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1 A bill to be entitled

2 An act relating to workers' compensation; amending s.
3 440.02, F.S.; redefining the term "employee" for purposes
4 of the Workers' Compensation Law; removing provisions
5 authorizing certain officers of a corporation to elect to
6 be exempt from ch. 440, F.S.; redefining the term
7 "employment"; deleting an exception provided for
8 professional athletes; redefining the term "wages";
9 amending s. 440.05, F.S.; providing a procedure under
10 which an officer of a corporation or partner to a
11 partnership may elect to be exempt from ch. 440, F.S.;
12 providing certain exceptions; revising requirements for
13 notice; specifying a date after which an officer or
14 partner may not elect to be exempt from ch. 440, F.S.;
15 amending s. 440.092, F.S.; deleting a requirement that
16 certain compensable activities produce a direct benefit to
17 the employer; amending s. 440.10, F.S.; providing for
18 mandatory penalties to be assessed against an employer who
19 fails to secure compensation as required by ch. 440, F.S.;
20 amending s. 440.11, F.S.; providing for the exclusive
21 liability of a carrier or self-insured employer; amending
22 s. 440.13, F.S.; including a licensed psychologist and
23 licensed acupuncturist within the definition of the terms
24 "physician" and "doctor"; deleting a mandatory requirement
25 for certification; providing for an employer or carrier to
26 allow an employee to select medical providers; revising
27 requirements for requesting treatment or care; providing
28 requirements for transfer of care; providing notice
29 requirements for access to medical records; revising
30 requirements for independent medical examinations;



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31 requiring that a health care provider file a petition in
32 order to contest the disallowance or adjustment of payment
33 by a carrier; providing for the medical provider to
34 recover costs and attorney's fees; revising requirements
35 for determining reimbursement amounts; restricting a
36 health care provider's right to recover payment for
37 medical fees; requiring that a provider file a petition in
38 order to recover such payments; providing for costs and
39 attorney's fees; amending s. 440.134, F.S.; revising
40 requirements for managed care arrangements; revising
41 requirements for medical benefits; amending s. 440.15,
42 F.S.; revising the requirements for paying impairment
43 benefits and supplemental benefits; prohibiting an
44 employee from receiving supplemental benefits and
45 impairment benefits; amending s. 440.16, F.S.; increasing
46 the limits on the amount of certain benefits paid as
47 compensation for death; amending s. 440.185, F.S. ;
48 providing a penalty for failure of an employer to notify
49 the carrier of an injury; amending s. 440.19, F.S. ;
50 increasing the period of limitation on filing a petition
51 for benefits; amending s. 440.20, F.S. ; requiring the
52 Department of Insurance to adopt by rule forms for
53 settlement agreements; amending s. 440.205, F.S. ;
54 authorizing a civil suit for damages against an employer
55 who unlawfully coerces an employee for a valid claim for
56 compensation; providing that a carrier who engages in
57 unlawful conduct is subject to civil suit; amending s.
58 440.25, F.S. ; revising procedures for mediations and
59 hearings; amending s. 440.29, F.S. ; providing for the
60 practice and procedure of compensation claims to be



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61 governed by rules of the Supreme Court; amending s.
 62 440.45, F.S.; providing additional qualifications for
 63 members of the statewide nominating commission for judges
 64 of compensation claims; removing a requirement that the
 65 Office of the Judges of Compensation Claims adopt
 66 procedural rules; amending s. 627.041, F.S.; revising the
 67 Ratings Law to include within regulated rating
 68 organizations those organizations that make and file
 69 prospective loss costs; amending s. 627.091, F.S.;
 70 providing definitions; providing for licensed rating
 71 organizations to file prospective loss costs, loss data,
 72 and other information with the Department of Insurance for
 73 approval; amending s. 627.096, F.S.; providing that the
 74 data, statistics, schedules, and other information
 75 submitted to the Workers' Compensation Rating Bureau are
 76 subject to public disclosure under public records
 77 requirements; amending s. 627.101, F.S.; providing
 78 requirements for the review and approval of prospective
 79 loss costs filings; amending s. 627.211, F.S.; providing
 80 for changes in premiums based on loss adjustment expenses;
 81 providing for severability; providing an effective date.

82
 83 Be It Enacted by the Legislature of the State of Florida:

84
 85 Section 1. Subsections (15), (17), and (28) of section
 86 440.02, Florida Statutes, are amended to read:

87 440.02 Definitions.--When used in this chapter, unless the
 88 context clearly requires otherwise, the following terms shall
 89 have the following meanings:



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90 (15)(a) "Employee" means any person engaged in any
 91 employment under any appointment or contract of hire or
 92 apprenticeship, express or implied, oral or written, whether
 93 lawfully or unlawfully employed, and includes, but is not
 94 limited to, aliens and minors.

95 (b) Except as provided in s. 440.05, "employee" means
 96 ~~includes~~ any person who is an officer of a corporation and who
 97 performs services for remuneration for such corporation within
 98 this state, whether or not such services are continuous.

99 ~~1. Any officer of a corporation may elect to be exempt~~
 100 ~~from this chapter by filing written notice of the election with~~
 101 ~~the department as provided in s. 440.05.~~

102 ~~2. As to officers of a corporation who are actively~~
 103 ~~engaged in the construction industry, no more than three~~
 104 ~~officers may elect to be exempt from this chapter by filing~~
 105 ~~written notice of the election with the department as provided~~
 106 ~~in s. 440.05. However, any exemption obtained by a corporate~~
 107 ~~officer of a corporation actively engaged in the construction~~
 108 ~~industry is not applicable with respect to any commercial~~
 109 ~~building project estimated to be valued at \$250,000 or greater.~~

110 ~~3. An officer of a corporation who elects to be exempt~~
 111 ~~from this chapter by filing a written notice of the election~~
 112 ~~with the department as provided in s. 440.05 is not an employee.~~

113
 114 ~~Services are presumed to have been rendered to the corporation~~
 115 ~~if the officer is compensated by other than dividends upon~~
 116 ~~shares of stock of the corporation which the officer owns.~~

117 (c)~~1.~~ Except as provided in s. 440.05, "employee" means
 118 ~~includes~~ a sole proprietor or a partner who devotes full time to
 119 the proprietorship or partnership, ~~and, except as provided in~~



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120 ~~this paragraph, elects to be included in the definition of~~
121 ~~employee by filing notice thereof as provided in s. 440.05.~~
122 ~~Partners or sole proprietors actively engaged in the~~
123 ~~construction industry are considered employees unless they elect~~
124 ~~to be excluded from the definition of employee by filing written~~
125 ~~notice of the election with the department as provided in s.~~
126 ~~440.05. However, no more than three partners in a partnership~~
127 ~~that is actively engaged in the construction industry may elect~~
128 ~~to be excluded. A sole proprietor or partner who is actively~~
129 ~~engaged in the construction industry and who elects to be exempt~~
130 ~~from this chapter by filing a written notice of the election~~
131 ~~with the department as provided in s. 440.05 is not an employee.~~
132 ~~For purposes of this chapter, an independent contractor is an~~
133 ~~employee unless he or she meets all of the conditions set forth~~
134 ~~in subparagraph (d)1.~~

135 ~~2. Notwithstanding the provisions of subparagraph 1., the~~
136 ~~term "employee" includes a sole proprietor or partner actively~~
137 ~~engaged in the construction industry with respect to any~~
138 ~~commercial building project estimated to be valued at \$250,000~~
139 ~~or greater. Any exemption obtained is not applicable, with~~
140 ~~respect to work performed at such a commercial building project.~~

141 (d) "Employee" does not include:

142 1. An independent contractor, except that an independent
143 contractor is an employee for purposes of this chapter unless he
144 or she substantially meets all of the following criteria if:

145 a. The independent contractor maintains a separate
146 business with his or her own work facility, truck, equipment,
147 materials, or similar accommodations;

148 b. The independent contractor holds or has applied for a
149 federal employer identification number, unless the independent



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150 contractor is a sole proprietor who is not required to obtain a
151 federal employer identification number under state or federal
152 requirements;

153 c. The independent contractor performs or agrees to
154 perform specific services or work for specific amounts of money
155 and controls the means of performing the services or work;

156 d. The independent contractor incurs the principal
157 expenses related to the service or work that he or she performs
158 or agrees to perform;

159 e. The independent contractor is responsible for the
160 satisfactory completion of work or services that he or she
161 performs or agrees to perform and is or could be held liable for
162 a failure to complete the work or services;

163 f. The independent contractor receives compensation for
164 work or services performed for a commission or on a per-job or
165 competitive-bid basis and not on any other basis;

166 g. The independent contractor may realize a profit or
167 suffer a loss in connection with performing work or services;

168 h. The independent contractor has continuing or recurring
169 business liabilities or obligations; and

170 i. The success or failure of the independent contractor's
171 business depends on the relationship of business receipts to
172 expenditures.

173

174 However, the determination as to whether an individual included
175 in the Standard Industrial Classification Manual of 1987,
176 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
177 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
178 or a newspaper delivery person, is an independent contractor is
179 governed not by the criteria in this paragraph but by common-law



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180 principles, giving due consideration to the business activity of
181 the individual. Notwithstanding the provisions of this paragraph
182 or any other provision of this chapter, with respect to any
183 commercial building project estimated to be valued at \$250,000
184 or greater, a person who is actively engaged in the construction
185 industry is not an independent contractor and is either an
186 employer or an employee who may not be exempt from the coverage
187 requirements of this chapter.

188 ~~2. A real estate salesperson or agent, if that person~~
189 ~~agrees, in writing, to perform for remuneration solely by way of~~
190 ~~commission.~~

191 ~~3. Bands, orchestras, and musical and theatrical~~
192 ~~performers, including disk jockeys, performing in licensed~~
193 ~~premises as defined in chapter 562, if a written contract~~
194 ~~evidencing an independent contractor relationship is entered~~
195 ~~into before the commencement of such entertainment.~~

196 ~~4. An owner-operator of a motor vehicle who transports~~
197 ~~property under a written contract with a motor carrier which~~
198 ~~evidences a relationship by which the owner-operator assumes the~~
199 ~~responsibility of an employer for the performance of the~~
200 ~~contract, if the owner-operator is required to furnish the~~
201 ~~necessary motor vehicle equipment and all costs incidental to~~
202 ~~the performance of the contract, including, but not limited to,~~
203 ~~fuel, taxes, licenses, repairs, and hired help; and the owner-~~
204 ~~operator is paid a commission for transportation service and is~~
205 ~~not paid by the hour or on some other time-measured basis.~~

206 ~~5. A person whose employment is both casual and not in the~~
207 ~~course of the trade, business, profession, or occupation of the~~
208 ~~employer.~~



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209 ~~2.6.~~ A volunteer, except a volunteer worker for the state
 210 or a county, municipality, or other governmental entity. A
 211 person who does not receive monetary remuneration for services
 212 is presumed to be a volunteer unless there is substantial
 213 evidence that a valuable consideration was intended by both
 214 employer and employee. For purposes of this chapter, the term
 215 "volunteer" includes, but is not limited to:

216 a. Persons who serve in private nonprofit agencies and who
 217 receive no compensation other than expenses in an amount less
 218 than or equivalent to the standard mileage and per diem expenses
 219 provided to salaried employees in the same agency or, ~~if such~~
 220 ~~agency does not have salaried employees who receive mileage and~~
 221 ~~per diem, then such volunteers who receive no compensation other~~
 222 ~~than expenses~~ in an amount less than or equivalent to the
 223 customary mileage and per diem paid to salaried workers in the
 224 community as determined by the department; and

225 b. Volunteers participating in federal programs
 226 established under Pub. L. No. 93-113.

227 ~~3.7.~~ Any sole proprietor, partner, or officer of a
 228 corporation who, pursuant to s. 440.05, is entitled to and
 229 elects to be exempt from this chapter.

230 ~~8.~~ A sole proprietor or officer of a corporation who
 231 actively engages in the construction industry, and a partner in
 232 a partnership that is actively engaged in the construction
 233 industry, who elects to be exempt from the provisions of this
 234 chapter. Such sole proprietor, officer, or partner is not an
 235 employee for any reason until the notice of revocation of
 236 election filed pursuant to s. 440.05 is effective.

237 ~~9.~~ An exercise rider who does not work for a single horse
 238 farm or breeder, and who is compensated for riding on a case-by-



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239 ~~ease basis, provided a written contract is entered into prior to~~
240 ~~the commencement of such activity which evidences that an~~
241 ~~employee/employer relationship does not exist.~~

242 ~~10. A taxicab, limousine, or other passenger vehicle for-~~
243 ~~hire driver who operates said vehicles pursuant to a written~~
244 ~~agreement with a company which provides any dispatch, marketing,~~
245 ~~insurance, communications, or other services under which the~~
246 ~~driver and any fees or charges paid by the driver to the company~~
247 ~~for such services are not conditioned upon, or expressed as a~~
248 ~~proportion of, fare revenues.~~

249 4.11. A person who performs services as a sports official
250 for an entity sponsoring an interscholastic sports event or for
251 a public entity or private, nonprofit organization that sponsors
252 an amateur sports event. For purposes of this subparagraph,
253 such a person is an independent contractor. For purposes of this
254 subparagraph, the term "sports official" means any person who is
255 a neutral participant in a sports event, including, but not
256 limited to, umpires, referees, judges, linespersons,
257 scorekeepers, or timekeepers. This subparagraph does not apply
258 to any person employed by a district school board who serves as
259 a sports official as required by the employing school board or
260 who serves as a sports official as part of his or her
261 responsibilities during normal school hours.

262 (17)(a) "Employment," subject to the other provisions of
263 this chapter, means any service performed by an employee for the
264 person employing him or her.

265 (b) "Employment" includes:

266 1. Employment by the state and all political subdivisions
267 thereof and all public and quasi-public corporations therein,
268 including officers elected at the polls.



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269 2. Subject to s. 440.05, all private employments in which
270 four or more employees are employed by the same employer or,
271 with respect to the construction industry, all private
272 employment in which one or more employees are employed by the
273 same employer. In a private employment wherein the employer
274 employs employees through an employee leasing company, the
275 effective date of employment is the date the employee begins
276 performing work for the employer and not the date that the
277 employee appears on an employee list maintained by the leasing
278 company.

279 3. Volunteer firefighters responding to or assisting with
280 fire or medical emergencies whether or not the firefighters are
281 on duty.

282 (c) "Employment" does not include service performed by or
283 as:

284 1. Domestic servants in private homes.

285 2. Agricultural labor performed on a farm in the employ of
286 a bona fide farmer, or association of farmers, that employs 5 or
287 fewer regular employees and that employs fewer than 12 other
288 employees at one time for seasonal agricultural labor that is
289 completed in less than 30 days, provided such seasonal
290 employment does not exceed 45 days in the same calendar year.
291 The term "farm" includes stock, dairy, poultry, fruit, fur-
292 bearing animals, fish, and truck farms, ranches, nurseries, and
293 orchards. The term "agricultural labor" includes field foremen,
294 timekeepers, checkers, and other farm labor supervisory
295 personnel.

296 ~~3. Professional athletes, such as professional boxers,~~
297 ~~wrestlers, baseball, football, basketball, hockey, polo, tennis,~~



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298 ~~jai alai, and similar players, and motorsports teams competing~~
299 ~~in a motor racing event as defined in s. 549.08.~~

300 3.4. Labor under a sentence of a court to perform
301 community services as provided in s. 316.193.

302 4.5. State prisoners or county inmates, except those
303 performing services for private employers or those enumerated in
304 s. 948.03(8)(a).

305 (28) "Wages" means the money rate at which the service
306 rendered is recompensed under the contract of hiring in force at
307 the time of the injury and includes only the wages earned and
308 reported for federal income tax purposes on the job where the
309 employee is injured and any other concurrent employment reported
310 for federal income tax purposes ~~where he or she is also subject~~
311 ~~to workers' compensation coverage and benefits~~, together with
312 the reasonable value of housing furnished to the employee by the
313 employer which is the permanent year-round residence of the
314 employee, ~~and~~ gratuities to the extent reported to the employer
315 in writing as taxable income received in the course of
316 employment from others than the employer, and employer
317 contributions for health insurance for the employee and ~~or~~ the
318 employee's dependents. However, housing furnished to migrant
319 workers shall be included in wages unless provided after the
320 time of injury. In employment in which an employee receives
321 consideration for housing, the reasonable value of such housing
322 compensation shall be the actual cost to the employer or based
323 upon the Fair Market Rent Survey promulgated pursuant to s. 8 of
324 the Housing and Urban Development Act of 1974, whichever is
325 less. However, if employer contributions for housing or health
326 insurance are continued after the time of the injury, the



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327 contributions are not "wages" for the purpose of calculating an
328 employee's average weekly wage.

329 Section 2. Section 440.05, Florida Statutes, is amended to
330 read:

331 440.05 Election of exemption; revocation of election;
332 notice; certification.--

333 (1) An officer of a corporation may elect to be exempt
334 from this chapter by filing written notice of the election with
335 the department as provided in this section. An officer of a
336 corporation who makes such election is not considered an
337 employee under this chapter. Not more than three officers of a
338 corporation actively engaged in the construction industry may
339 elect to be exempt from this chapter by filing written notice
340 with the department. An exemption obtained by a corporate
341 officer of a corporation actively engaged in the construction
342 industry is not applicable with respect to a commercial building
343 project estimated to be valued at \$250,000 or more.

344 (2) A partner or sole proprietor may elect to be exempt
345 from this chapter by filing written notice of the election with
346 the department as provided in this section. A partner or sole
347 proprietor who makes such election is not considered an employee
348 under this chapter. Partners actively engaged in the
349 construction industry may not elect to have more than three
350 partners excluded from this chapter. An exemption obtained by a
351 partner or sole proprietor actively engaged in the construction
352 industry is not applicable with respect to a commercial building
353 project estimated to be valued at \$250,000 or more.

354 (3) A corporate officer, partner, or sole proprietor may
355 revoke an election to be exempt from this chapter by mailing



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356 notice of the exemption to the department in Tallahassee in
357 accordance with a form prescribed by the department.

358 (a) The department shall by rule prescribe forms and
359 procedures for filing an election of exemption, a revocation of
360 an election to be exempt, and a notice of coverage for employers
361 and for issuing certificates of the election of exemption. The
362 forms must be submitted to the department by each employer that
363 files for the election of exemption.

364 ~~(1) Each corporate officer who elects not to accept the~~
365 ~~provisions of this chapter or who, after electing such~~
366 ~~exemption, revokes that exemption shall mail to the department~~
367 ~~in Tallahassee notice to such effect in accordance with a form~~
368 ~~to be prescribed by the department.~~

369 ~~(2) Each sole proprietor or partner who elects to be~~
370 ~~included in the definition of "employee" or who, after such~~
371 ~~election, revokes that election must mail to the department in~~
372 ~~Tallahassee notice to such effect, in accordance with a form to~~
373 ~~be prescribed by the department.~~

374 ~~(3) Each sole proprietor, partner, or officer of a~~
375 ~~corporation who is actively engaged in the construction industry~~
376 ~~and who elects an exemption from this chapter or who, after~~
377 ~~electing such exemption, revokes that exemption, must mail a~~
378 ~~written notice to such effect to the department on a form~~
379 ~~prescribed by the department. The notice of election to be~~
380 ~~exempt from the provisions of this chapter must be notarized and~~
381 ~~under oath. The notice of election must clearly indicate the~~
382 ~~following: "Any person who, knowingly and with intent to injure,~~
383 ~~defraud, or deceive the department or any employer or employee,~~
384 ~~insurance company, or purposes program, files a notice of~~



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385 election to be exempt which contains any false or misleading
386 information commits a felony of the third degree."

387 (b) The notice of election to be exempt ~~which is submitted~~
388 ~~to the department by the sole proprietor, partner, or officer of~~
389 ~~a corporation~~ must list the name, federal tax identification
390 number, social security number, all certified or registered
391 licenses issued pursuant to chapter 489 held by the person
392 seeking the exemption, a copy of relevant documentation as to
393 employment status filed with the Internal Revenue Service as
394 specified by the department, a copy of the relevant occupational
395 license in the primary jurisdiction of the business, and, for
396 corporate officers and partners, the registration number of the
397 corporation or partnership filed with the Division of
398 Corporations of the Department of State. The notice of election
399 to be exempt must identify each sole proprietorship,
400 partnership, or corporation that employs the person electing the
401 exemption and must list the social security number or federal
402 tax identification number of each such employer and the
403 additional documentation required by this section. In addition,
404 the notice of election to be exempt must provide that the sole
405 proprietor, partner, or officer electing an exemption is not
406 entitled to benefits under this chapter, must provide that the
407 election does not exceed exemption limits for officers and
408 partnerships provided in s. 440.02, and must certify that any
409 employees of the sole proprietor, partner, or officer electing
410 an exemption are covered by workers' compensation insurance.
411 Upon receipt of the notice of the election to be exempt, receipt
412 of all application fees, and a determination by the department
413 that the notice meets the requirements of this subsection, the
414 department shall issue a certification of the election to the



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415 sole proprietor, partner, or officer, unless the department
416 determines that the information contained in the notice is
417 invalid. The department shall revoke a certificate of election
418 to be exempt from coverage upon a determination by the
419 department that the person does not meet the requirements for
420 exemption or that the information contained in the notice of
421 election to be exempt is invalid. The certificate of election
422 must list the names of the sole proprietorship, partnership, or
423 corporation listed in the request for exemption. A new
424 certificate of election must be obtained each time the person is
425 employed by a new sole proprietorship, partnership, or
426 corporation that is not listed on the certificate of election. A
427 copy of the certificate of election must be sent to each
428 workers' compensation carrier identified in the request for
429 exemption. Upon filing a notice of revocation of election, a
430 sole proprietor, partner, or officer who is a subcontractor must
431 notify her or his contractor. Upon revocation of a certificate
432 of election of exemption by the department, the department shall
433 notify the workers' compensation carriers identified in the
434 request for exemption.

435 ~~(4) The notice of election to be exempt from the~~
436 ~~provisions of this chapter must contain a notice that clearly~~
437 ~~states in substance the following: "Any person who, knowingly~~
438 ~~and with intent to injure, defraud, or deceive the department or~~
439 ~~any employer or employee, insurance company, or purposes~~
440 ~~program, files a notice of election to be exempt containing any~~
441 ~~false or misleading information is guilty of a felony of the~~
442 ~~third degree." Each person filing a notice of election to be~~
443 ~~exempt shall personally sign the notice and attest that he or~~



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444 ~~she has reviewed, understands, and acknowledges the foregoing~~
445 ~~notice.~~

446 (4)~~(5)~~ A notice given under subsection (1) or~~,~~ subsection
447 ~~(2), or subsection (3)~~ shall become effective when issued by the
448 department or 30 days after an application for an exemption is
449 received by the department, whichever occurs first. However, if
450 an accident or occupational disease occurs less than 30 days
451 after the effective date of the insurance policy under which the
452 payment of compensation is secured or the date the employer
453 qualified as a self-insurer, such notice is effective as of
454 12:01 a.m. of the day following the date it is mailed to the
455 department in Tallahassee.

456 (5)~~(6)~~ A construction industry certificate of election to
457 be exempt which is issued in accordance with this section shall
458 be valid for 2 years after the effective date stated thereon.
459 Both the effective date and the expiration date must be listed
460 on the face of the certificate by the department. The
461 construction industry certificate must expire at midnight, 2
462 years from its issue date, as noted on the face of the exemption
463 certificate. Any person who has received from the division a
464 construction industry certificate of election to be exempt which
465 is in effect on December 31, 1998, shall file a new notice of
466 election to be exempt by the last day in his or her birth month
467 following December 1, 1998. A construction industry certificate
468 of election to be exempt may be revoked before its expiration by
469 the sole proprietor, partner, or officer for whom it was issued
470 or by the department for the reasons stated in this section. At
471 least 60 days prior to the expiration date of a construction
472 industry certificate of exemption issued after December 1, 1998,
473 the department shall send notice of the expiration date and an



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474 application for renewal to the certificateholder at the address
475 on the certificate.

476 (6)~~(7)~~ Any contractor responsible for compensation under
477 s. 440.10 may register in writing with the workers' compensation
478 carrier for any subcontractor and shall thereafter be entitled
479 to receive written notice from the carrier of any cancellation
480 or nonrenewal of the policy.

481 (7)~~(8)~~(a) The department must assess a fee of \$50 with
482 each request for a construction industry certificate of election
483 to be exempt or renewal of election to be exempt under this
484 section.

485 (b) The funds collected by the department shall be used to
486 administer this section, to audit the businesses that pay the
487 fee for compliance with any requirements of this chapter, and to
488 enforce compliance with the provisions of this chapter.

489 ~~(9) The department may by rule prescribe forms and
490 procedures for filing an election of exemption, revocation of
491 election to be exempt, and notice of election of coverage for
492 all employers and require specified forms to be submitted by all
493 employers in filing for the election of exemption. The
494 department may by rule prescribe forms and procedures for
495 issuing a certificate of the election of exemption.~~

496 (8)~~(10)~~ Each sole proprietor, partner, or officer of a
497 corporation who is actively engaged in the construction industry
498 and who elects an exemption from this chapter shall maintain
499 business records as specified by the division by rule, which
500 rules must include the provision that any corporation with
501 exempt officers and any partnership actively engaged in the
502 construction industry with exempt partners must maintain written



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503 statements of those exempted persons affirmatively acknowledging
504 each such individual's exempt status.

505 (9)~~(11)~~ Any sole proprietor or partner actively engaged in
506 the construction industry claiming an exemption under this
507 section shall maintain a copy of his or her federal income tax
508 records for each of the immediately previous 3 years in which he
509 or she claims an exemption. Such federal income tax records must
510 include a complete copy of the following for each year in which
511 an exemption is claimed:

512 (a) For sole proprietors, a copy of Federal Income Tax
513 Form 1040 and its accompanying Schedule C;

514 (b) For partners, a copy of the partner's Federal Income
515 Tax Schedule K-1 (Form 1065) and Federal Income Tax Form 1040 and
516 its accompanying Schedule E.

517
518 A sole proprietor or partner shall produce, upon request by the
519 division, a copy of those documents together with a statement by
520 the sole proprietor or partner that the tax records provided are
521 true and accurate copies of what the sole proprietor or partner
522 has filed with the federal Internal Revenue Service. The
523 statement must be signed under oath by the sole proprietor or
524 partner and must be notarized. The division shall issue a stop-
525 work order under s. 440.107(5) to any sole proprietor or partner
526 who fails or refuses to produce a copy of the tax records and
527 affidavit required under this paragraph to the division within 3
528 business days after the request is made.

529 (10)~~(12)~~ For those sole proprietors or partners that have
530 not been in business long enough to provide the information
531 required of an established business, the division shall require
532 such sole proprietor or partner to provide copies of the most



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533 recently filed Federal Income Tax Form 1040. The division shall
534 establish by rule such other criteria to show that the sole
535 proprietor or partner intends to engage in a legitimate
536 enterprise within the construction industry and is not otherwise
537 attempting to evade the requirements of this section. The
538 division shall establish by rule the form and format of
539 financial information required to be submitted by such
540 employers.

541 (11)~~(13)~~ Any corporate officer claiming an exemption under
542 this section must be listed on the records of this state's
543 Secretary of State, Division of Corporations, as a corporate
544 officer. If the person who claims an exemption as a corporate
545 officer is not so listed on the records of the Secretary of
546 State, the individual must provide to the division, upon request
547 by the division, a notarized affidavit stating that the
548 individual is a bona fide officer of the corporation and stating
549 the date his or her appointment or election as a corporate
550 officer became or will become effective. The statement must be
551 signed under oath by both the officer and the president or chief
552 operating officer of the corporation and must be notarized. The
553 division shall issue a stop-work order under s. 440.107(1) to
554 any corporation who employs a person who claims to be exempt as
555 a corporate officer but who fails or refuses to produce the
556 documents required under this subsection to the division within
557 3 business days after the request is made.

558 (12) Effective January 1, 2006, and notwithstanding any
559 other provision of this section or this chapter, an officer of a
560 corporation and a partner to a partnership of more than two
561 persons may not elect to be exempt from this chapter by filing
562 written notice of the election. An exemption filed before



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563 January 1, 2006, by an officer of a corporation or a partner to
 564 a partnership of more than two persons expires on January 1,
 565 2007, and is null and void.

566 Section 3. Subsection (1) of section 440.092, Florida
 567 Statutes, is amended to read:

568 440.092 Special requirements for compensability; deviation
 569 from employment; subsequent intervening accidents.--

570 (1) RECREATIONAL AND SOCIAL ACTIVITIES.--Recreational or
 571 social activities are not compensable unless such recreational
 572 or social activities are an expressly required incident of
 573 employment ~~and produce a substantial direct benefit to the~~
 574 ~~employer beyond improvement in employee health and morale that~~
 575 ~~is common to all kinds of recreation and social life.~~

576 Section 4. Paragraph (f) of subsection (1) of section
 577 440.10, Florida Statutes, is amended to read:

578 440.10 Liability for compensation.--

579 (1)

580 (f) If an employer fails to secure compensation as
 581 required by this chapter, the department shall ~~may~~ assess
 582 against the employer a penalty not to exceed \$5,000 for each
 583 employee of that employer who is classified by the employer as
 584 an independent contractor but who is found by the department to
 585 not meet the criteria for an independent contractor that are set
 586 forth in s. 440.02. The division shall adopt rules to administer
 587 the provisions of this paragraph.

588
 589 A sole proprietor, partner, or officer of a corporation who
 590 elects exemption from this chapter by filing a certificate of
 591 election under s. 440.05 may not recover benefits or
 592 compensation under this chapter. An independent contractor who



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593 provides the general contractor with both an affidavit stating
 594 that he or she meets the requirements of s. 440.02 and a
 595 certificate of exemption is not an employee under s. 440.02 and
 596 may not recover benefits under this chapter. For purposes of
 597 determining the appropriate premium for workers' compensation
 598 coverage, carriers may not consider any person who meets the
 599 requirements of this paragraph to be an employee.

600 Section 5. Subsection (4) of section 440.11, Florida
 601 Statutes, is amended to read:

602 440.11 Exclusiveness of liability.--

603 (4) Except as provided in ~~Notwithstanding the provisions~~
 604 ~~of s. 624.155, the liability of a carrier or a self-insured~~
 605 employer to an employee or to anyone entitled to bring suit in
 606 the name of the employee for acts related to the handling of a
 607 workers' compensation claim shall be as provided in this
 608 chapter, which ~~is shall be~~ exclusive and in place of all other
 609 liability.

610 Section 6. Paragraph (r) of subsection (1), subsection
 611 (2), paragraph (c) of subsection (4), and subsections (5), (7),
 612 (12), and (14) of section 440.13, Florida Statutes, are amended
 613 to read:

614 440.13 Medical services and supplies; penalty for
 615 violations; limitations.--

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

617 (r) "Physician" or "doctor" means a physician licensed
 618 under chapter 458, an osteopathic physician licensed under
 619 chapter 459, a chiropractic physician licensed under chapter
 620 460, a podiatric physician licensed under chapter 461, an
 621 optometrist licensed under chapter 463, a psychologist licensed
 622 under chapter 490 or chapter 491, an acupuncturist licensed



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623 under chapter 457, or a dentist licensed under chapter 466, each
 624 of whom the agency may require to be ~~must be~~ certified by the
 625 agency as a health care provider.

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

627 (a) Subject to the limitations specified elsewhere in this
 628 chapter, the employer shall furnish to the employee such
 629 medically necessary remedial treatment, care, and attendance for
 630 such period as the nature of the injury or the process of
 631 recovery may require, including medicines, medical supplies,
 632 durable medical equipment, orthoses, prostheses, and other
 633 medically necessary apparatus. Remedial treatment, care, and
 634 attendance, including work-hardening programs or pain-management
 635 programs accredited by the Commission on Accreditation of
 636 Rehabilitation Facilities or Joint Commission on the
 637 Accreditation of Health Organizations or pain-management
 638 programs affiliated with medical schools, shall be considered as
 639 covered treatment only when such care is given based on a
 640 referral by a physician as defined in this chapter. Each
 641 facility shall maintain outcome data, including work status at
 642 discharges, total program charges, total number of visits, and
 643 length of stay.

644 (b) An employer or carrier may allow an employee to select
 645 the medical providers who will furnish medically necessary
 646 treatment and care to the employee. The carrier must notify each
 647 employee of the right to select medical providers by certified
 648 mail. If an employee selects his or her medical providers, the
 649 employee is not entitled to an independent medical examination
 650 at the expense of the carrier as provided under subsection (5).
 651 If the carrier does not allow an employee to select medical
 652 providers, the employer or carrier is not entitled to an



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653 independent medical examination under subsection (5). The
654 ~~department shall utilize such data and report to the President~~
655 ~~of the Senate and the Speaker of the House of Representatives~~
656 ~~regarding the efficacy and cost-effectiveness of such program,~~
657 ~~no later than October 1, 1994. Medically necessary treatment,~~
658 ~~care, and attendance does not include chiropractic services in~~
659 ~~excess of 18 treatments or rendered 8 weeks beyond the date of~~
660 ~~the initial chiropractic treatment, whichever comes first,~~
661 ~~unless the carrier authorizes additional treatment or the~~
662 ~~employee is catastrophically injured.~~

663 (c)(b) The employer shall provide appropriate professional
664 or nonprofessional attendant care performed only at the
665 direction and control of a physician when such care is medically
666 necessary. The value of nonprofessional attendant care provided
667 by a family member must be determined as follows:

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

670 2. If the family member is employed and elects to leave
671 that employment to provide attendant or custodial care, the per-
672 hour value of that care equals the per-hour value of the family
673 member's former employment, not to exceed the per-hour value of
674 such care available in the community at large. ~~A family member~~
675 ~~or a combination of family members providing nonprofessional~~
676 ~~attendant care under this paragraph may not be compensated for~~
677 ~~more than a total of 12 hours per day.~~

678 (d)(e) If the employer fails to provide treatment or care
679 required by this section after request by the injured employee,
680 the employee may obtain such treatment at the expense of the
681 employer. The employee must make a specific written request for
682 the treatment or care being sought. The carrier must authorize



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683 the requested treatment or care within 14 days after receipt of
684 the written request. If the carrier fails, refuses, or neglects
685 to authorize treatment or care as required in this subsection,
686 it is presumed that the treatment or care requested by the
687 employee was medically necessary unless there is clear and
688 convincing evidence that the carrier's failure to authorize the
689 treatment or care was for reasons beyond its control or that the
690 treatment or care is contrary to the employee's health, safety,
691 or welfare. The timeframe for authorization provided in this
692 paragraph does not apply to a request for emergency treatment or
693 care., if the treatment is compensable and medically necessary.
694 ~~There must be a specific request for the treatment, and the~~
695 ~~employer or carrier must be given a reasonable time period~~
696 ~~within which to provide the treatment or care. However, the~~
697 ~~employee is not entitled to recover any amount personally~~
698 ~~expended for the treatment or service unless he or she has~~
699 ~~requested the employer to furnish that treatment or service and~~
700 ~~the employer has failed, refused, or neglected to do so within a~~
701 ~~reasonable time or unless the nature of the injury requires such~~
702 ~~treatment, nursing, and services and the employer or his or her~~
703 ~~superintendent or foreman, having knowledge of the injury, has~~
704 ~~neglected to provide the treatment or service.~~

705 (e)(d) If the employee selected his or her medical
706 provider, the carrier has the right to transfer the care of an
707 injured employee from the attending health care provider if an
708 independent medical examination determines that the employee is
709 not making appropriate progress in recuperation. An independent
710 medical examination that does not involve an actual physical
711 examination of the employee may not serve as the basis for a
712 transfer of care under this paragraph. If an employee challenges



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713 a transfer of care, the employee must show that the care prior
714 to the transfer was appropriate to his or her injuries and was
715 medically necessary and that he or she was making appropriate
716 progress in recuperation.

717 (f)~~(e)~~ Except in emergency situations and for treatment
718 rendered by a managed care arrangement, after any initial
719 examination and diagnosis by a physician providing remedial
720 treatment, care, and attendance, and before a proposed course of
721 medical treatment begins, each insurer shall review, in
722 accordance with the requirements of this chapter, the proposed
723 course of treatment, to determine whether such treatment would
724 be recognized as reasonably prudent. The review must be in
725 accordance with all applicable workers' compensation practice
726 parameters. The insurer must accept any such proposed course of
727 treatment unless the insurer notifies the physician of its
728 specific objections to the proposed course of treatment by the
729 close of the tenth business day after notification by the
730 physician, or a supervised designee of the physician, of the
731 proposed course of treatment.

732 (g)~~(f)~~ Upon the written request of the employee, the
733 carrier shall give the employee the opportunity for one change
734 of physician during the course of treatment for any one
735 accident. The employee shall be entitled to select another
736 physician from among not fewer than three carrier-authorized
737 physicians who are not professionally affiliated.

738 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
739 DEPARTMENT.--

740 (c) It is the policy for the administration of the
741 workers' compensation system that there be reasonable access to
742 medical information by all parties to facilitate the self-



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743 executing features of the law. Notwithstanding the limitations
744 in s. 456.057 and subject to the limitations in s. 381.004, upon
745 the request of the employer, the carrier, an authorized
746 qualified rehabilitation provider, or the attorney for the
747 employer or carrier, the medical records of an injured employee
748 must be furnished to those persons and the medical condition of
749 the injured employee must be discussed with those persons, if
750 the records and the discussions are restricted to conditions
751 relating to the workplace injury. Any such discussions may be
752 held before or after the filing of a claim, with 5 days' written
753 notice to the employee or the employee's legal representative,
754 without the knowledge, consent, or presence of any other party
755 or his or her agent or representative. A health care provider
756 who willfully refuses to provide medical records or to discuss
757 the medical condition of the injured employee, after a
758 reasonable request is made for such information pursuant to this
759 subsection, shall be subject by the agency to one or more of the
760 penalties set forth in paragraph (8)(b).

761 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

762 (a) Except as provided in paragraph (e), in any dispute
763 concerning overutilization, medical benefits, compensability, or
764 disability under this chapter, the carrier or the employee may,
765 at the expense of the carrier, select an independent medical
766 examiner. The examiner may be a health care provider treating or
767 providing other care to the employee. An independent medical
768 examiner may not render an opinion outside his or her area of
769 expertise, as demonstrated by licensure and applicable practice
770 parameters.



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

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

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

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

781 4. The parties agree to an alternate examiner.

782

783 Any party may request, or a judge of compensation claims may
784 require, designation of an agency medical advisor as an
785 independent medical examiner. The opinion of the advisors acting
786 as examiners shall not be afforded the presumption set forth in
787 paragraph (9)(c).

788 (c) The carrier shall ~~may, at its election,~~ contact the
789 employee or the employee's legal representative ~~claimant~~
790 ~~directly~~ to schedule a reasonable time for an independent
791 medical examination. The carrier must confirm the scheduling
792 agreement in writing within 5 days and notify the employee and
793 the employee's legal representative ~~claimant's counsel,~~ if any,
794 at least 7 days before the date upon which the independent
795 medical examination is scheduled to occur. ~~An attorney~~
796 ~~representing a claimant is not authorized to schedule~~
797 ~~independent medical evaluations under this subsection.~~

798 (d) If the employee fails to appear for the independent
799 medical examination without good cause and fails to advise the
800 physician at least 24 hours before the scheduled date for the



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801 examination that he or she cannot appear, the employee is barred
802 from recovering compensation for any period during which he or
803 she has refused to submit to such examination. Further, the
804 employee shall reimburse the carrier 50 percent of the
805 physician's cancellation or no-show fee unless the carrier that
806 schedules the examination fails to timely provide to the
807 employee a written confirmation of the date of the examination
808 pursuant to paragraph (c) which includes an explanation of why
809 he or she failed to appear. The employee may appeal to a judge
810 of compensation claims for reimbursement when the carrier
811 withholds payment in excess of the authority granted by this
812 section.

813 (e) If the carrier allows an employee to select his or her
814 medical providers, the employee is not entitled to an
815 independent medical examination at the expense of the employer
816 or carrier. If the carrier does not allow the employee to select
817 medical providers, the carrier is not entitled to an independent
818 medical examination under this section. ~~No medical opinion other~~
819 ~~than the opinion of a medical advisor appointed by the judge of~~
820 ~~compensation claims or agency, an independent medical examiner,~~
821 ~~or an authorized treating provider is admissible in proceedings~~
822 ~~before the judges of compensation claims.~~

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

827 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

828 (a) Any health care provider, ~~carrier, or employer~~ who
829 elects to contest the disallowance or adjustment of payment by a
830 carrier under subsection (6) may file a petition for benefits in



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831 accordance with s. 440.192 and proceed in the same manner as an
832 employee must, within 30 days after receipt of notice of
833 disallowance or adjustment of payment, petition the agency to
834 resolve the dispute. If the medical provider prevails in
835 contesting a disallowance or adjustment of payment, the provider
836 is entitled to recover taxable costs and attorney's fees as
837 provided in s. 440.34. The petitioner must serve a copy of the
838 petition on the carrier and on all affected parties by certified
839 mail. The petition must be accompanied by all documents and
840 records that support the allegations contained in the petition.
841 Failure of a petitioner to submit such documentation to the
842 agency results in dismissal of the petition.

843 ~~(b) The carrier must submit to the agency within 10 days~~
844 ~~after receipt of the petition all documentation substantiating~~
845 ~~the carrier's disallowance or adjustment. Failure of the carrier~~
846 ~~to submit the requested documentation to the agency within 10~~
847 ~~days constitutes a waiver of all objections to the petition.~~

848 ~~(c) Within 60 days after receipt of all documentation, the~~
849 ~~agency must provide to the petitioner, the carrier, and the~~
850 ~~affected parties a written determination of whether the carrier~~
851 ~~properly adjusted or disallowed payment. The agency must be~~
852 ~~guided by standards and policies set forth in this chapter,~~
853 ~~including all applicable reimbursement schedules, in rendering~~
854 ~~its determination.~~

855 ~~(d) If the agency finds an improper disallowance or~~
856 ~~improper adjustment of payment by an insurer, the insurer shall~~
857 ~~reimburse the health care provider, facility, insurer, or~~
858 ~~employer within 30 days, subject to the penalties provided in~~
859 ~~this subsection.~~



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860 ~~(c) The agency shall adopt rules to carry out this~~
861 ~~subsection. The rules may include provisions for consolidating~~
862 ~~petitions filed by a petitioner and expanding the timetable for~~
863 ~~rendering a determination upon a consolidated petition.~~

864 (b)(f) Any carrier that engages in a pattern or practice
865 of arbitrarily or unreasonably disallowing or reducing payments
866 to health care providers may be subject to an administrative
867 fine assessed by the agency in an amount not to exceed \$5,000
868 for any single improper disallowance or reduction. ~~one or more~~
869 of the following penalties imposed by the agency:

870 ~~1. Repayment of the appropriate amount to the health care~~
871 ~~provider.~~

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

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

877 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
878 REIMBURSEMENT ALLOWANCES.--

879 (a) A three-member panel is created, consisting of the
880 Insurance Commissioner, or the Insurance Commissioner's
881 designee, and two members to be appointed by the Governor,
882 subject to confirmation by the Senate, one member who, on
883 account of present or previous vocation, employment, or
884 affiliation, shall be classified as a representative of
885 employers, the other member who, on account of previous
886 vocation, employment, or affiliation, shall be classified as a
887 representative of employees. The panel shall determine statewide
888 schedules of maximum reimbursement allowances for medically
889 necessary treatment, care, and attendance provided by



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890 physicians, hospitals, ambulatory surgical centers, work-
891 hardening programs, pain programs, and durable medical
892 equipment. The reimbursement for medical services furnished
893 under this chapter may not be less than 100 percent of the
894 applicable reimbursement allowance, as determined in accordance
895 with the current procedural terminology codes of the American
896 Medical Association, and as adopted and updated annually by the
897 Centers for Medicare and Medicaid Services. ~~The maximum~~
898 ~~reimbursement allowances for inpatient hospital care shall be~~
899 ~~based on a schedule of per diem rates, to be approved by the~~
900 ~~three-member panel no later than March 1, 1994, to be used in~~
901 ~~conjunction with a precertification manual as determined by the~~
902 ~~agency. All compensable charges for hospital outpatient care~~
903 ~~shall be reimbursed at 75 percent of usual and customary~~
904 ~~charges. Until the three-member panel approves a schedule of per~~
905 ~~diem rates for inpatient hospital care and it becomes effective,~~
906 ~~all compensable charges for hospital inpatient care must be~~
907 ~~reimbursed at 75 percent of their usual and customary charges.~~
908 Annually, the three-member panel shall adopt schedules of
909 maximum reimbursement allowances for physicians, hospital
910 inpatient care, hospital outpatient care, ambulatory surgical
911 centers, work-hardening programs, and pain programs. ~~However,~~
912 The maximum percentage of increase in the individual
913 reimbursement allowance may not exceed the percentage of annual
914 increase, as determined by the Centers for Medicare and Medicaid
915 Services, in the Consumer Price Index for the previous year. ~~An~~
916 ~~individual physician, hospital, ambulatory surgical center, pain~~
917 ~~program, or work-hardening program shall be reimbursed either~~
918 ~~the usual and customary charge for treatment, care, and~~
919 ~~attendance, the agreed-upon contract price, or the maximum~~



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920 ~~reimbursement allowance in the appropriate schedule, whichever~~
 921 ~~is less.~~

922 (b) As to reimbursement for a prescription medication, the
 923 reimbursement amount for a prescription shall be the average
 924 wholesale price times 1.2 plus \$4.18 for the dispensing fee,
 925 except where the carrier has contracted for a lower amount. Fees
 926 for pharmaceuticals and pharmaceutical services shall be
 927 reimbursable at the applicable fee schedule amount. Where the
 928 employer or carrier has contracted for such services and the
 929 employee elects to obtain them through a provider not a party to
 930 the contract, the carrier shall reimburse at the schedule,
 931 negotiated, or contract price, whichever is lower.

932 (c) Reimbursement for all fees and other charges for such
 933 treatment, care, and attendance, including treatment, care, and
 934 attendance provided by any hospital or other health care
 935 provider, ambulatory surgical center, work-hardening program, or
 936 pain program, for which the Centers for Medicare and Medicaid
 937 Services do not provide a maximum rate of reimbursement must not
 938 exceed the amounts provided by the uniform schedule of maximum
 939 reimbursement allowances as determined by the panel or as
 940 otherwise provided in this section. ~~This subsection also applies~~
 941 ~~to independent medical examinations performed by health care~~
 942 ~~providers under this chapter. Until~~ The three-member panel shall
 943 approve ~~approves~~ a uniform schedule of maximum reimbursement
 944 allowances ~~and it becomes effective, all compensable charges~~ for
 945 treatment, care, and attendance provided by physicians,
 946 ambulatory surgical centers, work-hardening programs, or pain
 947 programs for which the Centers for Medicare and Medicaid
 948 Services do not provide a maximum rate of reimbursement ~~shall be~~
 949 ~~reimbursed at the lowest maximum reimbursement allowance across~~



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950 ~~all 1992 schedules of maximum reimbursement allowances for the~~
951 ~~services provided regardless of the place of service.~~ In
952 determining the uniform schedule, the panel shall first approve
953 the data which it finds representative of prevailing charges in
954 the state for similar treatment, care, and attendance of injured
955 persons. Each health care provider, health care facility,
956 ambulatory surgical center, work-hardening program, or pain
957 program receiving workers' compensation payments shall maintain
958 records verifying their usual charges. In establishing the
959 uniform schedule of maximum reimbursement allowances, the panel
960 must consider:

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

964 2. The impact upon cost to employers for providing a level
965 of reimbursement for treatment, care, and attendance which will
966 ensure the availability of treatment, care, and attendance
967 required by injured workers;

968 3. The financial impact of the reimbursement allowances
969 upon health care providers and health care facilities, including
970 trauma centers as defined in s. 395.4001, and its effect upon
971 their ability to make available to injured workers such
972 medically necessary remedial treatment, care, and attendance.
973 The uniform schedule of maximum reimbursement allowances must be
974 reasonable, must promote health care cost containment and
975 efficiency with respect to the workers' compensation health care
976 delivery system, and must be sufficient to ensure availability
977 of such medically necessary remedial treatment, care, and
978 attendance to injured workers; and



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979 4. The most recent average maximum allowable rate of
980 increase for hospitals determined by the Health Care Board under
981 chapter 408.

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

984 1. Take testimony, receive records, and collect data to
985 evaluate the adequacy of the workers' compensation fee schedule,
986 nationally recognized fee schedules and alternative methods of
987 reimbursement to certified health care providers and health care
988 facilities for inpatient and outpatient treatment and care.

989 2. Survey certified health care providers and health care
990 facilities to determine the availability and accessibility of
991 workers' compensation health care delivery systems for injured
992 workers.

993 3. Survey carriers to determine the estimated impact on
994 carrier costs and workers' compensation premium rates by
995 implementing changes to the carrier reimbursement schedule or
996 implementing alternative reimbursement methods.

997 4. Submit recommendations on or before January 1, 2003,
998 and biennially thereafter, to the President of the Senate and
999 the Speaker of the House of Representatives on methods to
1000 improve the workers' compensation health care delivery system.

1001
1002 The division shall provide data to the panel, including but not
1003 limited to, utilization trends in the workers' compensation
1004 health care delivery system. The division shall provide the
1005 panel with an annual report regarding the resolution of medical
1006 reimbursement disputes and any actions pursuant to s. 440.13(8).
1007 The division shall provide administrative support and service to
1008 the panel to the extent requested by the panel.



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1009 (14) PAYMENT OF MEDICAL FEES.--

1010 (a) Except for emergency care treatment, fees for medical
 1011 services are payable only to a health care provider certified
 1012 and authorized to render remedial treatment, care, or attendance
 1013 under this chapter. A health care provider may not collect or
 1014 receive a fee from an injured employee within this state, except
 1015 as otherwise provided by this chapter. If an authorized medical
 1016 provider attempts to recover from the employee payment of
 1017 medical services authorized and provided under this chapter, the
 1018 provider forfeits the right to receive reimbursement for those
 1019 medical services. ~~Such providers have recourse against the~~
 1020 ~~employer or carrier for payment for services rendered in~~
 1021 ~~accordance with this chapter.~~

1022 (b) A health care provider that seeks payment of fees for
 1023 medical services may file a petition for benefits in accordance
 1024 with s. 440.192 and proceed in the same manner as an employee.
 1025 If the health care provider prevails in obtaining payment for
 1026 medical services, the provider is entitled to recover taxable
 1027 costs and attorney's fees as provided in s. 440.34.

1028 ~~(c)(b)~~ Fees charged for remedial treatment, care, and
 1029 attendance, except for independent medical examinations, may not
 1030 exceed the applicable fee schedules adopted under this chapter.

1031 ~~(c) Notwithstanding any other provision of this chapter,~~
 1032 ~~following overall maximum medical improvement from an injury~~
 1033 ~~compensable under this chapter, the employee is obligated to pay~~
 1034 ~~a copayment of \$10 per visit for medical services. The copayment~~
 1035 ~~shall not apply to emergency care provided to the employee.~~

1036 Section 7. Subsections (10), (16), and (17) of section
 1037 440.134, Florida Statutes, are amended to read:

1038 440.134 Workers' compensation managed care arrangement.--



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1039 (10) Written procedures and methods for the management of
 1040 an injured worker's medical care by a medical care coordinator
 1041 including:

1042 (a) The mechanism for assuring that covered employees
 1043 receive all initial covered services from a primary care
 1044 provider participating in the provider network, except for
 1045 emergency care.

1046 (b) The mechanism for assuring that all continuing covered
 1047 services be received from the same primary care provider
 1048 participating in the provider network that provided the initial
 1049 covered services, except when services from another provider are
 1050 authorized by the medical care coordinator pursuant to paragraph
 1051 (d).

1052 (c) The policies and procedures for allowing an employee
 1053 one change to another provider as provided in s. 440.13(2)(g)
 1054 ~~within the same specialty and provider network as the authorized~~
 1055 ~~treating physician during the course of treatment for a work-~~
 1056 ~~related injury, if a request is made to the medical care~~
 1057 ~~coordinator by the employee; and requiring that special~~
 1058 ~~provision be made for more than one such referral through the~~
 1059 ~~arrangement's grievance procedures.~~

1060 (d) The process for assuring that all referrals authorized
 1061 by a medical care coordinator are made to the participating
 1062 network providers, unless medically necessary treatment, care,
 1063 and attendance are not available and accessible to the injured
 1064 worker in the provider network.

1065 (16) When a carrier enters into a managed care arrangement
 1066 pursuant to this section, the medical benefits available to
 1067 employees must, at a minimum, equal those afforded employees
 1068 under s. 440.13 ~~employees who are covered by the provisions of~~



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1069 ~~such arrangement shall be deemed to have received all the~~
1070 ~~benefits to which they are entitled pursuant to s. 440.13(2)(a)~~
1071 ~~and (b). In addition, the employer shall be deemed to have~~
1072 ~~complied completely with the requirements of such provisions.~~
1073 The provisions governing managed care arrangements shall govern
1074 exclusively unless those arrangements are contrary to s. 440.13
1075 ~~specifically stated otherwise in this section.~~

1076 (17) Notwithstanding any other provisions of this chapter,
1077 when a carrier provides medical care through a workers'
1078 compensation managed care arrangement, pursuant to this section,
1079 those workers who are subject to the arrangement must receive
1080 medical services for work-related injuries and diseases as
1081 prescribed in the contract, if provided the employer and carrier
1082 have provided notice to the employees of the arrangement in a
1083 manner approved by the agency. Treatment received outside the
1084 workers' compensation managed care arrangement is not
1085 compensable unless authorized by the carrier prior to the
1086 treatment date, except as provided under s. 440.13(2)(d).

1087 Section 8. Subsection (3) of section 440.15, Florida
1088 Statutes, is amended to read:

1089 440.15 Compensation for disability.--Compensation for
1090 disability shall be paid to the employee, subject to the limits
1091 provided in s. 440.12(2), as follows:

1092 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

1093 (a) Impairment benefits.--

1094 1. Once the employee has reached the date of maximum
1095 medical improvement, impairment benefits are due and payable
1096 within 20 days after the carrier has knowledge of the impairment
1097 unless the employee is entitled to supplemental benefits under
1098 paragraph (b).



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1099 2. The three-member panel, in cooperation with the
1100 department, shall establish and use a uniform permanent
1101 impairment rating schedule. This schedule must be based on
1102 medically or scientifically demonstrable findings as well as the
1103 systems and criteria set forth in the American Medical
1104 Association's Guides to the Evaluation of Permanent Impairment;
1105 the Snellen Charts, published by American Medical Association
1106 Committee for Eye Injuries; and the Minnesota Department of
1107 Labor and Industry Disability Schedules. The schedule should be
1108 based upon objective findings. The schedule shall be more
1109 comprehensive than the AMA Guides to the Evaluation of Permanent
1110 Impairment and shall expand the areas already addressed and
1111 address additional areas not currently contained in the guides.
1112 On August 1, 1979, and pending the adoption, by rule, of a
1113 permanent schedule, Guides to the Evaluation of Permanent
1114 Impairment, copyright 1977, 1971, 1988, by the American Medical
1115 Association, shall be the temporary schedule and shall be used
1116 for the purposes hereof. For injuries after July 1, 1990,
1117 pending the adoption by rule of a uniform disability rating
1118 agency schedule, the Minnesota Department of Labor and Industry
1119 Disability Schedule shall be used unless that schedule does not
1120 address an injury. In such case, the Guides to the Evaluation of
1121 Permanent Impairment by the American Medical Association shall
1122 be used. Determination of permanent impairment under this
1123 schedule must be made by a physician licensed under chapter 458,
1124 a doctor of osteopathic medicine licensed under chapters 458 and
1125 459, a chiropractic physician licensed under chapter 460, a
1126 podiatric physician licensed under chapter 461, an optometrist
1127 licensed under chapter 463, or a dentist licensed under chapter
1128 466, as appropriate considering the nature of the injury. No



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1129 other persons are authorized to render opinions regarding the
1130 existence of or the extent of permanent impairment.

1131 3. All impairment income benefits shall be based on an
1132 impairment rating using the impairment schedule referred to in
1133 subparagraph 2. Impairment income benefits are paid weekly at
1134 the rate of two-thirds ~~50 percent~~ of the employee's average
1135 weekly temporary total disability benefit not to exceed the
1136 maximum weekly benefit under s. 440.12. An employee's
1137 entitlement to impairment income benefits begins the day after
1138 the employee reaches maximum medical improvement or the
1139 expiration of temporary benefits, whichever occurs earlier, and
1140 continues until the earlier of:

1141 a. The expiration of a period computed at the rate of 3
1142 weeks for each percentage point of impairment; or

1143 b. The death of the employee.

1144 4. After the employee has been certified by a doctor as
1145 having reached maximum medical improvement or 6 weeks before the
1146 expiration of temporary benefits, whichever occurs earlier, the
1147 certifying doctor shall evaluate the condition of the employee
1148 and assign an impairment rating, using the impairment schedule
1149 referred to in subparagraph 2. Compensation is not payable for
1150 the mental, psychological, or emotional injury arising out of
1151 depression from being out of work. If the certification and
1152 evaluation are performed by a doctor other than the employee's
1153 treating doctor, the certification and evaluation must be
1154 submitted to the treating doctor, and the treating doctor must
1155 indicate agreement or disagreement with the certification and
1156 evaluation. The certifying doctor shall issue a written report
1157 to the department, the employee, and the carrier certifying that
1158 maximum medical improvement has been reached, stating the



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1159 impairment rating, and providing any other information required
 1160 by the department by rule. If the employee has not been
 1161 certified as having reached maximum medical improvement before
 1162 the expiration of 102 weeks after the date temporary total
 1163 disability benefits begin to accrue, the carrier shall notify
 1164 the treating doctor of the requirements of this section.

1165 5. The carrier shall pay the employee impairment income
 1166 benefits for a period based on the impairment rating.

1167 6. The department may by rule specify forms and procedures
 1168 governing the method of payment of wage loss and impairment
 1169 benefits for dates of accidents before January 1, 1994, and for
 1170 dates of accidents on or after January 1, 1994.

1171 (b) Supplemental benefits.--

1172 1. All supplemental benefits must be paid in accordance
 1173 with this subsection. An employee is entitled to supplemental
 1174 benefits as provided in this paragraph as of the expiration of
 1175 the impairment period, if:

1176 a. The employee has an impairment rating from the
 1177 compensable injury of 10 ~~20~~ percent or more as determined
 1178 pursuant to this chapter;

1179 b. The employee has not returned to work or has returned
 1180 to work earning less than 80 percent of the employee's average
 1181 weekly wage as a direct result of the employee's impairment; and

1182 c. The employee has in good faith attempted to obtain
 1183 employment commensurate with the employee's ability to work.

1184 2. An employee who is entitled to receive supplemental
 1185 benefits under this paragraph is not entitled to receive
 1186 impairment benefits under paragraph (a).

1187 ~~3.2.~~ If an employee is not entitled to supplemental
 1188 benefits at the time of payment of the final weekly impairment



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1189 income benefit because the employee is earning at least 80
1190 percent of the employee's average weekly wage, the employee may
1191 become entitled to supplemental benefits at any time within 1
1192 year after the impairment income benefit period ends if:

1193 a. The employee earns wages that are less than 80 percent
1194 of the employee's average weekly wage for a period of at least
1195 90 days;

1196 b. The employee meets the other requirements of
1197 subparagraph 1.; and

1198 c. The employee's decrease in earnings is a direct result
1199 of the employee's impairment from the compensable injury.

1200 ~~4.3.~~ If an employee earns wages that are at least 80
1201 percent of the employee's average weekly wage for a period of at
1202 least 90 days during which the employee is receiving
1203 supplemental benefits, the employee ceases to be entitled to
1204 supplemental benefits for the filing period. Supplemental
1205 benefits that have been terminated shall be reinstated when the
1206 employee satisfies the conditions enumerated in subparagraph 2.
1207 and files the statement required under subparagraph ~~5.~~ 4.
1208 Notwithstanding any other provision, if an employee is not
1209 entitled to supplemental benefits for 12 consecutive months, the
1210 employee ceases to be entitled to any additional income benefits
1211 for the compensable injury. If the employee is discharged within
1212 12 months after losing entitlement under this subsection,
1213 benefits may be reinstated if the employee was discharged at
1214 that time with the intent to deprive the employee of
1215 supplemental benefits.

1216 ~~5.4.~~ After the initial determination of supplemental
1217 benefits, the employee must file a statement with the carrier
1218 stating that the employee has earned less than 80 percent of the



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1219 employee's average weekly wage as a direct result of the
1220 employee's impairment, stating the amount of wages the employee
1221 earned in the filing period, and stating that the employee has
1222 in good faith sought employment commensurate with the employee's
1223 ability to work. The statement must be filed quarterly on a form
1224 and in the manner prescribed by the department. The department
1225 may modify the filing period as appropriate to an individual
1226 case. Failure to file a statement relieves the carrier of
1227 liability for supplemental benefits for the period during which
1228 a statement is not filed.

1229 ~~6.5-~~ The carrier shall begin payment of supplemental
1230 benefits not later than the seventh day after the expiration
1231 date of the impairment income benefit period and shall continue
1232 to timely pay those benefits. The carrier may request a
1233 mediation conference for the purpose of contesting the
1234 employee's entitlement to or the amount of supplemental income
1235 benefits.

1236 ~~7.6-~~ Supplemental benefits are calculated quarterly and
1237 paid monthly. For purposes of calculating supplemental benefits,
1238 80 percent of the employee's average weekly wage and the average
1239 wages the employee has earned per week are compared quarterly.
1240 For purposes of this paragraph, if the employee is offered a
1241 bona fide position of employment that the employee is capable of
1242 performing, given the physical condition of the employee and the
1243 geographic accessibility of the position, the employee's weekly
1244 wages are considered equivalent to the weekly wages for the
1245 position offered to the employee.

1246 ~~8.7-~~ Supplemental benefits are payable at the rate of 80
1247 percent of the difference between 80 percent of the employee's
1248 average weekly wage determined pursuant to s. 440.14 and the



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1249 weekly wages the employee has earned during the reporting
 1250 period, not to exceed the maximum weekly income benefit under s.
 1251 440.12.

1252 ~~9.8-~~ The department may by rule define terms that are
 1253 necessary for the administration of this section and forms and
 1254 procedures governing the method of payment of supplemental
 1255 benefits for dates of accidents before January 1, 1994, and for
 1256 dates of accidents on or after January 1, 1994.

1257 (c) Duration of temporary impairment and supplemental
 1258 income benefits.--The employee's eligibility for temporary
 1259 benefits, impairment income benefits, and supplemental benefits
 1260 terminates on the expiration of 401 weeks after the date of
 1261 injury.

1262 Section 9. Subsections (1) and (7) of section 440.16,
 1263 Florida Statutes, are amended to read:

1264 440.16 Compensation for death.--

1265 (1) If death results from the accident within 1 year
 1266 thereafter or follows continuous disability and results from the
 1267 accident within 5 years thereafter, the employer shall pay:

1268 (a) Within 14 days after receiving the bill, actual
 1269 funeral expenses not to exceed \$10,000 ~~\$5,000~~.

1270 (b) Compensation, in addition to the above, in the
 1271 following percentages of the average weekly wages to the
 1272 following persons entitled thereto on account of dependency upon
 1273 the deceased, and in the following order of preference, subject
 1274 to the limitation provided in subparagraph 2., but such
 1275 compensation shall be subject to the limits provided in s.
 1276 440.12(2), shall not exceed \$250,000 ~~\$100,000~~, and may be less
 1277 than, but shall not exceed, for all dependents or persons
 1278 entitled to compensation, 66 2/3 percent of the average wage:



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1279 1. To the spouse, if there is no child, 50 percent of the
1280 average weekly wage, such compensation to cease upon the
1281 spouse's death.

1282 2. To the spouse, if there is a child or children, the
1283 compensation payable under subparagraph 1. and, in addition, 16
1284 2/3 percent on account of the child or children. However, when
1285 the deceased is survived by a spouse and also a child or
1286 children, whether such child or children are the product of the
1287 union existing at the time of death or of a former marriage or
1288 marriages, the judge of compensation claims may provide for the
1289 payment of compensation in such manner as may appear to the
1290 judge of compensation claims just and proper and for the best
1291 interests of the respective parties and, in so doing, may
1292 provide for the entire compensation to be paid exclusively to
1293 the child or children; and, in the case of death of such spouse,
1294 33 1/3 percent for each child. However, upon the surviving
1295 spouse's remarriage, the spouse shall be entitled to a lump-sum
1296 payment equal to 26 weeks of compensation at the rate of 50
1297 percent of the average weekly wage as provided in s. 440.12(2),
1298 unless the \$250,000 ~~\$100,000~~ limit provided in this paragraph is
1299 exceeded, in which case the surviving spouse shall receive a
1300 lump-sum payment equal to the remaining available benefits in
1301 lieu of any further indemnity benefits. In no case shall a
1302 surviving spouse's acceptance of a lump-sum payment affect
1303 payment of death benefits to other dependents.

1304 3. To the child or children, if there is no spouse, 33 1/3
1305 percent for each child.

1306 4. To the parents, 25 percent to each, such compensation
1307 to be paid during the continuance of dependency.



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1308 5. To the brothers, sisters, and grandchildren, 15 percent
1309 for each brother, sister, or grandchild.

1310 (c) To the surviving spouse, payment of postsecondary
1311 student fees for instruction at any area technical center
1312 established under s. 1001.44 for up to 1,800 classroom hours or
1313 payment of student fees at any community college established
1314 under part III of chapter 1004 for up to 80 semester hours. The
1315 spouse of a deceased state employee shall be entitled to a full
1316 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
1317 lieu of the payment of such fees. The benefits provided for in
1318 this paragraph shall be in addition to other benefits provided
1319 for in this section and shall terminate 7 years after the death
1320 of the deceased employee, or when the total payment in eligible
1321 compensation under paragraph (b) has been received. To qualify
1322 for the educational benefit under this paragraph, the spouse
1323 shall be required to meet and maintain the regular admission
1324 requirements of, and be registered at, such area technical
1325 center or community college, and make satisfactory academic
1326 progress as defined by the educational institution in which the
1327 student is enrolled.

1328 (7) Compensation under this chapter to aliens not
1329 residents (or about to become nonresidents) of the United States
1330 or Canada shall be the same in amount as provided for residents,
1331 except that dependents in any foreign country shall be limited
1332 to surviving spouse and child or children, or if there be no
1333 surviving spouse or child or children, to surviving father or
1334 mother whom the employee has supported, either wholly or in
1335 part, for the period of 1 year prior to the date of the injury,
1336 and except that the judge of compensation claims may, at the
1337 option of the judge of compensation claims, or upon the



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1338 application of the insurance carrier, commute all future
 1339 installments of compensation to be paid to such aliens by paying
 1340 or causing to be paid to them one-half of the commuted amount of
 1341 such future installments of compensation as determined by the
 1342 judge of compensation claims, and provided further that
 1343 compensation to dependents referred to in this subsection shall
 1344 in no case exceed \$100,000 ~~\$50,000~~.

1345 Section 10. Subsection (9) of section 440.185, Florida
 1346 Statutes, is amended to read:

1347 440.185 Notice of injury or death; reports; penalties for
 1348 violations.--

1349 (9) Any employer or carrier who fails or refuses to timely
 1350 send any form, report, or notice required by this section shall
 1351 be subject to a civil penalty not to exceed \$500 for each such
 1352 failure or refusal. If an ~~However, any~~ employer ~~who~~ fails to
 1353 notify the carrier of the injury on the prescribed form or by
 1354 letter within the 7 days required in subsection (2), the
 1355 department shall impose a ~~shall be liable for the~~ civil penalty
 1356 of \$500 per incident, which shall be paid by the employer and
 1357 not the carrier. Failure by the employer to meet its
 1358 obligations under subsection (2) does ~~shall~~ not relieve the
 1359 carrier from liability for the civil penalty if it fails to
 1360 comply with subsections (4) and (5).

1361 Section 11. Subsection (2) of section 440.19, Florida
 1362 Statutes, is amended to read:

1363 440.19 Time bars to filing petitions for benefits.--

1364 (2) Payment of any indemnity benefit or the furnishing of
 1365 remedial treatment, care, or attendance pursuant to either a
 1366 notice of injury or a petition for benefits shall toll the
 1367 limitations period set forth above for 2 years following ~~1 year~~



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1368 ~~from~~ the date of such payment. This tolling period does not
1369 apply to the issues of compensability, date of maximum medical
1370 improvement, or permanent impairment.

1371 Section 12. Paragraph (c) of subsection (11) of section
1372 440.20, Florida Statutes, is amended to read:

1373 440.20 Time for payment of compensation; penalties for
1374 late payment.--

1375 (11)

1376 (c)1. Notwithstanding s. 440.21(2), when a claimant is
1377 represented by counsel, the claimant may waive all rights to any
1378 and all benefits under this chapter by entering into a
1379 settlement agreement releasing the employer and the carrier from
1380 liability for workers' compensation benefits in exchange for a
1381 lump-sum payment to the claimant. The settlement agreement
1382 requires approval by the judge of compensation claims only as to
1383 the attorney's fees paid to the claimant's attorney by the
1384 claimant. The parties need not submit any information or
1385 documentation in support of the settlement, except as needed to
1386 justify the amount of the attorney's fees. Neither the employer
1387 nor the carrier is responsible for any attorney's fees relating
1388 to the settlement and release of claims under this section.
1389 Payment of the lump-sum settlement amount must be made within 14
1390 days after the date the judge of compensation claims mails the
1391 order approving the attorney's fees. Any order entered by a
1392 judge of compensation claims approving the attorney's fees as
1393 set out in the settlement under this subsection is not
1394 considered to be an award and is not subject to modification or
1395 review. The judge of compensation claims shall report these
1396 settlements to the Deputy Chief Judge in accordance with the
1397 requirements set forth in paragraphs (a) and (b). Settlements



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1398 entered into under this subsection are valid and apply to all
1399 dates of accident.

1400 2. The department shall adopt by rule a form for
1401 settlement agreements which must be used for any settlement
1402 agreement entered into under this paragraph. The settlement
1403 agreement form may not include any provision that resolves a
1404 claim of the employee which is separate and apart from the claim
1405 arising under this chapter.

1406 Section 13. Section 440.205, Florida Statutes, is amended
1407 to read:

1408 440.205 Coercion of employees.--

1409 (1) An ~~Ne~~ employer may not ~~shall~~ discharge, threaten to
1410 discharge, intimidate, or coerce any employee by reason of such
1411 employee's valid claim for compensation or attempt to claim
1412 compensation under the Workers' Compensation Law. An employer
1413 who violates this subsection is subject to civil suit for
1414 damages which may be filed in any circuit court of this state
1415 where the employer resides or transacts business. The immunity
1416 provided for employers under s. 440.11 does not extend to the
1417 conduct prohibited by this subsection.

1418 (2) A carrier may not engage in conduct prohibited under
1419 s. 440.105. A carrier who engages in conduct prohibited under s.
1420 440.105 is subject to civil suit for damages which may be filed
1421 in any circuit court of this state where the carrier resides or
1422 transacts business. The immunity provided for carriers under s.
1423 440.11 does not extend to conduct prohibited under s. 440.105.

1424 Section 14. Subsections (1) and (2) and paragraph (f) of
1425 subsection (4) of section 440.25, Florida Statutes, are amended
1426 to read:

1427 440.25 Procedures for mediation and hearings.--



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1428 (1) Except as otherwise provided in subsection (2), within
1429 90 days after a petition for benefits is filed under s. 440.192,
1430 a mediation conference concerning such petition shall be held.
1431 Within 40 days after such petition is filed, the judge of
1432 compensation claims shall notify the interested parties by order
1433 that a mediation conference concerning such petition will be
1434 held unless the parties have notified the Office of the Judges
1435 of Compensation Claims that a mediation has been held. Such
1436 order must give the date by which the mediation conference must
1437 be held. Such order may be served personally upon the interested
1438 parties or may be sent to the interested parties by mail. The
1439 claimant or the adjuster of the employer or carrier residing or
1440 working outside the district where the mediation is to be held
1441 ~~may, at the mediator's discretion,~~ attend the mediation
1442 conference by telephone or, if agreed to by the parties, other
1443 electronic means. A continuance may be granted if the requesting
1444 party demonstrates to the judge of compensation claims that the
1445 reason for requesting the continuance arises from circumstances
1446 beyond the party's control. Any order granting a continuance
1447 must set forth the date of the rescheduled mediation conference.
1448 A mediation conference may not be used solely for the purpose of
1449 mediating attorney's fees.

1450 (2) Any party who participates in a mediation conference
1451 shall not be precluded from requesting a hearing following the
1452 mediation conference should both parties not agree to be bound
1453 by the results of the mediation conference. A mediation
1454 conference is required to be held unless this requirement is
1455 waived by the Deputy Chief Judge. However, a mediation
1456 conference is not required if the petition is for reimbursement
1457 of mileage expenses for medical purposes, payment of medical



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1458 benefits valued on the face of the petition at less than \$1,000,
1459 or payment of penalties or interest on indemnity benefits. No
1460 later than 3 days prior to the mediation conference, all parties
1461 must submit any applicable motions, including, but not limited
1462 to, a motion to waive the mediation conference, to the judge of
1463 compensation claims.

1464 (4)

1465 (f) Each judge of compensation claims shall ~~is required to~~
1466 submit a special report to the Deputy Chief Judge in each
1467 contested workers' compensation case in which the judge fails to
1468 issue an order within 30 days after the close of evidence in a
1469 proceeding to determine an issue pursuant to s. 440.20 or s.
1470 440.34 ~~case is not determined within 30 days of final hearing or~~
1471 ~~closure of the hearing record.~~ Said form shall be provided by
1472 the director of the Division of Administrative Hearings and
1473 shall contain the names of the judge of compensation claims and
1474 of the attorneys involved and a brief explanation by the judge
1475 of compensation claims as to the reason for such a delay in
1476 issuing a final order.

1477 Section 15. Subsection (3) of section 440.29, Florida
1478 Statutes, is amended to read:

1479 440.29 Procedure before the judge of compensation
1480 claims.--

1481 (3) The practice and procedure before the judges of
1482 compensation claims shall be governed by rules adopted by the
1483 Supreme Court, ~~except to the extent that such rules conflict~~
1484 ~~with the provisions of this chapter.~~

1485 Section 16. Paragraphs (b) and (c) of subsection (2) and
1486 subsection (4) of section 440.45, Florida Statutes, are amended
1487 to read:



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1488 440.45 Office of the Judges of Compensation Claims.--

1489 (2)

1490 (b) Except as provided in paragraph (c), the Governor
 1491 shall appoint a judge of compensation claims from a list of
 1492 three persons nominated by a statewide nominating commission.
 1493 The statewide nominating commission shall be composed of the
 1494 following:

1495 1. Five members, at least one of whom must be a member of
 1496 a minority group as defined in s. 288.703(3), two of whom must
 1497 be board certified in workers' compensation law by The Florida
 1498 Bar and represent employers and carriers exclusively, and two of
 1499 whom must be board certified in workers' compensation law by The
 1500 Florida Bar and represent employees exclusively, one of each who
 1501 resides in each of the territorial jurisdictions of the district
 1502 courts of appeal, appointed by the Board of Governors of The
 1503 Florida Bar from among The Florida Bar members who are engaged
 1504 in the practice of law. On July 1, 1999, the term of office of
 1505 each person appointed by the Board of Governors of The Florida
 1506 Bar to the commission expires. The Board of Governors shall
 1507 appoint members who reside in the odd-numbered district court of
 1508 appeal jurisdictions to 4-year terms each, beginning July 1,
 1509 1999, and members who reside in the even-numbered district court
 1510 of appeal jurisdictions to 2-year terms each, beginning July 1,
 1511 1999. Thereafter, each member shall be appointed for a 4-year
 1512 term;

1513 2. Five electors, at least one of whom must be a member of
 1514 a minority group as defined in s. 288.703(3), one of each who
 1515 resides in each of the territorial jurisdictions of the district
 1516 courts of appeal, appointed by the Governor. On July 1, 1999,
 1517 the term of office of each person appointed by the Governor to



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1518 the commission expires. The Governor shall appoint members who
1519 reside in the odd-numbered district court of appeal
1520 jurisdictions to 2-year terms each, beginning July 1, 1999, and
1521 members who reside in the even-numbered district court of appeal
1522 jurisdictions to 4-year terms each, beginning July 1, 1999.
1523 Thereafter, each member shall be appointed for a 4-year term;
1524 and

1525 3. Five electors, at least one of whom must be a member of
1526 a minority group as defined in s. 288.703(3), one of each who
1527 resides in the territorial jurisdictions of the district courts
1528 of appeal, selected and appointed by a majority vote of the
1529 other 10 members of the commission. On October 1, 1999, the term
1530 of office of each person appointed to the commission by its
1531 other members expires. A majority of the other members of the
1532 commission shall appoint members who reside in the odd-numbered
1533 district court of appeal jurisdictions to 2-year terms each,
1534 beginning October 1, 1999, and members who reside in the even-
1535 numbered district court of appeal jurisdictions to 4-year terms
1536 each, beginning October 1, 1999. Thereafter, each member shall
1537 be appointed for a 4-year term.

1538
1539 A vacancy occurring on the commission shall be filled by the
1540 original appointing authority for the unexpired balance of the
1541 term. No attorney who appears before any judge of compensation
1542 claims more than four times a year is eligible to serve on the
1543 statewide nominating commission, except as provided in
1544 subparagraph 1. The meetings and determinations of the
1545 nominating commission as to the judges of compensation claims
1546 shall be open to the public and shall be recorded.



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1547 (c) Each judge of compensation claims shall be appointed
1548 for a term of 4 years, but during the term of office may be
1549 removed by the Governor for cause. Prior to the expiration of a
1550 judge's term of office, the statewide nominating commission
1551 shall review the judge's conduct and determine whether the
1552 judge's performance is satisfactory. Effective July 1, 2002, in
1553 determining whether a judge's performance is satisfactory, the
1554 commission shall consider the extent to which the judge has met
1555 the requirements of this chapter, including, but not limited to,
1556 the requirements of ss. 440.25(1) and (4)(a)-(f), 440.34(2), and
1557 440.442. A judge of compensation claims appearing before the
1558 commission shall testify under oath and is subject to penalties
1559 for perjury. If the judge's performance is deemed satisfactory,
1560 the commission shall report its finding to the Governor no later
1561 than 6 months prior to the expiration of the judge's term of
1562 office. The Governor shall review the commission's report and
1563 may reappoint the judge for an additional 4-year term. If the
1564 Governor does not reappoint the judge, the Governor shall inform
1565 the commission. The judge shall remain in office until the
1566 Governor has appointed a successor judge in accordance with
1567 paragraphs (a) and (b). If a vacancy occurs during a judge's
1568 unexpired term, the statewide nominating commission does not
1569 find the judge's performance is satisfactory, or the Governor
1570 does not reappoint the judge, the Governor shall appoint a
1571 successor judge for a term of 4 years in accordance with
1572 paragraph (b).

1573 (4) The Office of the Judges of Compensation Claims shall
1574 adopt rules to effect the purposes of this section. Such rules
1575 shall include ~~procedural rules applicable to workers'~~
1576 ~~compensation claim resolution and~~ uniform criteria for measuring



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1577 the performance of the office, including, but not limited to,
 1578 the number of cases assigned and disposed, the age of pending
 1579 and disposed cases, timeliness of decisionmaking, extraordinary
 1580 fee awards, and other data necessary for the judicial nominating
 1581 commission to review the performance of judges as required in
 1582 paragraph (2)(c). ~~The workers' compensation rules of procedure~~
 1583 ~~approved by the Supreme Court apply until the rules adopted by~~
 1584 ~~the Office of the Judges of Compensation Claims pursuant to this~~
 1585 ~~section become effective.~~

1586 Section 17. Subsections (3) and (6) of section 627.041,
 1587 Florida Statutes, are amended to read:

1588 627.041 Definitions.--As used in this part:

1589 (3) "Rating organization" means every person, other than
 1590 an authorized insurer, whether located within or outside this
 1591 state, who has as his or her object or purpose the making of
 1592 prospective loss costs, rates, rating plans, or rating systems.
 1593 Two or more authorized insurers that act in concert for the
 1594 purpose of making prospective loss costs, rates, rating plans,
 1595 or rating systems, and that do not operate within the specific
 1596 authorizations contained in ss. 627.311, 627.314(2), (4), and
 1597 627.351, shall be deemed to be a rating organization. No single
 1598 insurer shall be deemed to be a rating organization.

1599 (6) "Subscriber" means an insurer which is furnished at
 1600 its request:

1601 (a) With prospective loss costs, rates, and rating manuals
 1602 by a rating organization of which it is not a member; or

1603 (b) With advisory services by an advisory organization of
 1604 which it is not a member.

1605 Section 18. Section 627.091, Florida Statutes, is amended
 1606 to read:



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1607 627.091 Rate filings; workers' compensation and employer's
1608 liability insurances.--

1609 (1) As used in this section, the term:

1610 (a) "Expenses" means that portion of a rate attributable
1611 to acquisition, field supervision, collection expenses, and
1612 general expenses.

1613 (b) "Multiplier" means the profit and expenses, other than
1614 loss adjustment expenses associated with writing workers'
1615 compensation and employer's liability insurance, expressed as a
1616 single, nonintegral number to be applied to the prospective loss
1617 costs approved by the department in making rates for each
1618 classification of risks used by that insurer.

1619 (c) "Prospective loss costs" means that portion of a rate
1620 reflecting historical aggregate losses and loss adjustment
1621 expenses projected through development to their ultimate value
1622 and through trending to a future point in time. The term does
1623 not include provisions for profit or expenses, other than loss
1624 adjustment expenses.

1625 (2)(1) As to workers' compensation and employer's
1626 liability insurances, every insurer shall file with the
1627 department every manual of classifications, rules, and rates,
1628 every rating plan, and every modification of any of the
1629 foregoing which it proposes to use. Every insurer is authorized
1630 to include deductible provisions in its manual of
1631 classifications, rules, and rates. Such deductibles shall in all
1632 cases be in a form and manner which is consistent with the
1633 underlying purpose of chapter 440.

1634 (3)(2) Every such filing shall state the proposed
1635 effective date thereof, and shall indicate the character and
1636 extent of the coverage contemplated. When a filing is not



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1637 accompanied by the information upon which the insurer supports
 1638 the filing and the department does not have sufficient
 1639 information to determine whether the filing meets the applicable
 1640 requirements of this part, it shall within 15 days after the
 1641 date of filing require the insurer to furnish the information
 1642 upon which it supports the filing. The information furnished in
 1643 support of a filing may include:

1644 (a) The experience or judgment of the insurer or rating
 1645 organization making the filing;

1646 (b) Its interpretation of any statistical data it relies
 1647 upon;

1648 (c) The experience of other insurers or rating
 1649 organizations; or

1650 (d) Any other factors which the insurer or rating
 1651 organization deems relevant.

1652 ~~(4)(3)~~ A filing and any supporting information shall be
 1653 open to public inspection as provided in s. 119.07(1).

1654 ~~(5)(4)~~ An insurer may satisfy its obligation to make ~~such~~
 1655 filings of prospective loss costs by becoming a member of, or a
 1656 subscriber to, a licensed rating organization which makes such
 1657 filings and by authorizing the department to accept such filings
 1658 in its behalf; but nothing contained in this chapter shall be
 1659 construed as requiring any insurer to become a member or a
 1660 subscriber to any rating organization.

1661 (6)(a) A licensed rating organization may develop and file
 1662 for approval with the department reference filings containing
 1663 prospective loss costs and the underlying loss data and other
 1664 supporting statistical and actuarial information. A rating
 1665 organization may not develop or file final rates or multipliers
 1666 for expenses and profit. After a loss cost reference filing has



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1667 been filed with the department and approved, the rating
1668 organization shall provide its member insurers with a copy of
1669 the approved reference filing.

1670 (b) Each insurer shall independently and individually file
1671 with the department the final rates it will use and the
1672 effective date of any rate changes. An insurer may independently
1673 file its rates, including prospective loss costs, as authorized
1674 by this section. An insurer that is a member or subscriber to a
1675 rating organization may use the prospective loss costs in an
1676 approved reference filing by the rating organization or the
1677 insurer may file for a deviation from the loss cost reference
1678 filing under s. 627.211.

1679 (c) If an insurer uses the prospective loss costs in the
1680 approved reference filing, the insurer must independently and
1681 individually file with the department its multiplier for
1682 expenses and profit. The insurer's rates shall be the
1683 combination of the prospective loss costs and the multiplier for
1684 expenses and profit. Insurers shall file data in accordance with
1685 the uniform statistical plan approved by the department.
1686 Insurers may use variable or fixed expense loads or a
1687 combination of these and may vary the expense load by class, if
1688 the insurer files supporting data justifying such variations. An
1689 insurer that uses the prospective loss costs in an approved
1690 reference filing may use its multiplier and final rates
1691 immediately upon filing with the department, subject to
1692 disapproval by the department.

1693 (d) Insurers may file with the department premium
1694 discounts, credits, and surcharges that bear a reasonable
1695 relationship to the expected loss and expense experience of an
1696 individual policyholder, subject to a maximum surcharge of 40



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1697 percent above the approved rate and a maximum discount or credit
1698 of 50 percent below the approved rate. An insurer that uses the
1699 prospective loss costs in an approved reference filing may use
1700 premium discounts, credits, and surcharges immediately upon
1701 filing with the department, subject to disapproval by the
1702 department.

1703 (e) An insurer may request to have its multiplier for
1704 expenses and profit remain on file and reference all subsequent
1705 prospective loss costs reference filings. Upon the effective
1706 date of approval of subsequent reference loss costs filings, the
1707 insurer's rates shall be the combination of the prospective loss
1708 costs and the multiplier contained in its filing with the
1709 department. The insurer's filed multiplier remains in effect
1710 until the insurer withdraws it and files a revised multiplier.
1711 If the insurer elects to use the prospective loss costs as filed
1712 but with a different effective date, the insurer must file
1713 notice with the department of the effective date.

1714 (7) A rating organization may file supplementary rating
1715 information that includes policy-writing rules, rating plans
1716 classification codes and descriptions, and rules that include
1717 factors or relativities, such as increased limits factors,
1718 classification relativities, or similar factors, but excludes
1719 minimum premiums. An insurer may elect to use such supplementary
1720 rating information approved by the department.

1721 (8) A rating organization may file:
1722 (a) Final rates and rating plans for the residual market;
1723 (b) The uniform classification plan and rules;
1724 (c) The uniform experience rating plan and rules; and



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1725 (d) Advisory manual workers' compensation rates to be used
1726 for the sole purpose of computing the assessment liability of
1727 self-insurers.

1728 ~~(9)(5)~~ Pursuant to the provisions of s. 624.3161, the
1729 department may examine the underlying statistical data used in
1730 such filings.

1731 ~~(10)(6)~~ Whenever the committee of a recognized rating
1732 organization with responsibility for workers' compensation and
1733 employer's liability insurance rates in this state meets to
1734 discuss the necessity for, or a request for, Florida rate
1735 increases or decreases, the determination of Florida rates, the
1736 rates to be requested, and any other matters pertaining
1737 specifically and directly to such Florida rates, such meetings
1738 shall be held in this state and shall be subject to s. 286.011.
1739 The committee of such a rating organization shall provide at
1740 least 3 weeks' prior notice of such meetings to the department
1741 and shall provide at least 14 days' prior notice of such
1742 meetings to the public by publication in the Florida
1743 Administrative Weekly.

1744 Section 19. Subsection (1) of section 627.096, Florida
1745 Statutes, is amended to read:

1746 627.096 Workers' Compensation Rating Bureau.--

1747 (1) There is created within the department a Workers'
1748 Compensation Rating Bureau, which shall make an investigation
1749 and study of all insurers authorized to issue workers'
1750 compensation and employer's liability coverage in this state.
1751 Such bureau shall study the data, statistics, schedules, or
1752 other information as it may deem necessary to assist and advise
1753 the department in its review of filings made by or on behalf of
1754 workers' compensation and employer's liability insurers. The



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1755 department shall have the authority to promulgate rules
 1756 requiring all workers' compensation and employer's liability
 1757 insurers to submit to the rating bureau any data, statistics,
 1758 schedules, and other information deemed necessary to the rating
 1759 bureau's study and advisement. All data, statistics, schedules,
 1760 and other information submitted to, or considered by, the
 1761 Workers' Compensation Rating Bureau are public records for
 1762 purposes of s. 119.07(1) and s. 24(a), Art. I of the State
 1763 Constitution.

1764 Section 20. Section 627.101, Florida Statutes, is amended
 1765 to read:

1766 627.101 When filing becomes effective; workers'
 1767 compensation and employer's liability insurances.--

1768 (1) The department shall review prospective loss costs
 1769 filings and final rate filings as to workers' compensation and
 1770 employer's liability insurances as soon as reasonably possible
 1771 after they have been made in order to determine whether they
 1772 meet the applicable requirements of this part. If the
 1773 department determines that part of a rate filing does not meet
 1774 the applicable requirements of this part, it may reject so much
 1775 of the filing as does not meet these requirements, and approve
 1776 the remainder of the filing.

1777 (2) The department shall specifically approve a
 1778 prospective loss costs ~~the~~ filing before it becomes effective,
 1779 unless the department has concluded it to be in the public
 1780 interest to hold a public hearing to determine whether the
 1781 filing meets the requirements of this chapter and has given
 1782 notice of such hearing to the insurer or rating organization
 1783 that made the filing, and in which case the effectiveness of the
 1784 filing shall be subject to the further order of the department



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1785 made as provided in s. 627.111. An insurer that uses prospective
1786 loss costs in an approved reference filing may use its
1787 multiplier and final rates immediately upon filing with the
1788 department as provided in s. 627.091, subject to disapproval by
1789 the department. If the department specifically disapproves a
1790 prospective loss costs filing or a final rate ~~the~~ filing, the
1791 provisions of subsection (4) shall apply.

1792 (3) An insurer or rating organization may, at the time it
1793 makes a prospective loss costs filing with the department,
1794 request a public hearing thereon. In such event, the department
1795 shall give notice of the hearing.

1796 (4) If the department disapproves a prospective loss costs
1797 filing or a final rate filing, it shall promptly give notice of
1798 such disapproval to the insurer or rating organization that made
1799 the filing, stating the respects in which it finds that the
1800 filing does not meet the requirements of this chapter. If the
1801 department approves a filing, it shall give prompt notice
1802 thereof to the insurer or rating organization that made the
1803 filing, and in which case the filing shall become effective upon
1804 such approval or upon such subsequent date as may be
1805 satisfactory to the department and the insurer or rating
1806 organization that made the filing.

1807 Section 21. Subsection (1) of section 627.211, Florida
1808 Statutes, is amended to read:

1809 627.211 Deviations; workers' compensation and employer's
1810 liability insurances.--

1811 (1) Every member or subscriber to a rating organization
1812 shall, as to workers' compensation or employer's liability
1813 insurance, adhere to the filings made on its behalf by such
1814 organization; except that any such insurer may make written



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1815 application to the department for permission to file a uniform
 1816 percentage decrease or increase to be applied to the premiums
 1817 produced by the rating system so filed for a kind of insurance,
 1818 for a class of insurance which is found by the department to be
 1819 a proper rating unit for the application of such uniform
 1820 percentage decrease or increase, or for a subdivision of
 1821 workers' compensation or employer's liability insurance:

1822 (a) Comprised of a group of manual classifications which
 1823 is treated as a separate unit for ratemaking purposes; or

1824 (b) For which separate provisions for loss adjustment
 1825 expenses ~~expense provisions~~ are included in the filings of the
 1826 rating organization.

1827
 1828 Such application shall specify the basis for the modification
 1829 and shall be accompanied by the data upon which the applicant
 1830 relies. A copy of the application and data shall be sent
 1831 simultaneously to the rating organization.

1832 Section 22. If any provision of this act or its
 1833 application to any person or circumstance is held invalid, the
 1834 invalidity does not affect other provisions or applications of
 1835 the act which can be given effect without the invalid provision
 1836 or application, and to this end the provisions of this act are
 1837 severable.

1838 Section 23. This act shall take effect January 1, 2004.