing within 5 days
 2535 after the state mediation conference date. Following the live
 2536 pretrial hearing and absent an agreement or stipulation by the
 2537 parties, the judge of compensation claims shall issue an order
 2538 establishing deadlines for the parties to complete any necessary
 2539 additional discovery and establishing a date and time for the
 2540 final hearing which shall be held within 90 days after the live
 2541 pretrial hearing.

2542 Section 28. Present subsections (1) and (2) of section
 2543 440.25, Florida Statutes, are amended, present subsection (3) is
 2544 renumbered as subsection (6) and amended, present subsection (4)
 2545 is renumbered as subsection (9) and amended, present subsection
 2546 (7) is renumbered as subsection (10), and new subsections (2),
 2547 (3), (4), (5), (7), and (8) are added to said section, to read:
 2548 440.25 Procedures for mediation and hearings.--

2549 (1) Within 150 ~~90~~ days after a petition for benefits is
 2550 filed under s. 440.192, a mediation conference concerning such
 2551 petition shall be held. ~~Within 40 days after such petition is~~
 2552 ~~filed,~~ The judge of compensation claims shall notify the
 2553 interested parties by order that a mediation conference
 2554 concerning such petition will be held ~~unless the parties have~~
 2555 ~~notified the Office of the Judges of Compensation Claims that a~~
 2556 ~~mediation has been held.~~ Such order must give the date on ~~by~~
 2557 which the mediation conference must be held. Such order may be
 2558 served personally upon the interested parties or may be sent to



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2559 the interested parties by mail. The claimant or the adjuster of
2560 the employer or carrier may, at the mediator's discretion,
2561 attend the mediation conference by telephone or, if agreed to by
2562 the parties, other electronic means. The judge of compensation
2563 claims may excuse the appearance of a party or attorney or
2564 permit the appearance of a party or attorney by telephone upon
2565 written request with timely notice of the request to the
2566 opposing counsel. It is the duty of the party or attorney
2567 appearing by telephone to ensure that facilities are arranged at
2568 the expense of the party appearing by telephone and that the
2569 means are readily available to exchange documents and sign
2570 stipulations, agreements, pretrial questionnaires, and other
2571 pleadings without unreasonable delay. If there is a conflict
2572 with the date for which the state mediation is set, counsel or
2573 the party, if unrepresented, shall within 21 days after the date
2574 of the notice contact the mediator's office to reset the
2575 mediation.

2576 (2)(a) The parties, upon request, shall exchange the
2577 following documents within their actual or constructive control
2578 within 30 days before the date of any scheduled mediation unless
2579 previously produced:

2580 1. The employee's 13-week wage statement together with
2581 information regarding the receipt and value of fringe benefits
2582 and the date of any suspension of same.

2583 2. Payroll records since the date of the accident.

2584 3. All medical records and reports related to the work
2585 injury or disability claimed which relate to the claim or
2586 defenses.

2587 4. A payout sheet or ledger.

2588 5. Statements, written or otherwise recorded, and not



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2589 privileged.

2590 6. All offers of employment and corresponding job
2591 descriptions.

2592 7. Any and all documentation concerning the employer's
2593 communication with the employee about returning to work.

2594 8. Any and all documents relating to recommended future
2595 medical treatment based on medical opinions pursuant to s.
2596 440.13(9)(b).

2597 (b) Failure to comply with the requirements of paragraph
2598 (a) or the requirement for continuing discovery pursuant to s.
2599 440.115(2)(d) shall result in the exclusion at the hearing of
2600 the documents not timely provided and other sanctions deemed
2601 appropriate by the judge. Mandatory exchange of documents is
2602 required unless a stipulation is entered into at the time of the
2603 pretrial that such documents are immaterial to the disputed
2604 issue.

2605 (c) No less than 30 days prior to any mediation, the
2606 employee shall make a specific written demand for settlement of
2607 the case and the issues that contains sufficient explanation and
2608 supporting documentation to enable the employer and carrier and
2609 its representative to evaluate the demand for settlement.

2610 (d) The employer and carrier and its representative
2611 receiving the demand shall respond in writing within 15 working
2612 days after receipt of the demand.

2613 (3) State mediations may be continued or rescheduled only
2614 by order of the judge of compensation claims. To obtain an
2615 order, a motion for continuance must be filed and state the
2616 reason for the continuance and the date that the notice
2617 scheduling the state mediation was mailed. The proposed order on
2618 the motion must contain a blank space so that a new state



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2619 mediation conference date may be assigned. ~~A continuance may be~~
2620 ~~granted if the requesting party demonstrates to the judge of~~
2621 ~~compensation claims that the reason for requesting the~~
2622 ~~continuance arises from circumstances beyond the party's~~
2623 ~~control. Any order granting a continuance must set forth the~~
2624 ~~date of the rescheduled mediation conference.~~ A mediation
2625 conference may not be used solely for the purpose of mediating
2626 attorney's fees.

2627 (4) State mediations may be cancelled if all issues other
2628 than attorney's fees have been settled or resolved, the
2629 petitions for benefits have been dismissed, the parties have
2630 obtained an order substituting private mediation for the
2631 mandatory state mediation, or the state mediation conference has
2632 been waived by order of the chief judge.

2633 (5)(a) Motions to substitute private mediation for state
2634 mediation shall be filed with the presiding judge no later than
2635 7 days prior to the scheduled state mediation conference. Such
2636 motions shall include the date and time of the state and private
2637 mediations.

2638 (b) The proposed order substituting private mediation for state
2639 mediation shall include language that the parties and the
2640 private mediator shall be bound by the applicable rules and
2641 statutes pertaining to state mediations, including the filing by
2642 the private mediator of a mediator's report pursuant to rule
2643 4.310(e), Florida Rules of Workers' Compensation Procedure. The
2644 order shall state that the private mediation may only be
2645 continued or rescheduled by order of the judge and that the
2646 claimant's counsel is responsible for ensuring that a mediator's
2647 report is filed within 10 days after the conclusion of the
2648 private mediation conference.



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2649 (c) If an order is entered allowing the substitution of private
2650 mediation for mandatory state mediation, or the parties agree to
2651 hold a private mediation conference, such private mediation
2652 conference shall be at the carrier's expense. The mediation
2653 conference shall be conducted by a mediator certified under s.
2654 44.106. If the parties do not agree upon a mediator within 20
2655 days after the date of the order substituting private mediation
2656 for mandatory state mediation and so notify the judge of
2657 compensation claims, the employee shall notify the judge in
2658 writing and the judge shall appoint a mediator under this
2659 paragraph within 7 days after the judge is notified. In the
2660 event of a private mediation, the terms and requirements of the
2661 original notice and order governing the state mediation shall
2662 remain in full force and effect and the parties shall comply
2663 with the terms thereof.

2664 (d) The private mediation shall be scheduled to occur no
2665 later than 30 days after the deadline set forth in subsection
2666 (1).

2667 ~~(2) Any party who participates in a mediation conference~~
2668 ~~shall not be precluded from requesting a hearing following the~~
2669 ~~mediation conference should both parties not agree to be bound~~
2670 ~~by the results of the mediation conference. A mediation~~
2671 ~~conference is required to be held unless this requirement is~~
2672 ~~waived by the Deputy Chief Judge. No later than 3 days prior to~~
2673 ~~the mediation conference, all parties must submit any applicable~~
2674 ~~motions, including, but not limited to, a motion to waive the~~
2675 ~~mediation conference, to the judge of compensation claims.~~

2676 (6)(3)(a) Such mediation conference shall be conducted
2677 informally and does not require the use of formal rules of
2678 evidence or procedure. Any information from the files, reports,



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2679 case summaries, mediator's notes, or other communications or
2680 materials, oral or written, relating to a mediation conference
2681 under this section obtained by any person performing mediation
2682 duties is privileged and confidential and may not be disclosed
2683 without the written consent of all parties to the conference.
2684 Any research or evaluation effort directed at assessing the
2685 mediation program activities or performance must protect the
2686 confidentiality of such information. Each party to a mediation
2687 conference has a privilege during and after the conference to
2688 refuse to disclose and to prevent another from disclosing
2689 communications made during the conference whether or not the
2690 contested issues are successfully resolved. This subsection and
2691 paragraphs (9)(4)(a) and (b) shall not be construed to prevent
2692 or inhibit the discovery or admissibility of any information
2693 that is otherwise subject to discovery or that is admissible
2694 under applicable law or rule of procedure, except that any
2695 conduct or statements made during a mediation conference or in
2696 negotiations concerning the conference are inadmissible in any
2697 proceeding under this chapter.

2698 (a)1- Unless the parties conduct a private mediation under
2699 paragraph (b) subparagraph 2-, mediation shall be conducted by a
2700 mediator selected by the Chief Judge of Compensation Claims
2701 ~~Director of the Division of Administrative Hearings~~ from among
2702 mediators employed on a full-time basis by the Office of the
2703 Judges of Compensation Claims. A mediator must be a member of
2704 The Florida Bar for at least 5 years, ~~and~~ must complete a
2705 mediation training program approved by the Chief Judge of
2706 Compensation Claims, and must possess a minimum of 5 years'
2707 experience in the full-time practice of workers' compensation
2708 law ~~Director of the Division of Administrative Hearings~~. Adjunct



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2709 mediators may be employed by the Office of the Judges of
2710 Compensation Claims on an as-needed basis and shall be selected
2711 from a list prepared by the Chief Judge of Compensation Claims
2712 ~~Director of the Division of Administrative Hearings~~. An adjunct
2713 mediator must be independent of all parties participating in the
2714 mediation conference. An adjunct mediator must be a member of
2715 The Florida Bar for at least 5 years, and must possess a minimum
2716 of 5 years' experience in the full-time practice of Florida
2717 workers' compensation law, and must complete a mediation
2718 training program approved by the Chief Judge of Compensation
2719 Claims Director of the Division of Administrative Hearings. An
2720 adjunct mediator shall have access to the office, equipment, and
2721 supplies of the judge of compensation claims in each district.

2722 ~~(b)2. With respect to any mediation occurring on or after January~~
2723 ~~1, 2003, if the parties agree or if mediators are not available~~
2724 ~~under subparagraph 1. to conduct the required mediation within the~~
2725 ~~period specified in this section, the parties shall hold a~~
2726 ~~mediation conference at the carrier's expense within the 90-day~~
2727 ~~period set for mediation. The mediation conference shall be~~
2728 ~~conducted by a mediator certified under s. 44.106. If the parties~~
2729 ~~do not agree upon a mediator within 10 days after the date of the~~
2730 ~~order, the claimant shall notify the judge in writing and the judge~~
2731 ~~shall appoint a mediator under this subparagraph within 7 days. In~~
2732 the event both parties agree, the results of the mediation
2733 conference shall be binding and neither party shall have a right to
2734 appeal the results. In the event either party refuses to agree to
2735 the results of the mediation conference, the results of the
2736 mediation conference as well as the testimony, witnesses, and
2737 evidence presented at the conference shall not be admissible at any
2738 subsequent proceeding on the claim. The mediator shall not be



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2739 called in to testify or give deposition to resolve any claim for
2740 any hearing before the judge of compensation claims. The employer
2741 may be represented by an attorney at the mediation conference if
2742 the employee is also represented by an attorney at the mediation
2743 conference.

2744 (7)(a) After receiving notice of impasse from the mediator, the
2745 judge of compensation claims shall hold a live pretrial hearing.
2746 The judge of compensation claims shall give the parties at least
2747 7 days' notice of the pretrial hearing and, unless the judge of
2748 compensation claims indicates otherwise, the pretrial hearing
2749 shall be held in the county where the office of the judge of
2750 compensation claims is located. A pretrial hearing may be
2751 continued with prior approval of the judge of compensation
2752 claims.

2753 (b) The parties may submit their pretrial stipulations by mail
2754 when represented by counsel and with leave of the judge of
2755 compensation claims; however, the parties or their legal counsel
2756 shall appear at any live pretrial hearing.

2757 (c) If a party or a party's attorney fails to attend the
2758 pretrial hearing without good cause, the judge may dismiss the
2759 petition or claim, strike defenses, or take such other action as
2760 may be authorized by law or rule 4.150, Florida Rules of
2761 Workers' Compensation Procedure.

2762 (d) At the pretrial hearing the parties shall:

- 2763 1. State and simplify the claims, defense, and issues.
- 2764 2. Stipulate and admit to such facts and documents as will
2765 avoid unnecessary proof.
- 2766 3. Present, examine, and mark all exhibits for identification,
2767 including all impeachment and rebuttal exhibits.
- 2768 4. Furnish the opposing party with the names and addresses of



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2769 all witnesses, including impeachment and rebuttal witnesses. A
2770 party may be required by the judge of compensation claims to
2771 provide a statement of subject matter of the expected testimony
2772 of one or more witnesses.

2773 5. Exchange all available written reports of experts when
2774 expert opinion is offered at trial. The reports shall clearly
2775 disclose the expert opinion and its basis on all subjects on
2776 which the expert will testify. If stipulated into evidence, the
2777 reports shall be presented to the judge to be so marked. The
2778 parties shall consider and determine a limitation of the number
2779 of expert witnesses.

2780 6. Estimate time of trial and schedule the final hearing.

2781 7. Consider and determine, as appropriate, such other matters
2782 as may aid in the disposition of the case, including, but not
2783 limited to, referral to additional mediation or appointment of
2784 an expert medical advisor pursuant to s. 440.13(10)(c).

2785 (e) Final witness lists, final exhibit lists, supplements, and
2786 amendments to the pretrial stipulation shall be served no later
2787 than 30 days before the final hearing. Witness lists, exhibit
2788 lists, supplements, and amendments to be filed less than 30 days
2789 before the final hearing must be approved by the judge or
2790 stipulated to by the parties. A motion seeking such approval is
2791 a procedural motion.

2792 (f) At the discretion of the judge and on filing and service of
2793 motion and notice of hearing not less than 5 days before the
2794 date of the pretrial hearing, procedural motions may also be
2795 heard at the pretrial hearing.

2796 (g) The judge shall record the pretrial hearing by stenographer
2797 or electronic means at the request of any party or by a written
2798 stipulation signed by the parties.



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2799 (h)1. At the request of any party, or by his or her own motion,
2800 the judge promptly shall enter an order reciting the actions
2801 taken at the pretrial hearing and the agreements made by the
2802 parties about any of the matters considered and limiting the
2803 issues for trial to those not disposed of by admissions or
2804 stipulations of the parties.

2805 2. The order shall control the subsequent course of action
2806 unless the judge modifies it to prevent injustice.

2807 3. The judge shall serve the order on the attorneys for the
2808 parties and on any party not represented by counsel.

2809 4. Unless otherwise specified in the notice of hearing, the
2810 judge may consider and determine all issues pending as of the
2811 date of the pretrial hearing.

2812 (i) If the date is not already set, the judge shall set the
2813 date of the final hearing at the pretrial hearing. The notice of
2814 the final hearing may be set forth in the pretrial order
2815 accompanying the pretrial stipulation or may be mailed
2816 separately by the judge to all interested parties.

2817 (8) Upon the motion of the judge of compensation claims or on
2818 the motion of any party, the judge of compensation claims may
2819 consolidate any petitions for benefits filed 30 days before the
2820 scheduled mediation with any pending petitions for benefits for
2821 purposes of a hearing or for any other purpose. Any hearing on a
2822 consolidation must be held no later than 10 days before the
2823 mediation. Only petitions for benefits filed 30 days before the
2824 mediation date are ripe, due, and owing for the final hearing.

2825 ~~(b) The parties shall complete the pretrial stipulations~~
2826 ~~before the conclusion of the mediation conference if the claims,~~
2827 ~~except for attorney's fees and costs, have not been settled and~~
2828 ~~if any claims in any filed petition remain unresolved. The judge~~



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2829 ~~of compensation claims may impose sanctions against a party or~~
 2830 ~~both parties for failing to complete the pretrial stipulations~~
 2831 ~~before the conclusion of the mediation conference.~~

2832 ~~(9)(4)(a) If the parties fail to agree upon written~~
 2833 ~~submission of pretrial stipulations at the mediation conference,~~
 2834 ~~the judge of compensation claims shall order a pretrial hearing~~
 2835 ~~to occur within 14 days after the date of mediation ordered by~~
 2836 ~~the judge of compensation claims. The judge of compensation~~
 2837 ~~claims shall give the interested parties at least 7 days'~~
 2838 ~~advance notice of the pretrial hearing by mail. At the pretrial~~
 2839 ~~hearing, the judge of compensation claims shall, subject to~~
 2840 ~~paragraph (b), set a date for the final hearing that allows the~~
 2841 ~~parties at least 60 days to conduct discovery unless the parties~~
 2842 ~~consent to an earlier hearing date.~~

2843 ~~(b) A continuance of the final hearing~~ The final hearing
 2844 ~~must be held and concluded within 90 days after the mediation~~
 2845 ~~conference is held. Continuances may be granted~~ when the reason
 2846 for requesting the continuance arises from circumstances beyond
 2847 the party's control, when appropriate in the discretion of ~~only~~
 2848 ~~if the requesting party demonstrates to the judge of~~
 2849 ~~compensation claims,~~ or by agreement of the parties; however,
 2850 any continuance to a date greater than 150 days after the date
 2851 of initial mediation shall require the written consent of the
 2852 claimant that the reason for requesting the continuance arises
 2853 ~~from circumstances beyond the party's control. The written~~
 2854 ~~consent of the claimant must be obtained before any request from~~
 2855 ~~a claimant's attorney is granted for an additional continuance~~
 2856 ~~after the initial continuance has been granted. Any order~~
 2857 ~~granting a continuance must set forth the date and time of the~~
 2858 ~~rescheduled hearing. A continuance may be granted only if the~~



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2859 ~~requesting party demonstrates to the judge of compensation~~
2860 ~~claims that the reason for requesting the continuance arises~~
2861 ~~from circumstances beyond the control of the parties. The judge~~
2862 ~~of compensation claims shall report any grant of two or more~~
2863 ~~continuances to the Deputy Chief Judge.~~

2864 (c) The judge of compensation claims shall give the
2865 interested parties at least 7 days' advance notice of the final
2866 hearing, served upon the interested parties by mail.

2867 (d) The final hearing shall be held ~~within 210 days after~~
2868 ~~receipt of the petition for benefits~~ in the county where the
2869 injury occurred, if the injury occurred in this state, unless
2870 otherwise agreed to between the parties and authorized by the
2871 judge of compensation claims in the county where the injury
2872 occurred. If the injury occurred outside the state and is one
2873 for which compensation is payable under this chapter, then the
2874 final hearing may be held in the county of the employer's
2875 residence or place of business, or in any other county of the
2876 state that will, in the discretion of the ~~Deputy~~ Chief Judge, be
2877 the most convenient for a hearing. The final hearing shall be
2878 conducted by a judge of compensation claims, who shall, within
2879 30 days after final hearing or closure of the hearing record,
2880 unless otherwise agreed by the parties, enter a final order on
2881 the merits of the disputed issues. The judge of compensation
2882 claims may enter an abbreviated final order in cases in which
2883 compensability is not disputed. Either party may request
2884 separate findings of fact and conclusions of law. At the final
2885 hearing, the claimant and employer may each present evidence
2886 with respect to the claims presented by the petition for
2887 benefits and may be represented by any attorney authorized in
2888 writing for such purpose. When there is a conflict in the



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2889 medical evidence submitted at the hearing, the provisions of s.
 2890 440.13 shall apply. The report or testimony of the expert
 2891 medical advisor shall be made a part of the record of the
 2892 proceeding and shall be given the same consideration by the
 2893 judge of compensation claims as is accorded other medical
 2894 evidence submitted in the proceeding; and all costs incurred in
 2895 connection with such examination and testimony may be assessed
 2896 as costs in the proceeding, subject to the provisions of s.
 2897 440.13. No judge of compensation claims may make a finding of a
 2898 degree of permanent impairment that is greater than the greatest
 2899 permanent impairment rating given the claimant by any examining
 2900 or treating physician, except upon stipulation of the parties.
 2901 ~~Any benefit due but not raised at the final hearing which was~~
 2902 ~~ripe, due, or owing at the time of the final hearing is waived.~~

2903 (e) Co-counsel or any successor attorney shall file a
 2904 notice of appearance in accordance with the Florida Rules of
 2905 Workers' Compensation Procedure. Substitution of counsel may be
 2906 made:

2907 1. By the filing and service of a stipulation, which does
 2908 not require the approval of the judge; or

2909 2. By motion, which requires approval of the judge.

2910 (f) An attorney of record shall remain the attorney of
 2911 record and not be permitted to withdraw unless:

2912 1. The attorney files a written motion for withdrawal
 2913 setting forth the reasons for the motion.

2914 2. The motion is served on the client and counsel for all
 2915 parties.

2916 3. An order is entered granting the motion of withdrawal.

2917 4. The attorney who is claiming attorney's fees and
 2918 taxable costs files a motion for withdrawal or substitution of



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2919 counsel within 60 days after the filing of said motion or
 2920 substitution of counsel. The failure to file the petition for
 2921 attorney's fees and taxable costs within 60 days is a waiver of
 2922 any claim for the same period.

2923 (g)(e) The order making an award or rejecting the claim,
 2924 referred to in this chapter as a "compensation order," shall set
 2925 forth the findings of ultimate facts and the mandate; and the
 2926 order need not include any other reason or justification for
 2927 such mandate. The compensation order shall be filed in the
 2928 Office of the Judges of Compensation Claims at Tallahassee. A
 2929 copy of such compensation order shall be sent by mail to the
 2930 parties and attorneys of record at the last known address of
 2931 each, with the date of mailing noted thereon.

2932 (h)(f) Each judge of compensation claims is required to
 2933 submit a special report to the ~~Deputy~~ Chief Judge in each
 2934 contested workers' compensation case in which the case is not
 2935 determined within 30 days of final hearing or closure of the
 2936 hearing record. Said form shall be provided by the secretary
 2937 ~~director~~ of the Department of Management Services Division of
 2938 ~~Administrative Hearings~~ and shall contain the names of the judge
 2939 of compensation claims and of the attorneys involved and a brief
 2940 explanation by the judge of compensation claims as to the reason
 2941 for such a delay in issuing a final order.

2942 ~~(g) Notwithstanding any other provision of this section,~~
 2943 ~~the judge of compensation claims may require the appearance of~~
 2944 ~~the parties and counsel before her or him without written notice~~
 2945 ~~for an emergency conference where there is a bona fide emergency~~
 2946 ~~involving the health, safety, or welfare of an employee. An~~
 2947 ~~emergency conference under this section may result in the entry~~



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2948 ~~of an order or the rendering of an adjudication by the judge of~~
2949 ~~compensation claims.~~

2950 ~~(h) To expedite dispute resolution and to enhance the~~
2951 ~~self-executing features of the Workers' Compensation Law, the~~
2952 ~~Deputy Chief Judge shall make provision by rule or order for the~~
2953 ~~resolution of appropriate motions by judges of compensation~~
2954 ~~claims without oral hearing upon submission of brief written~~
2955 ~~statements in support and opposition, and for expedited~~
2956 ~~discovery and docketing. Unless the judge of compensation~~
2957 ~~claims, for good cause, orders a hearing under paragraph (i),~~
2958 ~~each claim in a petition relating to the determination of pay~~
2959 ~~under s. 440.14 shall be resolved under this paragraph without~~
2960 ~~oral hearing.~~

2961 ~~(i) To further expedite dispute resolution and to enhance~~
2962 ~~the self-executing features of the system, those petitions filed~~
2963 ~~in accordance with s. 440.192 that involve a claim for benefits~~
2964 ~~of \$5,000 or less shall, in the absence of compelling evidence~~
2965 ~~to the contrary, be presumed to be appropriate for expedited~~
2966 ~~resolution under this paragraph; and any other claim filed in~~
2967 ~~accordance with s. 440.192, upon the written agreement of both~~
2968 ~~parties and application by either party, may similarly be~~
2969 ~~resolved under this paragraph. A claim in a petition or \$5,000~~
2970 ~~or less for medical benefits only or a petition for~~
2971 ~~reimbursement for mileage for medical purposes shall, in the~~
2972 ~~absence of compelling evidence to the contrary, be resolved~~
2973 ~~through the expedited dispute resolution process provided in~~
2974 ~~this paragraph. For purposes of expedited resolution pursuant to~~
2975 ~~this paragraph, the Deputy Chief Judge shall make provision by~~
2976 ~~rule or order for expedited and limited discovery and expedited~~
2977 ~~docketing in such cases. At least 15 days prior to hearing, the~~



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2978 ~~parties shall exchange and file with the judge of compensation~~
2979 ~~claims a pretrial outline of all issues, defenses, and witnesses~~
2980 ~~on a form adopted by the Deputy Chief Judge; provided, in no~~
2981 ~~event shall such hearing be held without 15 days' written notice~~
2982 ~~to all parties. No pretrial hearing shall be held. The judge of~~
2983 ~~compensation claims shall limit all argument and presentation of~~
2984 ~~evidence at the hearing to a maximum of 30 minutes, and such~~
2985 ~~hearings shall not exceed 30 minutes in length. Neither party~~
2986 ~~shall be required to be represented by counsel. The employer or~~
2987 ~~carrier may be represented by an adjuster or other qualified~~
2988 ~~representative. The employer or carrier and any witness may~~
2989 ~~appear at such hearing by telephone. The rules of evidence shall~~
2990 ~~be liberally construed in favor of allowing introduction of~~
2991 ~~evidence.~~

2992 (i)~~(j)~~ A judge of compensation claims may, upon the motion
2993 of a party or the judge's own motion, dismiss a petition for
2994 lack of prosecution if a petition, response, motion, order,
2995 request for hearing, or notice of deposition has not been filed
2996 during the previous 12 months unless good cause is shown. A
2997 dismissal for lack of prosecution is without prejudice and does
2998 not require a hearing.

2999 (j)~~(k)~~ A judge of compensation claims may not award
3000 interest on unpaid medical bills and the amount of such bills
3001 may not be used to calculate the amount of interest awarded.
3002 Regardless of the date benefits were initially requested,
3003 attorney's fees do not attach under this subsection until 30
3004 days after the date the carrier or self-insured employer
3005 receives the petition.

3006 (10)~~(7)~~ An injured employee claiming or entitled to
3007 compensation shall submit to such physical examination by a



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3008 certified expert medical advisor approved by the agency or the
3009 judge of compensation claims as the agency or the judge of
3010 compensation claims may require. The place or places shall be
3011 reasonably convenient for the employee. Such physician or
3012 physicians as the employee, employer, or carrier may select and
3013 pay for may participate in an examination if the employee,
3014 employer, or carrier so requests. Proceedings shall be suspended
3015 and no compensation shall be payable for any period during which
3016 the employee may refuse to submit to examination. Any interested
3017 party shall have the right in any case of death to require an
3018 autopsy, the cost thereof to be borne by the party requesting
3019 it; and the judge of compensation claims shall have authority to
3020 order and require an autopsy and may, in her or his discretion,
3021 withhold her or his findings and award until an autopsy is held.

3022 Section 29. Subsection (5) of section 440.25, Florida
3023 Statutes, is renumbered as section 440.255, Florida Statutes,
3024 and amended to read:

3025 440.255 Procedures for appeals.--

3026 (1)(5)(a) Procedures with respect to appeals from orders
3027 of judges of compensation claims shall be governed by rules
3028 adopted by the Supreme Court. Such an order shall become final
3029 30 days after mailing of copies of such order to the parties,
3030 unless appealed pursuant to such rules.

3031 (2)(b) An appellant may be relieved of any necessary
3032 filing fee by filing a verified petition of indigency for
3033 approval as provided in s. 57.081(1) and may be relieved in
3034 whole or in part from the costs for preparation of the record on
3035 appeal if, within 15 days after the date notice of the estimated
3036 costs for the preparation is served, the appellant files with
3037 the judge of compensation claims a copy of the designation of



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3038 the record on appeal, and a verified petition to be relieved of
 3039 costs. A verified petition filed prior to the date of service of
 3040 the notice of the estimated costs shall be deemed not timely
 3041 filed. The verified petition relating to record costs shall
 3042 contain a sworn statement that the appellant is insolvent and a
 3043 complete, detailed, and sworn financial affidavit showing all
 3044 the appellant's assets, liabilities, and income. Failure to
 3045 state in the affidavit all assets and income, including marital
 3046 assets and income, shall be grounds for denying the petition
 3047 with prejudice. The Office of the Judges of Compensation Claims
 3048 shall adopt rules as may be required pursuant to this section
 3049 ~~subsection~~, including forms for use in all petitions brought
 3050 under this section ~~subsection~~. The appellant's attorney, or the
 3051 appellant if she or he is not represented by an attorney, shall
 3052 include as a part of the verified petition relating to record
 3053 costs an affidavit or affirmation that, in her or his opinion,
 3054 the notice of appeal was filed in good faith and that there is a
 3055 probable basis for the District Court of Appeal, First District,
 3056 to find reversible error, and shall state with particularity the
 3057 specific legal and factual grounds for the opinion. Failure to
 3058 so affirm shall be grounds for denying the petition. A copy of
 3059 the verified petition relating to record costs shall be served
 3060 upon all interested parties. The judge of compensation claims
 3061 shall promptly conduct a hearing on the verified petition
 3062 relating to record costs, giving at least 15 days' notice to the
 3063 appellant, the department, and all other interested parties, all
 3064 of whom shall be parties to the proceedings. The judge of
 3065 compensation claims may enter an order without such hearing if
 3066 no objection is filed by an interested party within 20 days from
 3067 the service date of the verified petition relating to record



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3068 costs. Such proceedings shall be conducted in accordance with
3069 the provisions of this section and with the workers'
3070 compensation rules of procedure, to the extent applicable. In
3071 the event an insolvency petition is granted, the judge of
3072 compensation claims shall direct the department to pay record
3073 costs and filing fees from the Workers' Compensation
3074 Administration Trust Fund pending final disposition of the costs
3075 of appeal. The department may transcribe or arrange for the
3076 transcription of the record in any proceeding for which it is
3077 ordered to pay the cost of the record.

3078 (3)~~(e)~~ As a condition of filing a notice of appeal to the
3079 District Court of Appeal, First District, an employer who has
3080 not secured the payment of compensation under this chapter in
3081 compliance with s. 440.38 shall file with the notice of appeal a
3082 good and sufficient bond, as provided in s. 59.13, conditioned
3083 to pay the amount of the demand and any interest and costs
3084 payable under the terms of the order if the appeal is dismissed,
3085 or if the District Court of Appeal, First District, affirms the
3086 award in any amount. Upon the failure of such employer to file
3087 such bond with the judge of compensation claims or the District
3088 Court of Appeal, First District, along with the notice of
3089 appeal, the District Court of Appeal, First District, shall
3090 dismiss the notice of appeal.

3091 Section 30. Section 440.28, Florida Statutes, is amended
3092 to read:

3093 440.28 Modification of orders.--

3094 (1) Upon a judge of compensation claims' own initiative,
3095 or upon the application of any party in interest, on the ground
3096 of a change in condition or because of a mistake in a
3097 determination of fact, the judge of compensation claims may, at



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3098 any time prior to 2 years after the date of the last payment of
 3099 compensation pursuant to the compensation order the party seeks
 3100 to modify, or at any time prior to 2 years after the date copies
 3101 of an order rejecting a claim are mailed to the parties at the
 3102 last known address of each, review a compensation case in
 3103 accordance with the procedure prescribed in respect of claims in
 3104 s. 440.25 and, in accordance with such section, issue a new
 3105 compensation order which may terminate, continue, reinstate,
 3106 increase, or decrease such compensation or award compensation.
 3107 Such new order shall not affect any compensation previously
 3108 paid, except that an award increasing the compensation rate may
 3109 be made effective from the date of the injury, and, if any part
 3110 of the compensation due or to become due is unpaid, an award
 3111 decreasing the compensation rate may be made effective from the
 3112 date of the injury, and any payment made prior thereto in excess
 3113 of such decreased rate shall be deducted from any unpaid
 3114 compensation, in such manner and by such method as may be
 3115 determined by the judge of compensation claims.

3116 (2) Application for modification of an order under
 3117 subsection (1) shall be substantially in the form of a petition
 3118 for benefits under s. 440.192(2) and shall include a request for
 3119 a hearing.

3120 Section 31. Subsection (5) is added to section 440.29,
 3121 Florida Statutes, to read:

3122 440.29 Procedure before the judge of compensation
 3123 claims.--

3124 (5)(a) Failure to comply with the provisions of this
 3125 section or any order of the judges of compensation claims may
 3126 subject a party to reprimand, striking of claims, defenses,
 3127 pleadings, imposition of costs or attorney's fees, and such



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3128 other sanctions as the judge may deem appropriate. These
3129 sanctions are in addition to any sanctions available to the
3130 judge pursuant to s. 440.33.

3131 (b) Every pleading, written motion, and other paper shall
3132 be signed by the attorney of record or, if the party is not
3133 represented, by the party. Each paper shall state the signer's
3134 address and telephone number, if any. Except when otherwise
3135 specifically provided by rule or statute, pleadings need not be
3136 verified. An unsigned paper shall be stricken unless omission of
3137 the signature is corrected promptly after being called to the
3138 attention of the attorney or party.

3139 (c) By presenting to the judge, whether by signing,
3140 filing, submitting, or later advocating a pleading, written
3141 motion, or other paper, an attorney or unrepresented party is
3142 certifying to the best of the person's knowledge, information,
3143 and belief, formed after inquiry reasonable under the
3144 circumstances, that:

3145 1. It is not being presented for any improper purpose,
3146 such as to harass or to cause unnecessary delay or needless
3147 increase in the costs of litigation.

3148 2. The claims defenses and other legal contentions therein
3149 are warranted by existing law or by a nonfrivolous argument for
3150 the extension, modification, or reversal of existing law or the
3151 establishment of a new law.

3152 3. The allegations and other factual contentions have
3153 evidentiary support or, if specifically so identified, are
3154 likely to have evidentiary support after a reasonable
3155 opportunity for further investigation or discovery.



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3156 4. The denials of factual contentions are warranted on the
3157 evidence or, if specifically so identified, are reasonably based
3158 on a lack of information or belief.

3159 (d) If, after notice and a reasonable opportunity to
3160 respond, the judge determines that paragraph (c) has been
3161 violated, the judge may, subject to the conditions stated in
3162 this section, impose an appropriate sanction on the attorneys or
3163 parties who have violated paragraph (c) or who are responsible
3164 for the violation.

3165 (e)1. A motion for sanctions under this section shall be
3166 made separately from other motions or requests and shall
3167 describe the specific conduct alleged, including, but not
3168 limited to, a violation of paragraph (c). The motion shall be
3169 served as provided in rule 4.030, Florida Rules of Workers'
3170 Compensation Procedure, but shall not be filed with or presented
3171 to the judge unless the challenged paper, claim, defense,
3172 allegation, or denial is not withdrawn or appropriately
3173 corrected within 21 days after service of the motion or such
3174 other period as the judge may prescribe. If warranted, the judge
3175 may award to the party prevailing on the motion the cost of the
3176 proceeding and attorney's fees incurred in presenting the
3177 motion.

3178 2. On his or her own initiative, the judge may enter an
3179 order describing the specific conduct that appears to warrant
3180 sanctions and direct an attorney or party to show cause why it
3181 should not be sanctioned.

3182 (f)1. A sanction imposed for the violation of this section
3183 shall be limited to what is sufficient to deter repetition of
3184 such conduct or comparable conduct by others similarly situated.
3185 Subject to the limitations in this paragraph and in paragraph



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3186 (d), the sanction may consist of or include directives of a
3187 nonmonetary nature, a penalty pursuant to s. 440.20 or s.
3188 440.24, or, if imposed on motion and warranted for effective
3189 deterrence, an order directing payment to the movant of some or
3190 all of the reasonable attorney's fees and other costs incurred
3191 as a direct result of the violation. If the judge determines
3192 that any proceeding was maintained or continued frivolously, the
3193 costs of the proceeding, including attorney's fees, shall be
3194 assessed against the offending party or attorney. Penalties,
3195 fees, and costs awarded under this section may not be recouped
3196 from the party.

3197 2. Monetary sanctions may not be awarded against a
3198 represented party for a violation of subparagraph (c)2.

3199 3. Monetary sanctions may not be awarded on the judge's
3200 initiative unless the judge issues an order to show cause before
3201 a voluntary dismissal or settlement of the claim.

3202 (g) When imposing sanctions, the judge shall describe the
3203 conduct determined to warrant such impositions of sanctions and
3204 explain the basis for the sanctions imposed. If a penalty is
3205 assessed against an attorney pursuant to s. 440.24 or this
3206 section, the judge may forward a copy of the order assessing the
3207 penalty to the appropriate grievance committee acting under the
3208 jurisdiction of the Supreme Court.

3209 Section 32. Section 440.291, Florida Statutes, is created
3210 to read:

3211 440.291 Discovery.--

3212 (1) The judge shall have jurisdiction to take appropriate
3213 action to compel discovery, including the imposition of
3214 sanctions and, as circumstances warrant, may enlarge or shorten
3215 the applicable time for complying with discovery.



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3216 (2) Discovery may be had before or after the filing of a
3217 claim or petition, in the same manner and for the same purpose
3218 as provided in the Florida Rules of Civil Procedure or s.
3219 440.30. At the pretrial hearing, the judge shall set a date for
3220 the final hearing that allows the parties at least 30 days to
3221 conduct discovery, unless the parties consent to an earlier
3222 hearing date.

3223 (3) Interrogatories, requests for admission, and other
3224 forms of discovery not authorized by the Florida Rules of
3225 Workers' Compensation Procedure shall not be permitted or used
3226 in workers' compensation proceedings.

3227 (4) Depositions of witnesses or parties may be taken and
3228 used in proceedings under this chapter in the same manner and
3229 for the same purposes as provided in the Florida Rules of Civil
3230 Procedure or as otherwise provided by law.

3231 (a) For good cause shown, the judge may require taking a
3232 deposition by telephone.

3233 (b) If a deposition is taken by telephone, the oath shall
3234 be administered in the physical presence of the witness by a
3235 notary public or officer authorized to administer oaths. A
3236 certificate of the notary public or officer, substantially the
3237 same as form 4.9105, Florida Rules of Workers' Compensation
3238 Procedure, shall be filed by the party offering the witness's
3239 deposition within 15 days after the date on which the deposition
3240 was taken.

3241 (5)(a) The parties shall be subject to discovery
3242 procedures seeking the production of records or other tangible
3243 things, including, but not limited to, all hospital and medical
3244 records pertaining to the industrial accident, all
3245 rehabilitation reports, all records pertaining to the claimant's



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3246 average weekly wage at the time of the accident or earnings made
3247 subsequent to the industrial accident, and a transcript of any
3248 recorded statements of a party.

3249 (b) The parties shall be subject to discovery procedures
3250 seeking entry on land or other property for inspection or other
3251 purposes within the scope of discovery.

3252 (c) The parties shall have 30 days to serve a written
3253 response after service of any request under this section.

3254 (6) The parties may seek the production of documents and
3255 other tangible things within the scope of discovery for
3256 inspection and copying from a person who is not a party pursuant
3257 to applicable Florida Rules of Civil Procedure, except that the
3258 time for objection to production of documents under this section
3259 is reduced to 5 days.

3260 (7) The evidence of any investigator, adjuster, or other
3261 witness in the nature of surveillance shall be subject to
3262 discovery when such evidence will be used at trial, provided the
3263 party intending to use such evidence is first given a reasonable
3264 opportunity to depose the party or witness who is the subject of
3265 the surveillance.

3266 Section 33. Section 440.292, Florida Statutes, is created
3267 to read:

3268 440.292 Motion practice.--

3269 (1) A motion relating to the adjudication of entitlement
3270 to benefits, including, but not limited to, motions to vacate
3271 orders for lump-sum advances, motions for advances under s.
3272 440.20(12)(c)2. and (d), appeals of administrative fines or
3273 penalties under s. 440.106, motions for appointment of
3274 guardians, motions to appoint expert medical advisors under s.
3275 440.13(9)(b), requests for imposition of sanctions under the



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3276 Florida Rules of Workers' Compensation Procedure, motions to
3277 disqualify a judge or a mediator, motions to recuse counsel,
3278 motions to correct the appellate record, and motions to appoint
3279 independent medical examiners under s. 440.13(9)(b) shall be
3280 filed and handled in the manner as provided for a claim in rule
3281 4.025, Florida Rules of Workers' Compensation Procedure, except
3282 the motion shall be filed with the presiding judge in cases
3283 where a petition is pending.

3284 (2)(a) Procedural motions include, but are not limited to,
3285 motions to consolidate, motions related to discovery, motions to
3286 dismiss for lack of jurisdiction and prosecution, motions to
3287 dismiss for lack of specificity, motions to amend and supplement
3288 pretrial stipulations, motions for a continuance, motions to
3289 compel, motions for protective orders, motions to bifurcate the
3290 issues, and motions in limine. Procedural motions shall be heard
3291 on not less than 5 days' written notice. The judge may require
3292 the moving party to serve written notice of the hearing on
3293 opposing counsel. No pretrial hearing shall be required.

3294 (b) A procedural motion shall set forth in detail the
3295 facts giving rise to the motion, its legal basis, and the
3296 specific relief sought. Any documents relied on should be
3297 specifically referenced and attached.

3298 (3)(a) All motions shall contain a certificate of counsel
3299 that the motion is made in good faith and not for the purpose of
3300 delay.

3301 (b) All motions, other than motions to dismiss for lack of
3302 prosecution under rule 4.075(e), Florida Rules of Workers'
3303 Compensation Procedure, shall contain a certificate of counsel
3304 that opposing counsel has been contacted in an effort to resolve
3305 the matter without a hearing, and despite those efforts, the



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3306 opposing counsel objects to the motion.

3307 (4) All emergency procedural motions shall be identified
3308 as such and shall identify the nature of the emergency,
3309 including time constraints. Emergency procedural motions shall
3310 be heard promptly.

3311 (5) A written response to a contested motion is not
3312 required. If a written response is made, it shall specifically
3313 state the basis for the objection.

3314 (6) Unless the moving party obtains prior approval of the
3315 judge, all procedural motions shall be heard at the office of
3316 the judge. If the judge allows telephone appearances, the party
3317 wishing to appear by telephone shall be responsible to
3318 coordinate the appearance of counsel and other necessary
3319 participants and to notify the judge.

3320 (7) Notices of hearing shall be prepared and served on the
3321 parties under rule 4.030, Florida Rules of Workers' Compensation
3322 Procedure.

3323 (8) Motions may be heard at pretrial hearing in accordance
3324 with rule 4.045, Florida Rules of Workers' Compensation
3325 Procedure.

3326 (9) Judges, at their own discretion, may treat any motion
3327 seeking affirmative relief or the adjudication of entitlement to
3328 any benefits in the manner provided for a claim or petition
3329 under these rules.

3330 (10)(a) In addition to meeting the requirements of
3331 subsection (1), all motions to dismiss must state with
3332 particularity the basis for the motion. The judge shall enter an
3333 order on such motions without a hearing, unless good cause for
3334 the hearing is shown.

3335 (b) Notwithstanding the entry of a docketing order under



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3336 rule 4.029, Florida Rules of Workers' Compensation Procedure,
3337 any motion to dismiss for lack of specificity must be filed
3338 pursuant to s. 440.192(5) and comply with the requirements of
3339 subsections (1) and (2).

3340 (11) All medical records and reports of authorized
3341 treating health care providers relating to the claimant and
3342 subject accident shall be received into evidence upon proper
3343 motion served on the opposing party at the time of the pretrial
3344 hearing or no later than 30 days before the final hearing. Such
3345 records shall be served with the motion.

3346 Section 34. Section 440.293, Florida Statutes, is created
3347 to read:

3348 440.293 Agreements or stipulations.--

3349 (1) Agreements or stipulations not involving settlements
3350 under s. 440.20(11) shall comply with this section.

3351 (2) An agreement or stipulation shall not be enforceable
3352 unless it is in writing and signed by the parties or their
3353 attorneys or dictated on the record.

3354 (3) All agreements or stipulations submitted to a judge
3355 for approval and entry of an order shall include a detailed
3356 statement of the issues in dispute and how the issues were
3357 resolved, including a description of the benefits provided.

3358 (4) Any agreement or stipulation under this section may be
3359 expressly relied on by the judge in any proceeding, unless a
3360 party seeks to be relieved of the agreement or stipulation for
3361 good cause shown.

3362 (5) The judge may abrogate any stipulation that appears to
3363 be manifestly contrary to the evidence on due notice to the
3364 parties; however, the judge need not inquire beyond the
3365 stipulation or agreement.



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3366 Section 35. Section 440.295, Florida Statutes, is created
3367 to read:

3368 440.295 Summary judgment.--

3369 (1) Any party may, at any time, move for a summary
3370 judgment in the party's favor on all or any part of the claim or
3371 defense. A motion for summary judgment may not delay final
3372 hearing.

3373 (2) If, upon the filing of a motion for summary judgment,
3374 the party against whom the motion is directed believes the
3375 summary judgment will delay final hearing, the party shall
3376 immediately notify the court and arrange for a telephone
3377 conference between counsel for the respective parties. The court
3378 shall determine after the conference whether further briefing
3379 and proceedings are appropriate.

3380 (3) Subject to other provisions, summary judgments shall
3381 be rendered if the pleading, depositions, and responses to all
3382 requests for production, together with affidavits, if any, show
3383 there is no genuine issue as to any material fact and the moving
3384 party is entitled to a judgment as a matter of law.

3385 (4) Any party filing a motion under this section shall
3386 include in the motion a statement of uncontroverted facts which
3387 shall set forth in full the specific facts on which the party
3388 relies in support of the motion. The specific facts shall be set
3389 forth in serial fashion and not in narrative form. As to each
3390 fact, the statement shall refer to a specific pleading,
3391 affidavit, or other document where the fact may be found. Any
3392 party opposing a motion filed under this section shall include
3393 in his or her opposition a brief statement of genuine issues,
3394 setting forth specific facts which the opposing party asserts
3395 establish a genuine issue of material fact precluding summary



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3396 judgment in favor of the moving party which shall refer to a
3397 specific pleading, affidavit, or other document where the fact
3398 may be found.

3399 (5) If the movant and the party opposing the motion agree
3400 that there is no genuine issue of any material fact, they shall
3401 jointly file a stipulation with the court setting forth a
3402 statement of stipulated facts.

3403 (6) If either party desires a hearing on the motion, a
3404 request shall be made in writing to the court which shall set a
3405 time and place for hearing. If no request for hearing is made
3406 within 10 days after the filing of the motion, any right to a
3407 hearing afforded by this section shall be deemed waived. The
3408 court may order a hearing on its own motion.

3409 (7) Supporting and opposing affidavits shall be made on
3410 personal knowledge, set forth such facts as would be admissible
3411 in evidence, and show affirmatively that the affiant is
3412 competent to testify to the matters stated therein. Copies of
3413 all papers or parts thereof referred to in an affidavit shall be
3414 attached thereto or served therewith. The court may permit
3415 affidavits to be supplemented or opposed by depositions, answers
3416 to discovery, or further affidavits. When a motion for summary
3417 judgment is made and supported as provided in this section, an
3418 adverse party may not rest upon the mere allegations or denials
3419 of his or her pleading, and his or her response, by affidavits
3420 or as otherwise provided in this section, must set forth
3421 specific facts showing that there is a genuine issue for trial.
3422 If the adverse party does not so respond, summary judgment, if
3423 appropriate, may be entered against the adverse party.

3424 (8) Should it appear from the affidavits of the adverse
3425 party that the party filing the motion for summary judgment



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3426 cannot present by affidavit facts essential to justify the party
3427 filing the motion for summary judgment's opposition, the court
3428 may delay judgment or may order a continuance to permit
3429 additional discovery or additional affidavits to be obtained.

3430 (9) Should it appear to the satisfaction of the court at
3431 any time that any of the affidavits presented pursuant to this
3432 rule are presented in bad faith or solely for the purpose of
3433 delay, the court may punish the offending party or parties as
3434 provided by law.

3435 Section 36. Subsections (5) and (6) are added to section
3436 440.42, Florida Statutes, to read:

3437 440.42 Insurance policies; liability.--

3438 (4) When there is any controversy as to which of two or
3439 more carriers is liable for the discharge of the obligations and
3440 duties of one or more employers with respect to a claim for
3441 compensation, remedial treatment, or other benefits under this
3442 chapter, the judge of compensation claims shall have
3443 jurisdiction to adjudicate such controversy; and if one of the
3444 carriers voluntarily or in compliance with a compensation order
3445 makes payments in discharge of such liability and it is finally
3446 determined that another carrier is liable for all or any part of
3447 such obligations and duties with respect to such claim, the
3448 carrier which has made payments either voluntarily or in
3449 compliance with a compensation order shall be entitled to
3450 reimbursement from the carrier finally determined liable, and
3451 the judge of compensation claims shall have jurisdiction to
3452 order such reimbursement; however, if the carrier finally
3453 determined liable can demonstrate that it has been prejudiced by
3454 lack of knowledge or notice of its potential liability, such



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3455 reimbursement shall be only with respect to payments made after
3456 it had knowledge or notice of its potential liability.

3457 (5) If there is a dispute between two or more carriers
3458 pursuant to subsection (4) regarding liability for workers'
3459 compensation benefits, the following procedures shall be
3460 followed:

3461 (a) When the carriers in dispute agree that benefits are
3462 payable under this chapter and a dispute exists between two or
3463 more carriers as to their respective responsibilities for
3464 payment to or on behalf of the injured employee, upon the motion
3465 of any carrier or upon the motion of the judge of compensation
3466 claims, the judge of compensation claims shall enter a temporary
3467 order requiring equal payment of all compensable benefits by and
3468 between the carriers in dispute.

3469 (b) At any time after the temporary order is issued, any
3470 party may petition for a formal hearing pursuant to subsection
3471 (4) before the judge of compensation claims for a determination
3472 of liability between the carriers. When liability has been
3473 determined by a final order of the judge of compensation claims,
3474 the party held liable for benefits shall be ordered to reimburse
3475 any moneys the other party has paid and shall provide for
3476 payment of interest at 12 percent per annum on any compensation
3477 benefits reimbursed.

3478 (c) Nothing in this section shall prevent the parties from
3479 entering into a stipulation regarding their respective
3480 liabilities which shall be approved by the judge of compensation
3481 claims.

3482 (6) If the employer or carrier stipulates to the claimant
3483 entitlement to attorney's fees and taxable costs and the nature
3484 and amount of benefits secured, the claimant's counsel shall



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3485 file a petition for benefits for attorney's fees and taxable
 3486 costs within 60 days after said stipulation or the claim for
 3487 attorney's fees and taxable costs shall be barred.

3488 Section 37. Section 440.442, Florida Statutes, is amended
 3489 to read:

3490 440.442 Code of Judicial Conduct.--The ~~Deputy~~ Chief Judge
 3491 and judges of compensation claims shall observe and abide by the
 3492 Code of Judicial Conduct as adopted by the Florida Supreme
 3493 Court. Any material violation of a provision of the Code of
 3494 Judicial Conduct shall constitute either malfeasance or
 3495 misfeasance in office and shall be grounds for suspension and
 3496 removal of the ~~Deputy~~ Chief Judge or judge of compensation
 3497 claims by the Governor.

3498 Section 38. Section 440.45, Florida Statutes, is amended
 3499 to read:

3500 440.45 Office of the Judges of Compensation Claims.--

3501 (1)(a) There is created the Office of the Judges of
 3502 Compensation Claims within the Department of Management
 3503 Services. The Office of the Judges of Compensation Claims shall
 3504 be headed by the ~~Deputy~~ Chief Judge of Compensation Claims. The
 3505 ~~Deputy~~ Chief Judge of Compensation Claims shall report to the
 3506 Secretary ~~director~~ of Management Services ~~the Division of~~
 3507 ~~Administrative Hearings~~. The ~~Deputy~~ Chief Judge shall be
 3508 appointed by the Governor for a term of 4 years from only one a
 3509 list of three names submitted by the statewide nominating
 3510 commission created under subsection (2). The ~~Deputy~~ Chief Judge
 3511 of Compensation Claims must demonstrate prior administrative
 3512 experience and possess the same qualifications for appointment
 3513 as a judge of compensation claims, and the procedure for
 3514 reappointment of the ~~Deputy~~ Chief Judge of Compensation Claims



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3515 will be the same as for reappointment of a judge of compensation
 3516 claims. The office shall be a separate budget entity and the
 3517 Chief Judge of Compensation Claims ~~director of the Division of~~
 3518 ~~Administrative Hearings~~ shall be its office ~~agency~~ head for all
 3519 purposes, ~~including, but not limited to, rulemaking pursuant to~~
 3520 ~~subsection (4) and establishing agency policies and procedures.~~
 3521 The Department of Management Services shall provide
 3522 administrative support and service to the office ~~to the extent~~
 3523 ~~requested by the director of the Division of Administrative~~
 3524 ~~Hearings~~ but shall not direct, supervise, or control the Office
 3525 of the Judges of Compensation Claims in any manner, including,
 3526 but not limited to, personnel, purchasing, budgetary matters, or
 3527 property transactions. The operating budget of the Office of the
 3528 Judges of Compensation Claims shall be paid out of the Workers'
 3529 Compensation Administration Trust Fund established in s. 440.50.

3530 (b) The current term of the Deputy Chief Judge of
 3531 Compensation Claims shall expire October 1, 2003 ~~2001~~. Effective
 3532 October 1, 2003 ~~2001~~, the position of ~~Deputy~~ Chief Judge of
 3533 Compensation Claims is created.

3534 (2)(a) The Governor shall appoint full-time judges of
 3535 compensation claims to conduct proceedings as required by this
 3536 chapter or other law. No person may be nominated to serve as a
 3537 judge of compensation claims unless he or she has been a member
 3538 of The Florida Bar in good standing for the previous 5 years and
 3539 must possess a minimum of 5 years' experience ~~is experienced~~ in
 3540 the full-time practice of Florida law ~~of workers' compensation~~
 3541 law. No judge of compensation claims shall engage in the private
 3542 practice of law during a term of office.

3543 (b) Except as provided in paragraph (c), the Governor
 3544 shall appoint a judge of compensation claims from only one a



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3545 list of three persons nominated by a statewide nominating
3546 commission. The statewide nominating commission shall be
3547 composed of the following:

3548 1. Five members, at least one of whom must be a member of
3549 a minority group as defined in s. 288.703(3), one of each who
3550 resides in each of the territorial jurisdictions of the district
3551 courts of appeal, appointed by the Board of Governors of The
3552 Florida Bar from among The Florida Bar members who are engaged
3553 in the practice of law. On July 1, 1999, the term of office of
3554 each person appointed by the Board of Governors of The Florida
3555 Bar to the commission expires. The Board of Governors shall
3556 appoint members who reside in the odd-numbered district court of
3557 appeal jurisdictions to 4-year terms each, beginning July 1,
3558 1999, and members who reside in the even-numbered district court
3559 of appeal jurisdictions to 2-year terms each, beginning July 1,
3560 1999. Thereafter, each member shall be appointed for a 4-year
3561 term;

3562 2. Five electors, at least one of whom must be a member of
3563 a minority group as defined in s. 288.703(3), one of each who
3564 resides in each of the territorial jurisdictions of the district
3565 courts of appeal, appointed by the Governor. On July 1, 1999,
3566 the term of office of each person appointed by the Governor to
3567 the commission expires. The Governor shall appoint members who
3568 reside in the odd-numbered district court of appeal
3569 jurisdictions to 2-year terms each, beginning July 1, 1999, and
3570 members who reside in the even-numbered district court of appeal
3571 jurisdictions to 4-year terms each, beginning July 1, 1999.
3572 Thereafter, each member shall be appointed for a 4-year term;
3573 and



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3574 3. Five electors, at least one of whom must be a member of
3575 a minority group as defined in s. 288.703(3), one of each who
3576 resides in the territorial jurisdictions of the district courts
3577 of appeal, selected and appointed by a majority vote of the
3578 other 10 members of the commission. On October 1, 1999, the term
3579 of office of each person appointed to the commission by its
3580 other members expires. A majority of the other members of the
3581 commission shall appoint members who reside in the odd-numbered
3582 district court of appeal jurisdictions to 2-year terms each,
3583 beginning October 1, 1999, and members who reside in the even-
3584 numbered district court of appeal jurisdictions to 4-year terms
3585 each, beginning October 1, 1999. Thereafter, each member shall
3586 be appointed for a 4-year term.

3587
3588 A vacancy occurring on the commission shall be filled by the
3589 original appointing authority for the unexpired balance of the
3590 term. ~~No attorney who appears before any judge of compensation~~
3591 ~~claims more than four times a year is eligible to serve on the~~
3592 ~~statewide nominating commission.~~ The meetings and determinations
3593 of the nominating commission as to the judges of compensation
3594 claims shall be open to the public.

3595 (c) Each judge of compensation claims shall be appointed
3596 for a term of 4 years, but during the term of office may be
3597 removed by the Governor for cause. Prior to the expiration of a
3598 judge's term of office, the statewide nominating commission
3599 shall review the judge's conduct and determine whether the
3600 judge's performance is satisfactory. Effective July 1, 2002, in
3601 determining whether a judge's performance is satisfactory, the
3602 commission shall consider the extent to which the judge has met
3603 the requirements of this chapter, including, but not limited to,



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3604 the requirements of ss. 440.25(1) and (9)(a)-(h) ~~(4)(a)-(f)~~,
 3605 ~~440.34(2)~~, and 440.442. If the judge's performance is deemed
 3606 unsatisfactory ~~satisfactory~~, the commission shall report its
 3607 finding to the Governor no later than 6 months prior to the
 3608 expiration of the judge's term of office. The Governor shall
 3609 review the commission's report and may reappoint the judge for
 3610 an additional 4-year term. If the Governor does not reappoint
 3611 the judge, the Governor shall inform the commission. The judge
 3612 shall remain in office until the Governor has appointed a
 3613 successor judge in accordance with paragraphs (a) and (b). If a
 3614 vacancy occurs during a judge's unexpired term, the statewide
 3615 nominating commission does not find the judge's performance is
 3616 satisfactory, or the Governor does not reappoint the judge, the
 3617 Governor shall appoint a successor judge for a term of 4 years
 3618 in accordance with paragraph (b).

3619 (d) The Governor may appoint any attorney who has been a
 3620 member of The Florida Bar in good standing for the previous 5
 3621 years and who possesses a minimum of at least 5 years' ~~years of~~
 3622 experience in the full-time practice of Florida workers'
 3623 compensation law in this state to serve as a judge of
 3624 compensation claims pro hac vice in the absence or
 3625 disqualification of any full-time judge of compensation claims
 3626 or to serve temporarily as an additional judge of compensation
 3627 claims in any area of the state in which the Governor determines
 3628 that a need exists for such an additional judge. However, an
 3629 attorney who is so appointed by the Governor may not serve for a
 3630 period of more than 120 successive days.

3631 (e) The Florida Bar ~~director of the Division of~~
 3632 ~~Administrative Hearings~~ may receive or initiate complaints,
 3633 conduct investigations, and dismiss complaints against the



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3634 ~~Deputy~~ Chief Judge and the judges of compensation claims on the
 3635 basis of the Code of Judicial Conduct. The Florida Bar ~~director~~
 3636 may recommend to the Governor the removal or discipline of the
 3637 ~~Deputy~~ Chief Judge or a judge of compensation claims ~~or~~
 3638 ~~recommend the discipline of a judge~~ whose conduct during his or
 3639 her term of office warrants such discipline. For purposes of
 3640 this section, the term "discipline" includes reprimand, fine,
 3641 and suspension with or without pay. At the conclusion of each
 3642 investigation, The Florida Bar ~~director~~ shall submit preliminary
 3643 findings of fact and recommendations to the judge of
 3644 compensation claims who is the subject of the complaint. The
 3645 Chief Judge and judge of compensation claims shall each have ~~has~~
 3646 20 days within which to respond to the preliminary findings. The
 3647 response and The Florida Bar's ~~director's~~ rebuttal to the
 3648 response must be included in the final report submitted to the
 3649 Governor.

3650 (3) The ~~Deputy~~ Chief Judge shall establish training and
 3651 continuing education for new and sitting judges.

3652 (4) The Office of the Judges of Compensation Claims shall
 3653 ~~adopt rules to effect the purposes of this section. Such rules~~
 3654 ~~shall include procedural rules applicable to workers'~~
 3655 ~~compensation claim resolution and~~ uniform criteria for measuring
 3656 the performance of the office, including, but not limited to,
 3657 the number of cases assigned and disposed, the age of pending
 3658 and disposed cases, timeliness of decisionmaking, attorney's
 3659 fees paid in excess of the fee schedule and the basis therefor
 3660 ~~extraordinary fee awards~~, and other data necessary for the
 3661 judicial nominating commission to review the performance of
 3662 judges as required in paragraph (2)(c). The Workers'
 3663 Compensation Rules of Procedure, rules 4.010 through 4.918, in



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3664 effect as of February 22, 2003, shall apply in all workers'
 3665 compensation proceedings before the judges of compensation
 3666 claims and replace Chapter 60Q-6 Rules of Procedure for Workers'
 3667 Compensation Adjudication and all forms referenced therein.
 3668 Thereafter, Workers' Compensation Rules of Procedure shall be
 3669 promulgated by The Florida Bar Rules Committee and adopted
 3670 ~~approved by the Supreme Court apply until the rules adopted by~~
 3671 ~~the Office of the Judges of Compensation Claims pursuant to s.~~
 3672 ~~440.29(3) this section become effective.~~ All forms referenced in
 3673 this chapter shall be promulgated by The Florida Bar Rules
 3674 Committee.

3675 (5) Not later than December 1 of each year, commencing
 3676 December 1, 2004, the Office of the Judges of Compensation
 3677 Claims shall issue a written report to the Governor, the House
 3678 of Representatives, the Senate, The Florida Bar, the Workers'
 3679 Compensation Section of The Florida Bar, and the statewide
 3680 nominating commission summarizing the amount, cost, and outcome
 3681 of all litigation resolved in the previous fiscal year;
 3682 summarizing the disposition of mediation conferences, the number
 3683 of mediation conferences held, ~~the number of continuances~~
 3684 ~~granted for mediations and final hearings,~~ the number and
 3685 outcome of litigated cases, the amount of attorney's fees paid
 3686 in excess of the fee schedule and the basis therefor in each
 3687 case according to order year and accident year, and the number
 3688 of final orders not issued within 60 ~~30~~ days after the final
 3689 hearing or closure of the hearing record; and recommending
 3690 changes or improvements to the dispute resolution elements of
 3691 the Workers' Compensation Law and regulations. If the ~~Deputy~~
 3692 Chief Judge finds that judges generally are unable to meet a
 3693 particular statutory requirement for reasons beyond their



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3694 control, the ~~Deputy~~ Chief Judge shall submit such findings and
3695 any recommendations to the Legislature.

3696 Section 39. Subsections (6) through (9) of section
3697 440.491, Florida Statutes, are renumbered as subsections (7)
3698 through (10), respectively, and a new subsection (6) is added to
3699 said section, to read:

3700 440.491 Reemployment of injured workers; rehabilitation.--

3701 (6) ADDITIONAL REHABILITATION TEMPORARY TOTAL DISABILITY
3702 BENEFITS.--

3703 (a) When the employer or carrier denies the payment of
3704 additional rehabilitation temporary total disability benefits,
3705 an employer or carrier shall give the employee 7 days' written
3706 notice of denial by certificate of mailing that the employee's
3707 additional rehabilitation temporary total disability benefits
3708 are being denied; provide the employee with a copy of any
3709 documentation for the denial, including any medical, employment,
3710 wages, vocational reports, and unemployment records; and advise
3711 the employee of his or her right to request a hearing on the
3712 payment of additional rehabilitation temporary total disability
3713 benefits by filing a petition for benefits. The employer's or
3714 carrier's failure to comply with this time provision shall
3715 result in a waiver of any time period in which to file a
3716 petition for benefits on the issue. The evidence of any
3717 investigator, adjuster, or other witness in the nature of
3718 surveillance shall be subject to discovery when such evidence
3719 will be used at trial, provided the party intending to use such
3720 evidence is first given a reasonable opportunity to depose the
3721 party or witness who is the subject of the surveillance.

3722 (b) When the Division of Workers' Compensation has
3723 determined an injured employee is entitled to retraining and



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3724 education to obtain suitable gainful employment and the employee
3725 claims and the employer or carrier contests the employee's
3726 entitlement to an additional 26 weeks of rehabilitation
3727 temporary total disability benefits, or an extended period to be
3728 determined necessary and proper by the judge of compensation
3729 claims, the employee shall file a petition for benefits for
3730 rehabilitation temporary total disability benefits which
3731 includes a statement of the period in dispute, copies of all
3732 vocational reports from the division establishing the employee's
3733 entitlement to retraining, copies of the employee's transcripts
3734 and attendance records coinciding with the first 26 weeks of
3735 benefits, medical reports establishing that the employee has
3736 limitations and restrictions which preclude his or her obtaining
3737 suitable gainful employment as provided in this section, and a
3738 proposed course of study for the period claimed. A copy of said
3739 documentation shall be sent to the employer and carrier and its
3740 representative no later than 10 days after the filing of the
3741 petition for benefits.

3742 (c) The failure of the employee to provide the
3743 documentation required by paragraph (a) shall result in
3744 dismissal of the employee's petition for benefits. The failure
3745 of the employer or carrier to provide the documentation required
3746 by paragraph (b) shall result in the same being excluded from
3747 evidence at any trial of this issue.

3748 Section 40. Paragraph (b) of subsection (1) and subsection
3749 (4) of section 112.3145, Florida Statutes, are amended to read:

3750 112.3145 Disclosure of financial interests and clients
3751 represented before agencies.--

3752 (1) For purposes of this section, unless the context
3753 otherwise requires, the term:



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3754 (b) "Specified state employee" means:

3755 1. Public counsel created by chapter 350, an assistant
3756 state attorney, an assistant public defender, a full-time state
3757 employee who serves as counsel or assistant counsel to any state
3758 agency, the ~~Deputy~~ Chief Judge of Compensation Claims, a judge
3759 of compensation claims, an administrative law judge, or a
3760 hearing officer.

3761 2. Any person employed in the office of the Governor or in
3762 the office of any member of the Cabinet if that person is exempt
3763 from the Career Service System, except persons employed in
3764 clerical, secretarial, or similar positions.

3765 3. Each appointed secretary, assistant secretary, deputy
3766 secretary, executive director, assistant executive director, or
3767 deputy executive director of each state department, commission,
3768 board, or council; unless otherwise provided, the division
3769 director, assistant division director, deputy director, bureau
3770 chief, and assistant bureau chief of any state department or
3771 division; or any person having the power normally conferred upon
3772 such persons, by whatever title.

3773 4. The superintendent or institute director of a state
3774 mental health institute established for training and research in
3775 the mental health field or the warden or director of any major
3776 state institution or facility established for corrections,
3777 training, treatment, or rehabilitation.

3778 5. Business managers, purchasing agents having the power
3779 to make any purchase exceeding the threshold amount provided for
3780 in s. 287.017 for CATEGORY ONE, finance and accounting
3781 directors, personnel officers, or grants coordinators for any
3782 state agency.



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3783 6. Any person, other than a legislative assistant exempted
3784 by the presiding officer of the house by which the legislative
3785 assistant is employed, who is employed in the legislative branch
3786 of government, except persons employed in maintenance, clerical,
3787 secretarial, or similar positions.

3788 7. Each employee of the Commission on Ethics.

3789 (4) Each elected constitutional officer, state officer,
3790 local officer, and specified state employee shall file a
3791 quarterly report of the names of clients represented for a fee
3792 or commission, except for appearances in ministerial matters,
3793 before agencies at his or her level of government. For the
3794 purposes of this part, agencies of government shall be
3795 classified as state-level agencies or agencies below state
3796 level. Each local officer shall file such report with the
3797 supervisor of elections of the county in which the officer is
3798 principally employed or is a resident. Each state officer,
3799 elected constitutional officer, and specified state employee
3800 shall file such report with the commission. The report shall be
3801 filed only when a reportable representation is made during the
3802 calendar quarter and shall be filed no later than the last day
3803 of each calendar quarter, for the previous calendar quarter.
3804 Representation before any agency shall be deemed to include
3805 representation by such officer or specified state employee or by
3806 any partner or associate of the professional firm of which he or
3807 she is a member and of which he or she has actual knowledge. For
3808 the purposes of this subsection, the term "representation before
3809 any agency" does not include appearances before any court or the
3810 ~~Deputy~~ Chief Judge of Compensation Claims or judges of
3811 compensation claims or representations on behalf of one's agency
3812 in one's official capacity. Such term does not include the



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3813 preparation and filing of forms and applications merely for the
3814 purpose of obtaining or transferring a license based on a quota
3815 or a franchise of such agency or a license or operation permit
3816 to engage in a profession, business, or occupation, so long as
3817 the issuance or granting of such license, permit, or transfer
3818 does not require substantial discretion, a variance, a special
3819 consideration, or a certificate of public convenience and
3820 necessity.

3821 Section 41. Subsection (1) of section 120.65, Florida
3822 Statutes, is amended to read:

3823 120.65 Administrative law judges.--

3824 (1) The Division of Administrative Hearings within the
3825 Department of Management Services shall be headed by a director
3826 who shall be appointed by the Administration Commission and
3827 confirmed by the Senate. The director, who shall also serve as
3828 the chief administrative law judge, and any deputy chief
3829 administrative law judge must possess the same minimum
3830 qualifications as the administrative law judges employed by the
3831 division. The ~~Deputy~~ Chief Judge of Compensation Claims must
3832 possess the minimum qualifications established in s. 440.45(2)
3833 and shall report to the director. The division shall be a
3834 separate budget entity, and the director shall be its agency
3835 head for all purposes. The Department of Management Services
3836 shall provide administrative support and service to the division
3837 to the extent requested by the director. The division shall not
3838 be subject to control, supervision, or direction by the
3839 Department of Management Services in any manner, including, but
3840 not limited to, personnel, purchasing, transactions involving
3841 real or personal property, and budgetary matters.



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3842 Section 42. Paragraph (i) of subsection (1) of section
 3843 121.055, Florida Statutes, is amended to read:

3844 121.055 Senior Management Service Class.--There is hereby
 3845 established a separate class of membership within the Florida
 3846 Retirement System to be known as the "Senior Management Service
 3847 Class," which shall become effective February 1, 1987.

3848 (1)

3849 (i)1. Except as provided in subparagraph 2., effective
 3850 July 1, 1999, participation in the Senior Management Service
 3851 Class is compulsory for any member of the Florida Retirement
 3852 System who is employed as the ~~Deputy~~ Chief Judge of Compensation
 3853 Claims or as a judge of compensation claims with the Office of
 3854 the Judges of Compensation Claims within the Division of
 3855 Administrative Hearings.

3856 2. In lieu of participating in the Senior Management
 3857 Service Class, the ~~Deputy~~ Chief Judge of Compensation Claims or
 3858 a judge of compensation claims may participate in the Senior
 3859 Management Service Optional Annuity Program established under
 3860 subsection (6).

3861 Section 43. Paragraph (b) of subsection (2) of section
 3862 216.251, Florida Statutes, is amended to read:

3863 216.251 Salary appropriations; limitations.--

3864 (2)

3865 (b) Salary payments shall be made only to employees
 3866 filling established positions included in the agency's or in the
 3867 judicial branch's approved budgets and amendments thereto as may
 3868 be provided by law; provided, however:

3869 1. Reclassification of established positions may be
 3870 accomplished when justified in accordance with the established
 3871 procedures for reclassifying positions; or



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3872 2. When the Division of Risk Management of the Department
3873 of Insurance has determined that an employee is entitled to
3874 receive a temporary partial disability benefit pursuant to the
3875 provisions of s. 440.1502 or a temporary total disability
3876 benefit pursuant to the provisions of s. 440.15 and there is
3877 medical certification that the employee cannot perform the
3878 duties of the employee's regular position, but the employee can
3879 perform some type of work beneficial to the agency, the agency
3880 may return the employee to the payroll, at his or her regular
3881 rate of pay, to perform such duties as the employee is capable
3882 of performing, even if there is not an established position in
3883 which the employee can be placed. Nothing in this subparagraph
3884 shall abrogate an employee's rights under chapter 440 or chapter
3885 447, nor shall it adversely affect the retirement credit of a
3886 member of the Florida Retirement System in the membership class
3887 he or she was in at the time of, and during, the member's
3888 disability.

3889 Section 44. Paragraph (b) of subsection (3) of section
3890 440.105, Florida Statutes, is amended to read:

3891 440.105 Prohibited activities; reports; penalties;
3892 limitations.--

3893 (3) Whoever violates any provision of this subsection
3894 commits a misdemeanor of the first degree, punishable as
3895 provided in s. 775.082 or s. 775.083.

3896 (b) It is unlawful for any attorney or other person, in
3897 his or her individual capacity or in his or her capacity as a
3898 public or private employee, or for any firm, corporation,
3899 partnership, or association to receive any fee or other
3900 consideration or any gratuity from a person on account of
3901 services rendered for a person in connection with any



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3902 proceedings arising under this chapter, unless such fee,
 3903 consideration, or gratuity is approved by a judge of
 3904 compensation claims or by the ~~Deputy~~ Chief Judge of Compensation
 3905 Claims.

3906 Section 45. Subsection (16) of section 440.134, Florida
 3907 Statutes, is amended to read:

3908 440.134 Workers' compensation managed care arrangement.--

3909 (16) When a carrier enters into a managed care arrangement
 3910 pursuant to this section the employees who are covered by the
 3911 provisions of such arrangement shall be deemed to have received
 3912 all the benefits to which they are entitled pursuant to ss. s-
 3913 440.13(2)(a) and 440.1509(1)(b). In addition, the employer shall
 3914 be deemed to have complied completely with the requirements of
 3915 such provisions. The provisions governing managed care
 3916 arrangements shall govern exclusively unless specifically stated
 3917 otherwise in this section.

3918 Section 46. Subsection (4) of section 440.14, Florida
 3919 Statutes, is amended to read:

3920 440.14 Determination of pay.--

3921 (4) Upon termination of the employee or upon termination
 3922 of the payment of fringe benefits of any employee who is
 3923 collecting indemnity benefits pursuant to ss. s- 440.15-440.1507
 3924 (2) or (3)(b), the employer shall within 7 days of such
 3925 termination file a corrected 13-week wage statement reflecting
 3926 the wages paid and the fringe benefits that had been paid to the
 3927 injured employee, as provided in s. 440.02 (28)(27).

3928 Section 47. Paragraph (a) of subsection (1), subsection
 3929 (2), paragraph (c) of subsection (8), and paragraph (c) of
 3930 subsection (11) of section 440.20, Florida Statutes, are amended
 3931 to read:



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3932 440.20 Time for payment of compensation; penalties for
3933 late payment.--

3934 (1)(a) Unless it denies compensability or entitlement to
3935 benefits, the carrier shall pay compensation directly to the
3936 employee as required by ss. 440.14, 440.15440.1507, and 440.16,
3937 in accordance with the obligations set forth in such sections.
3938 If authorized by the employee, the carrier's obligation to pay
3939 compensation directly to the employee is satisfied when the
3940 carrier directly deposits, by electronic transfer or other
3941 means, compensation into the employee's account at a financial
3942 institution. As used in this paragraph, the term "financial
3943 institution" means a financial institution as defined in s.
3944 655.005(1)(h). Compensation by direct deposit is considered paid
3945 on the date the funds become available for withdrawal by the
3946 employee.

3947 (2) The carrier must pay the first installment of
3948 compensation or deny compensability no later than the 14th day
3949 after the employer receives notice of the injury or death. The
3950 carrier shall thereafter pay compensation in biweekly
3951 installments or as otherwise provided in ss. ~~ss.~~ 440.15-440.1507,
3952 unless the judge of compensation claims determines or the
3953 parties agree that an alternate installment schedule is in the
3954 best interests of the employee.

3955 (8) In addition to any other penalties provided by this
3956 chapter for late payment, if any installment of compensation is
3957 not paid when it becomes due, the employer, carrier, or
3958 servicing agent shall pay interest thereon at the rate of 12
3959 percent per year from the date the installment becomes due until
3960 it is paid, whether such installment is payable without an order



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3961 or under the terms of an order. The interest payment shall be
3962 the greater of the amount of interest due or \$5.

3963 (c) In order to ensure carrier compliance under this
3964 chapter and provisions of the Florida Insurance Code, the
3965 department shall monitor the performance of carriers by
3966 conducting market conduct examinations, as provided in s.
3967 624.3161, and conducting investigations, as provided in s.
3968 624.317. The department shall establish by rule minimum
3969 performance standards for carriers to ensure that a minimum of
3970 90 percent of all compensation benefits are timely paid. The
3971 department shall fine a carrier as provided in s. 440.1312(2)
3972 ~~440.13(11)(b)~~ up to \$50 for each late payment of compensation
3973 that is below the minimum 90 percent performance standard. This
3974 paragraph does not affect the imposition of any penalties or
3975 interest due to the claimant. If a carrier contracts with a
3976 servicing agent to fulfill its administrative responsibilities
3977 under this chapter, the payment practices of the servicing agent
3978 are deemed the payment practices of the carrier for the purpose
3979 of assessing penalties against the carrier.

3980 (11)

3981 (c) Notwithstanding s. 440.21(2), when a claimant is
3982 represented by counsel, the claimant may waive all rights to any
3983 and all benefits under this chapter by entering into a
3984 settlement agreement releasing the employer and the carrier from
3985 liability for workers' compensation benefits in exchange for a
3986 lump-sum payment to the claimant. The settlement agreement
3987 requires approval by the judge of compensation claims only as to
3988 the attorney's fees paid to the claimant's attorney by the
3989 claimant. The parties need not submit any information or
3990 documentation in support of the settlement, except as needed to



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3991 justify the amount of the attorney's fees. Neither the employer
 3992 nor the carrier is responsible for any attorney's fees relating
 3993 to the settlement and release of claims under this section.
 3994 Payment of the lump-sum settlement amount must be made within 14
 3995 days after the date the judge of compensation claims mails the
 3996 order approving the attorney's fees. Any order entered by a
 3997 judge of compensation claims approving the attorney's fees as
 3998 set out in the settlement under this subsection is not
 3999 considered to be an award and is not subject to modification or
 4000 review. The judge of compensation claims shall report these
 4001 settlements to the ~~Deputy~~ Chief Judge in accordance with the
 4002 requirements set forth in paragraphs (a) and (b). Settlements
 4003 entered into under this subsection are valid and apply to all
 4004 dates of accident.

4005 Section 48. Subsection (2) of section 440.207, Florida
 4006 Statutes, is amended to read:

4007 440.207 Workers' compensation system guide.--

4008 (2) The department shall publish an understandable guide
 4009 to the workers' compensation system which shall contain an
 4010 explanation of benefits provided; ~~services provided by the~~
 4011 ~~Employee Assistance and Ombudsman Office;~~ procedures regarding
 4012 mediation, the hearing process, and civil and criminal
 4013 penalties; relevant rules of the department; and such other
 4014 information as the department believes will inform employees,
 4015 employers, carriers, and those providing services pursuant to
 4016 this chapter of their rights and responsibilities under this
 4017 chapter and the rules of the department. For the purposes of
 4018 this subsection, a guide is understandable if the text of the
 4019 guide is written at a level of readability not exceeding the
 4020 eighth grade level, as determined by a recognized readability



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4021 test.

4022 Section 49. Subsection (2) of section 440.29, Florida
 4023 Statutes, is amended to read:

4024 440.29 Procedure before the judge of compensation
 4025 claims.--

4026 (2) Hearings before the judge of compensation claims shall
 4027 be open to the public, and the ~~Deputy~~ Chief Judge is authorized
 4028 to designate the manner in which particular types of hearings
 4029 are recorded and reported and, when necessary, to contract for
 4030 the reporting of such hearings. The ~~Deputy~~ Chief Judge shall
 4031 arrange for the preparation of a record of the hearings and
 4032 other proceedings before judges of compensation claims, as
 4033 necessary, and is authorized to allow for the attendance of
 4034 court reporters at hearings, for preparation of transcripts of
 4035 testimony, for copies of any instrument, and for other reporting
 4036 or recording services. The ~~Deputy~~ Chief Judge may charge the
 4037 same fees allowed by law or court rule to reporters, persons
 4038 preparing transcripts, or clerks of courts of this state for
 4039 like services.

4040 Section 50. Subsection (5) of section 440.44, Florida
 4041 Statutes, is amended to read:

4042 440.44 Workers' compensation; staff organization.--

4043 (5) OFFICE.--The department, the agency, the Department of
 4044 Education, and the ~~Deputy~~ Chief Judge shall maintain and keep
 4045 open during reasonable business hours an office, which shall be
 4046 provided in the Capitol or some other suitable building in the
 4047 City of Tallahassee, for the transaction of business under this
 4048 chapter, at which office the official records and papers shall
 4049 be kept. The office shall be furnished and equipped. The
 4050 department, the agency, any judge of compensation claims, or the



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4051 ~~Deputy~~ Chief Judge may hold sessions and conduct hearings at any
 4052 place within the state. The Office of the Judges of Compensation
 4053 Claims shall maintain the 17 district offices, 31 judges of
 4054 compensation claims, and 31 mediators as they exist on June 30,
 4055 2001.

4056 Section 51. Section 440.47, Florida Statutes, is amended
 4057 to read:

4058 440.47 Travel expenses.--The ~~Deputy~~ Chief Judge, judges of
 4059 compensation claims, and employees of the department shall be
 4060 reimbursed for travel expenses as provided in s. 112.061. Such
 4061 expenses shall be sworn to by the person who incurred the same
 4062 and shall be allowed and paid as provided in s. 440.50 upon the
 4063 presentation of vouchers therefor approved by the director of
 4064 the Division of Administrative Hearings or the department,
 4065 whichever is applicable.

4066 Section 52. Paragraph (a) of subsection (4) and paragraphs
 4067 (a) and (c) of subsection (6) of section 440.49, Florida
 4068 Statutes, are amended to read:

4069 440.49 Limitation of liability for subsequent injury
 4070 through Special Disability Trust Fund.--

4071 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
 4072 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
 4073 OTHER PHYSICAL IMPAIRMENT.--

4074 (a) *Permanent impairment*.--If an employee who has a
 4075 preexisting permanent physical impairment incurs a subsequent
 4076 permanent impairment from injury or occupational disease arising
 4077 out of, and in the course of, her or his employment which merges
 4078 with the preexisting permanent physical impairment to cause a
 4079 permanent impairment, the employer shall, in the first instance,
 4080 pay all benefits provided by this chapter; but, subject to the



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4081 limitations specified in subsection (6), such employer shall be
 4082 reimbursed from the Special Disability Trust Fund created by
 4083 subsection (9) for 50 percent of all impairment benefits which
 4084 the employer has been required to provide pursuant to s.
 4085 440.1503(1) ~~440.15(3)(a)~~ as a result of the subsequent accident
 4086 or occupational disease.

4087 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.--

4088 (a) Reimbursement is not allowed under this section unless
 4089 it is established that the employer knew of the preexisting
 4090 permanent physical impairment prior to the occurrence of the
 4091 subsequent injury or occupational disease, and that the
 4092 permanent physical impairment is one of the following:

- 4093 1. Epilepsy.
- 4094 2. Diabetes.
- 4095 3. Cardiac disease.
- 4096 4. Amputation of foot, leg, arm, or hand.
- 4097 5. Total loss of sight of one or both eyes or a partial
 4098 loss of corrected vision of more than 75 percent bilaterally.
- 4099 6. Residual disability from poliomyelitis.
- 4100 7. Cerebral palsy.
- 4101 8. Multiple sclerosis.
- 4102 9. Parkinson's disease.
- 4103 10. Meniscectomy.
- 4104 11. Patellectomy.
- 4105 12. Ruptured cruciate ligament.
- 4106 13. Hemophilia.
- 4107 14. Chronic osteomyelitis.
- 4108 15. Surgical or spontaneous fusion of a major weight-
 4109 bearing joint.
- 4110 16. Hyperinsulinism.



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- 4111 17. Muscular dystrophy.
- 4112 18. Thrombophlebitis.
- 4113 19. Herniated intervertebral disk.
- 4114 20. Surgical removal of an intervertebral disk or spinal
- 4115 fusion.
- 4116 21. One or more back injuries or a disease process of the
- 4117 back resulting in disability over a total of 120 or more days,
- 4118 if substantiated by a doctor's opinion that there was a
- 4119 preexisting impairment to the claimant's back.
- 4120 22. Total deafness.
- 4121 23. Mental retardation, provided the employee's
- 4122 intelligence quotient is such that she or he falls within the
- 4123 lowest 2 percentile of the general population. However, it shall
- 4124 not be necessary for the employer to know the employee's actual
- 4125 intelligence quotient or actual relative ranking in relation to
- 4126 the intelligence quotient of the general population.
- 4127 24. Any permanent physical condition which, prior to the
- 4128 industrial accident or occupational disease, constitutes a 20-
- 4129 percent impairment of a member or of the body as a whole.
- 4130 25. Obesity, provided the employee is 30 percent or more
- 4131 over the average weight designated for her or his height and age
- 4132 in the Table of Average Weight of Americans by Height and Age
- 4133 prepared by the Society of Actuaries using data from the 1979
- 4134 Build and Blood Pressure Study.
- 4135 26. Any permanent physical impairment as defined in s.
- 4136 440.1503 ~~440.15(3)~~ which is a result of a prior industrial
- 4137 accident with the same employer or the employer's parent
- 4138 company, subsidiary, sister company, or affiliate located within
- 4139 the geographical boundaries of this state.



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4140 (c) An employer's or carrier's right to apportionment or
4141 deduction pursuant to ss. 440.02(1), 440.1506(1)(b)
4142 ~~440.15(5)(b)~~, and 440.151(1)(c) does not preclude reimbursement
4143 from such fund, except when the merger comes within the
4144 definition of paragraph (2)(c) and such apportionment or
4145 deduction relieves the employer or carrier from providing the
4146 materially and substantially greater permanent disability
4147 benefits otherwise contemplated in those paragraphs.

4148 Section 53. Paragraph (a) of subsection (1) of section
4149 440.50, Florida Statutes, is amended to read:

4150 440.50 Workers' Compensation Administration Trust Fund.--

4151 (1)(a) There is established in the State Treasury a
4152 special fund to be known as the "Workers' Compensation
4153 Administration Trust Fund" for the purpose of providing for the
4154 payment of all expenses in respect to the administration of this
4155 chapter, including the vocational rehabilitation of injured
4156 employees as provided in s. 440.49 and the payments due under s.
4157 440.1505(1)(f) ~~440.15(1)(f)~~, the funding of the fixed
4158 administrative expenses of the plan, and the funding of the
4159 Bureau of Workers' Compensation Fraud within the Department of
4160 Insurance. Such fund shall be administered by the department.

4161 Section 54. Paragraph (b) of subsection (1) of section
4162 440.51, Florida Statutes, is amended to read:

4163 440.51 Expenses of administration.--

4164 (1) The department shall estimate annually in advance the
4165 amounts necessary for the administration of this chapter, in the
4166 following manner.

4167 (b) The total expenses of administration shall be prorated
4168 among the carriers writing compensation insurance in the state
4169 and self-insurers. The net premiums collected by carriers and



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4170 the amount of premiums calculated by the department for self-
4171 insured employers are the basis for computing the amount to be
4172 assessed. When reporting deductible policy premium for purposes
4173 of computing assessments levied after July 1, 2001, full policy
4174 premium value must be reported prior to application of
4175 deductible discounts or credits. This amount may be assessed as
4176 a specific amount or as a percentage of net premiums payable as
4177 the department may direct, provided such amount so assessed
4178 shall not exceed 2.75 percent, beginning January 1, 2001, except
4179 during the interim period from July 1, 2000, through December
4180 31, 2000, such assessments shall not exceed 4 percent of such
4181 net premiums. The carriers may elect to make the payments
4182 required under s. 440.1505(1)(f) ~~440.15(1)(f)~~ rather than having
4183 these payments made by the department. In that event, such
4184 payments will be credited to the carriers, and the amount due by
4185 the carrier under this section will be reduced accordingly.

4186 Section 55. Section 631.929, Florida Statutes, is amended
4187 to read:

4188 631.929 Election of remedies.--An injured worker who has a
4189 date of accident which occurred before January 1, 1994, and is
4190 not receiving benefits due under chapter 440 due to the
4191 insolvency of a self-insurance fund or its successors,
4192 regardless of the date declared insolvent by the court, may
4193 elect to seek medical care, treatment, and attendance, and
4194 compensation required under ss. ~~440.15-440.1507~~ and 440.16 from
4195 the corporation and forego the remedy to seek benefits from his
4196 or her employer or the insolvent self-insurance fund. An
4197 employee who so elects may be required to obtain medical care,
4198 treatment, and attendance through a managed care plan comporting
4199 with the requirement of s. 440.134 if the plan of operation so



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4200 provides. An injured worker has 60 days to seek benefits from
 4201 the corporation upon ratification by the corporation of his or
 4202 her right to elect a remedy under this part. If the injured
 4203 worker elects to pursue his or her remedy under the provisions
 4204 of this part, the corporation may, with the agreement of the
 4205 injured employee, pay a lump-sum payment in exchange for the
 4206 corporation's and employer's release from liability for future
 4207 medical and compensation expenses, as well as any other benefit
 4208 provided under chapter 440. However, there shall be no
 4209 entitlement to attorney's fees, penalties, interest, or costs to
 4210 be paid on any claim presented to the corporation under this
 4211 part. This section shall not create any cause of action against
 4212 any employer who purchased workers' compensation insurance
 4213 coverage pursuant to s. 440.38.

4214 Section 56. Subsection (2) of section 946.523, Florida
 4215 Statutes, is amended to read:

4216 946.523 Prison industry enhancement (PIE) programs.--

4217 (2) Notwithstanding any other law to the contrary,
 4218 including s. 440.1506(5) ~~440.15(9)~~, private sector employers
 4219 shall provide workers' compensation coverage to inmates who
 4220 participate in prison industry enhancement (PIE) programs under
 4221 subsection (1). However, inmates are not entitled to
 4222 unemployment compensation.

4223 Section 57. Paragraph (b) of subsection (8) of section
 4224 948.03, Florida Statutes, is amended to read:

4225 948.03 Terms and conditions of probation or community
 4226 control.--

4227 (8)

4228 (b) In determining the average weekly wage, unless
 4229 otherwise determined by a specific funding program, all



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4230 remuneration received from the employer shall be considered a
 4231 gratuity, and the offender shall not be entitled to any benefits
 4232 otherwise payable under ss. s. 440.15-440.1507, regardless of
 4233 whether the offender may be receiving wages and remuneration
 4234 from other employment with another employer and regardless of
 4235 his or her future wage-earning capacity. The provisions of this
 4236 subsection do not apply to any person performing labor under a
 4237 sentence of a court to perform community services as provided in
 4238 s. 316.193.

4239 Section 58. Subsection (4) of section 960.13, Florida
 4240 Statutes, is amended to read:

4241 960.13 Awards.--

4242 (4) Any award made pursuant to this chapter shall be made
 4243 in accordance with the schedule of benefits, degrees of
 4244 disability, and wage-loss formulas specified in ss. 440.12, ~~and~~
 4245 440.15-440.1505, and 440.1507 ~~excluding subsection (5) of that~~
 4246 ~~section.~~

4247 Section 59. Paragraph (a) of subsection (4) of section
 4248 985.21, Florida Statutes, is amended to read:

4249 985.21 Intake and case management.--

4250 (4) The juvenile probation officer shall make a
 4251 preliminary determination as to whether the report, affidavit,
 4252 or complaint is complete, consulting with the state attorney as
 4253 may be necessary. In any case where the juvenile probation
 4254 officer or the state attorney finds that the report, affidavit,
 4255 or complaint is insufficient by the standards for a probable
 4256 cause affidavit, the juvenile probation officer or state
 4257 attorney shall return the report, affidavit, or complaint,
 4258 without delay, to the person or agency originating the report,
 4259 affidavit, or complaint or having knowledge of the facts or to



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4260 the appropriate law enforcement agency having investigative
4261 jurisdiction of the offense, and shall request, and the person
4262 or agency shall promptly furnish, additional information in
4263 order to comply with the standards for a probable cause
4264 affidavit.

4265 (a) The juvenile probation officer, upon determining that
4266 the report, affidavit, or complaint is complete, pursuant to
4267 uniform procedures established by the department, shall:

4268 1. When indicated by the preliminary screening, provide
4269 for a comprehensive assessment of the child and family for
4270 substance abuse problems, using community-based licensed
4271 programs with clinical expertise and experience in the
4272 assessment of substance abuse problems.

4273 2. When indicated by the preliminary screening, provide
4274 for a comprehensive assessment of the child and family for
4275 mental health problems, using community-based psychologists,
4276 psychiatrists, or other licensed mental health professionals
4277 with clinical expertise and experience in the assessment of
4278 mental health problems.

4279

4280 When indicated by the comprehensive assessment, the department
4281 is authorized to contract within appropriated funds for services
4282 with a local nonprofit community mental health or substance
4283 abuse agency licensed or authorized under chapter 394, or
4284 chapter 397, or other authorized nonprofit social service agency
4285 providing related services. The determination of mental health
4286 or substance abuse services shall be conducted in coordination
4287 with existing programs providing mental health or substance
4288 abuse services in conjunction with the intake office. Client
4289 information resulting from the screening and evaluation shall be



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4290 documented pursuant to rules established by the department and
4291 shall serve to assist the juvenile probation officer in
4292 providing the most appropriate services and recommendations in
4293 the least intrusive manner. Such client information shall be
4294 used in the multidisciplinary assessment and classification of
4295 the child, but such information, and any information obtained
4296 directly or indirectly through the assessment process, is
4297 inadmissible in court prior to the disposition hearing, unless
4298 the child's written consent is obtained. At the disposition
4299 hearing, documented client information shall serve to assist the
4300 court in making the most appropriate custody, adjudicatory, and
4301 dispositional decision. If the screening and assessment indicate
4302 that the interest of the child and the public will be best
4303 served thereby, the juvenile probation officer, with the
4304 approval of the state attorney, may refer the child for care,
4305 diagnostic and evaluation services, substance abuse treatment
4306 services, mental health services, retardation services, a
4307 diversionary or arbitration or mediation program, community
4308 service work, or other programs or treatment services
4309 voluntarily accepted by the child and the child's parents or
4310 legal guardians. The victim, if any, and the law enforcement
4311 agency which investigated the offense shall be notified
4312 immediately by the state attorney of the action taken under this
4313 paragraph. Whenever a child volunteers to participate in any
4314 work program under this chapter or volunteers to work in a
4315 specified state, county, municipal, or community service
4316 organization supervised work program or to work for the victim,
4317 the child shall be considered an employee of the state for the
4318 purposes of liability. In determining the child's average weekly
4319 wage, unless otherwise determined by a specific funding program,



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4320 all remuneration received from the employer is considered a
 4321 gratuity, and the child is not entitled to any benefits
 4322 otherwise payable under ss. ~~s.~~ 440.15-440.1507, regardless of
 4323 whether the child may be receiving wages and remuneration from
 4324 other employment with another employer and regardless of the
 4325 child's future wage-earning capacity.

4326 Section 60. Paragraph (g) of subsection (1) of section
 4327 985.231, Florida Statutes, is amended to read:

4328 985.231 Powers of disposition in delinquency cases.--
 4329 (1)

4330 (g) Whenever a child is required by the court to
 4331 participate in any work program under this part or whenever a
 4332 child volunteers to work in a specified state, county,
 4333 municipal, or community service organization supervised work
 4334 program or to work for the victim, either as an alternative to
 4335 monetary restitution or as a part of the rehabilitative or
 4336 probation program, the child is an employee of the state for the
 4337 purposes of liability. In determining the child's average weekly
 4338 wage unless otherwise determined by a specific funding program,
 4339 all remuneration received from the employer is a gratuity, and
 4340 the child is not entitled to any benefits otherwise payable
 4341 under ss. ~~s.~~ 440.15-440.1507, regardless of whether the child
 4342 may be receiving wages and remuneration from other employment
 4343 with another employer and regardless of the child's future wage-
 4344 earning capacity.

4345 Section 61. Paragraph (c) of subsection (5) of section
 4346 985.315, Florida Statutes, is amended to read:

4347 985.315 Educational/technical and vocational work-related
 4348 programs.--

4349 (5)



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4350 (c) Notwithstanding any other law to the contrary,
4351 including s. 440.1506(5) ~~440.15(9)~~, private sector employers
4352 shall provide juveniles participating in juvenile work programs
4353 under paragraph (b) with workers' compensation coverage, and
4354 juveniles shall be entitled to the benefits of such coverage.
4355 Nothing in this subsection shall be construed to allow juveniles
4356 to participate in unemployment compensation benefits.

4357 Section 62. This act shall take effect upon becoming a
4358 law.