



HB 1539

2003

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; revising provisions that  
5 authorize certain officers of a corporation to elect to be  
6 exempt from ch. 440, F.S.; redefining the term  
7 "employment"; redefining the term "wages"; amending s.  
8 440.05, F.S.; providing a procedure under which an officer  
9 of a corporation may elect to be exempt from ch. 440,  
10 F.S.; providing certain exceptions; removing references to  
11 sole proprietors and partners from provisions authorizing  
12 election of exemption; revising requirements for notice;  
13 amending s. 440.11, F.S.; providing for the exclusive  
14 liability of a carrier or self-insured employer; amending  
15 s. 440.13, F.S.; including a licensed psychologist within  
16 the definition of the terms "physician" and "doctor";  
17 deleting a mandatory requirement for certification;  
18 providing for an employer or carrier to allow an employee  
19 to select medical providers; revising requirements for  
20 requesting treatment or care; providing requirements for  
21 transfer of care; providing notice requirements for access  
22 to medical records; revising requirements for independent  
23 medical examinations; authorizing a health care provider  
24 to file a petition in order to contest the disallowance or  
25 adjustment of payment by a carrier; providing for the  
26 medical provider to recover costs and attorney's fees;  
27 revising requirements for determining reimbursement  
28 amounts; restricting a health care provider's right to  
29 recover payment for medical fees; requiring that a  
30 provider file a petition in order to recover such



HB 1539

2003

31 payments; providing for costs and attorney's fees;  
32 amending s. 440.134, F.S.; revising requirements for  
33 managed care arrangements; revising requirements for  
34 medical benefits; amending s. 440.15, F.S.; revising the  
35 requirements for paying impairment benefits and  
36 supplemental benefits; prohibiting an employee from  
37 receiving supplemental benefits and impairment benefits;  
38 amending s. 440.16, F.S.; increasing the limits on the  
39 amount of certain benefits paid as compensation for death;  
40 amending s. 440.19, F.S.; increasing the period of  
41 limitation on filing a petition for benefits; amending s.  
42 440.205, F.S.; authorizing a civil suit for damages  
43 against an employer who unlawfully coerces an employee for  
44 a valid claim for compensation; providing that a carrier  
45 who engages in unlawful conduct is subject to civil suit;  
46 amending s. 440.25, F.S.; revising procedures for  
47 mediations and hearings; amending s. 440.45, F.S.;  
48 providing additional qualifications for members of the  
49 statewide nominating commission for judges of compensation  
50 claims; removing a requirement that the Office of the  
51 Judges of Compensation Claims adopt procedural rules;  
52 amending s. 627.041, F.S.; revising the Rating Law to  
53 include within regulated rating organizations those  
54 organizations that make and file prospective loss costs;  
55 amending s. 627.091, F.S.; providing definitions;  
56 providing for licensed rating organizations to file  
57 prospective loss costs, loss data, and other information  
58 with the Department of Insurance for approval; amending s.  
59 627.096, F.S.; providing that the data, statistics,  
60 schedules, and other information submitted to the Workers'



HB 1539

2003

61 Compensation Rating Bureau are subject to public  
62 disclosure under public records requirements; amending s.  
63 627.101, F.S.; providing requirements for the review and  
64 approval of prospective loss costs filings; amending s.  
65 627.211, F.S.; providing for changes in premiums based on  
66 loss adjustment expenses; providing for severability;  
67 providing an effective date.

68  
69 Be It Enacted by the Legislature of the State of Florida:

70  
71 Section 1. Subsection (15), paragraph (b) of subsection  
72 (17), and subsection (28) of section 440.02, Florida Statutes,  
73 are amended to read:

74 440.02 Definitions.--When used in this chapter, unless the  
75 context clearly requires otherwise, the following terms shall  
76 have the following meanings:

77 (15)(a) "Employee" means any person engaged in any  
78 employment under any appointment or contract of hire or  
79 apprenticeship, express or implied, oral or written, whether  
80 lawfully or unlawfully employed, and includes, but is not  
81 limited to, aliens and minors.

82 (b) Except as provided in s. 440.05, "employee" includes  
83 any person who is an officer of a corporation and who performs  
84 services for remuneration for such corporation within this  
85 state, whether or not such services are continuous.

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

89 ~~2. As to officers of a corporation who are actively~~  
90 ~~engaged in the construction industry, no more than three~~



HB 1539

2003

91 ~~officers may elect to be exempt from this chapter by filing~~  
92 ~~written notice of the election with the department as provided~~  
93 ~~in s. 440.05. However, any exemption obtained by a corporate~~  
94 ~~officer of a corporation actively engaged in the construction~~  
95 ~~industry is not applicable with respect to any commercial~~  
96 ~~building project estimated to be valued at \$250,000 or greater.~~

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

100  
101 ~~Services are presumed to have been rendered to the corporation~~  
102 ~~if the officer is compensated by other than dividends upon~~  
103 ~~shares of stock of the corporation which the officer owns.~~

104 ~~(c)1. "Employee" includes a sole proprietor or a partner~~  
105 ~~who devotes full time to the proprietorship or partnership and,~~  
106 ~~except as provided in this paragraph, elects to be included in~~  
107 ~~the definition of employee by filing notice thereof as provided~~  
108 ~~in s. 440.05. Partners or sole proprietors actively engaged in~~  
109 ~~the construction industry are considered employees unless they~~  
110 ~~elect to be excluded from the definition of employee by filing~~  
111 ~~written notice of the election with the department as provided~~  
112 ~~in s. 440.05. However, no more than three partners in a~~  
113 ~~partnership that is actively engaged in the construction~~  
114 ~~industry may elect to be excluded. A sole proprietor or partner~~  
115 ~~who is actively engaged in the construction industry and who~~  
116 ~~elects to be exempt from this chapter by filing a written notice~~  
117 ~~of the election with the department as provided in s. 440.05 is~~  
118 ~~not an employee. For purposes of this chapter, an independent~~  
119 ~~contractor is an employee unless he or she meets all of the~~  
120 ~~conditions set forth in subparagraph (d)1.~~



HB 1539

2003

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

127 (d) "Employee" does not include:

128 1. An independent contractor, if:

129 a. The independent contractor maintains a separate  
130 business with his or her own work facility, truck, equipment,  
131 materials, or similar accommodations;

132 b. The independent contractor holds or has applied for a  
133 federal employer identification number, unless the independent  
134 contractor is a sole proprietor who is not required to obtain a  
135 federal employer identification number under state or federal  
136 requirements;

137 c. The independent contractor performs or agrees to  
138 perform specific services or work for specific amounts of money  
139 and controls the means of performing the services or work;

140 d. The independent contractor incurs the principal  
141 expenses related to the service or work that he or she performs  
142 or agrees to perform;

143 e. The independent contractor is responsible for the  
144 satisfactory completion of work or services that he or she  
145 performs or agrees to perform and is or could be held liable for  
146 a failure to complete the work or services;

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



HB 1539

2003

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

152 h. The independent contractor has continuing or recurring  
153 business liabilities or obligations; and

154 i. The success or failure of the independent contractor's  
155 business depends on the relationship of business receipts to  
156 expenditures.

157

158 However, the determination as to whether an individual included  
159 in the Standard Industrial Classification Manual of 1987,  
160 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,  
161 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,  
162 or a newspaper delivery person, is an independent contractor is  
163 governed not by the criteria in this paragraph but by common-law  
164 principles, giving due consideration to the business activity of  
165 the individual. Notwithstanding the provisions of this paragraph  
166 or any other provision of this chapter, with respect to any  
167 commercial building project estimated to be valued at \$250,000  
168 or greater, a person who is actively engaged in the construction  
169 industry is not an independent contractor and is either an  
170 employer or an employee who may not be exempt from the coverage  
171 requirements of this chapter.

172 2. A real estate salesperson or agent, if that person  
173 agrees, in writing, to perform for remuneration solely by way of  
174 commission.

175 3. Bands, orchestras, and musical and theatrical  
176 performers, including disk jockeys, performing in licensed  
177 premises as defined in chapter 562, if a written contract  
178 evidencing an independent contractor relationship is entered  
179 into before the commencement of such entertainment.



HB 1539

2003

180 4. An owner-operator of a motor vehicle who transports  
181 property under a written contract with a motor carrier which  
182 evidences a relationship by which the owner-operator assumes the  
183 responsibility of an employer for the performance of the  
184 contract, if the owner-operator is required to furnish the  
185 necessary motor vehicle equipment and all costs incidental to  
186 the performance of the contract, including, but not limited to,  
187 fuel, taxes, licenses, repairs, and hired help; and the owner-  
188 operator is paid a commission for transportation service and is  
189 not paid by the hour or on some other time-measured basis.

190 5. A person whose employment is both casual and not in the  
191 course of the trade, business, profession, or occupation of the  
192 employer.

193 6. A volunteer, except a volunteer worker for the state or  
194 a county, municipality, or other governmental entity. A person  
195 who does not receive monetary remuneration for services is  
196 presumed to be a volunteer unless there is substantial evidence  
197 that a valuable consideration was intended by both employer and  
198 employee. For purposes of this chapter, the term "volunteer"  
199 includes, but is not limited to:

200 a. Persons who serve in private nonprofit agencies and who  
201 receive no compensation other than expenses in an amount less  
202 than or equivalent to the standard mileage and per diem expenses  
203 provided to salaried employees in the same agency or, if such  
204 agency does not have salaried employees who receive mileage and  
205 per diem, then such volunteers who receive no compensation other  
206 than expenses in an amount less than or equivalent to the  
207 customary mileage and per diem paid to salaried workers in the  
208 community as determined by the department; and



HB 1539

2003

209 b. Volunteers participating in federal programs  
210 established under Pub. L. No. 93-113.

211 7. Any officer of a corporation who, pursuant to s.  
212 440.05, is entitled to elect and who elects to be exempt from  
213 this chapter.

214 ~~8. A sole proprietor or officer of a corporation who~~  
215 ~~actively engages in the construction industry, and a partner in~~  
216 ~~a partnership that is actively engaged in the construction~~  
217 ~~industry, who elects to be exempt from the provisions of this~~  
218 ~~chapter. Such sole proprietor, officer, or partner is not an~~  
219 ~~employee for any reason until the notice of revocation of~~  
220 ~~election filed pursuant to s. 440.05 is effective.~~

221 8.9. An exercise rider who does not work for a single  
222 horse farm or breeder, and who is compensated for riding on a  
223 case-by-case basis, provided a written contract is entered into  
224 prior to the commencement of such activity which evidences that  
225 an employee/employer relationship does not exist.

226 9.10. A taxicab, limousine, or other passenger vehicle-  
227 for-hire driver who operates said vehicles pursuant to a written  
228 agreement with a company which provides any dispatch, marketing,  
229 insurance, communications, or other services under which the  
230 driver and any fees or charges paid by the driver to the company  
231 for such services are not conditioned upon, or expressed as a  
232 proportion of, fare revenues.

233 10.11. A person who performs services as a sports official  
234 for an entity sponsoring an interscholastic sports event or for  
235 a public entity or private, nonprofit organization that sponsors  
236 an amateur sports event. For purposes of this subparagraph, such  
237 a person is an independent contractor. For purposes of this  
238 subparagraph, the term "sports official" means any person who is





HB 1539

2003

239 a neutral participant in a sports event, including, but not  
240 limited to, umpires, referees, judges, linespersons,  
241 scorekeepers, or timekeepers. This subparagraph does not apply  
242 to any person employed by a district school board who serves as  
243 a sports official as required by the employing school board or  
244 who serves as a sports official as part of his or her  
245 responsibilities during normal school hours.

246 (17)

247 (b) "Employment" includes:

248 1. Employment by the state and all political subdivisions  
249 thereof and all public and quasi-public corporations therein,  
250 including officers elected at the polls.

251 2. Subject to the provisions of s. 440.05, all private  
252 employments in which four or more employees are employed by the  
253 same employer or, with respect to the construction industry, all  
254 private employment in which one or more employees are employed  
255 by the same employer. In any private employment wherein an  
256 employer employs employees through an employee leasing company,  
257 the effective date of the employment shall be the date the  
258 employee begins performing work for the employer and not the  
259 date the employee appears on any employee list maintained by the  
260 leasing company.

261 3. Volunteer firefighters responding to or assisting with  
262 fire or medical emergencies whether or not the firefighters are  
263 on duty.

264 (28) "Wages" means the money rate at which the service  
265 rendered is recompensed under the contract of hiring in force at  
266 the time of the injury and includes only the wages earned and  
267 reported for federal income tax purposes on the job where the  
268 employee is injured and any other concurrent employment reported



HB 1539

2003

269 for federal income tax purposes ~~where he or she is also subject~~  
 270 ~~to workers' compensation coverage and benefits~~, together with  
 271 the reasonable value of housing furnished to the employee by the  
 272 employer which is the permanent year-round residence of the  
 273 employee, ~~and~~ gratuities to the extent reported to the employer  
 274 in writing as taxable income received in the course of  
 275 employment from others than the employer, and employer  
 276 contributions for health insurance for the employee and ~~or~~ the  
 277 employee's dependents. However, housing furnished to migrant  
 278 workers shall be included in wages unless provided after the  
 279 time of injury. In employment in which an employee receives  
 280 consideration for housing, the reasonable value of such housing  
 281 compensation shall be the actual cost to the employer or based  
 282 upon the Fair Market Rent Survey promulgated pursuant to s. 8 of  
 283 the Housing and Urban Development Act of 1974, whichever is  
 284 less. However, if employer contributions for housing or health  
 285 insurance are continued after the time of the injury, the  
 286 contributions are not "wages" for the purpose of calculating an  
 287 employee's average weekly wage.

288 Section 2. Section 440.05, Florida Statutes, is amended to  
 289 read:

290 440.05 Election of exemption; revocation of election;  
 291 notice; certification.--

292 (1) An officer of a corporation may elect to be exempt  
 293 from this chapter by filing written notice of the election with  
 294 the department pursuant to this section. Thereafter, such  
 295 officer shall not be considered an employee under this chapter.  
 296 Not more than three corporate officers of any corporation may  
 297 elect to be exempt from this chapter. ~~Each corporate officer who~~  
 298 ~~elects not to accept the provisions of this chapter or who,~~



HB 1539

2003

299 ~~after electing such exemption, revokes that exemption shall mail~~  
 300 ~~to the department in Tallahassee notice to such effect in~~  
 301 ~~accordance with a form to be prescribed by the department.~~

302 ~~(2) Each sole proprietor or partner who elects to be~~  
 303 ~~included in the definition of "employee" or who, after such~~  
 304 ~~election, revokes that election must mail to the department in~~  
 305 ~~Tallahassee notice to such effect, in accordance with a form to~~  
 306 ~~be prescribed by the department.~~

307 ~~(2)(3) Each corporate officer sole proprietor, partner, or~~  
 308 ~~officer of a corporation who is actively engaged in the~~  
 309 ~~construction industry and who elects an exemption from this~~  
 310 ~~chapter or who, after electing such exemption, revokes that~~  
 311 ~~exemption, must mail a written notice to such effect to the~~  
 312 ~~department on a form prescribed by the department.~~

313 (a) The department shall by rule prescribe forms and  
 314 procedures for filing an election of exemption, revocation of  
 315 election to be exempt, notice of election of coverage for all  
 316 employers and for issuing certificates of the election of  
 317 exemption. Such forms shall be submitted to the department by  
 318 all employers filing for the election of exemption. The notice  
 319 of election to be exempt from the provisions of this chapter  
 320 must be notarized and under oath. The notice of election shall  
 321 clearly state the following: "Any person who, knowingly and  
 322 with intent to injure, defraud, or deceive the department or any  
 323 employer or employee, insurance company, or purposes program,  
 324 files a notice of election to be exempt containing any false or  
 325 misleading information commits a felony of the third degree."

326 (b) The notice of election to be exempt ~~which is submitted~~  
 327 ~~to the department by the sole proprietor, partner, or officer of~~  
 328 ~~a corporation~~ must list the name, federal tax identification



HB 1539

2003

329 number, social security number, all certified or registered  
330 licenses issued pursuant to chapter 489 held by the person  
331 seeking the exemption, a copy of relevant documentation as to  
332 employment status filed with the Internal Revenue Service as  
333 specified by the department, a copy of the relevant occupational  
334 license in the primary jurisdiction of the business, and, for  
335 corporate officers ~~and partners~~, the registration number of the  
336 corporation ~~or partnership~~ filed with the Division of  
337 Corporations of the Department of State. The notice of election  
338 to be exempt must identify each ~~sole proprietorship,~~  
339 ~~partnership, or~~ corporation that employs the person electing the  
340 exemption and must list the social security number or federal  
341 tax identification number of each such employer and the  
342 additional documentation required by this section. In addition,  
343 the notice of election to be exempt must provide that the ~~sole~~  
344 ~~proprietor, partner, or~~ officer electing an exemption is not  
345 entitled to benefits under this chapter, must provide that the  
346 election does not exceed exemption limits for officers ~~and~~  
347 ~~partnerships provided in s. 440.02~~, and must certify that any  
348 employees of the ~~sole proprietor, partner, or~~ officer electing  
349 an exemption are covered by workers' compensation insurance.  
350 Upon receipt of the notice of the election to be exempt, receipt  
351 of all application fees, and a determination by the department  
352 that the notice meets the requirements of this subsection, the  
353 department shall issue a certification of the election to the  
354 ~~sole proprietor, partner, or~~ officer, unless the department  
355 determines that the information contained in the notice is  
356 invalid. The department shall revoke a certificate of election  
357 to be exempt from coverage upon a determination by the  
358 department that the person does not meet the requirements for



HB 1539

2003

359 exemption or that the information contained in the notice of  
360 election to be exempt is invalid. The certificate of election  
361 must list the name ~~names~~ of the ~~sole proprietorship,~~  
362 ~~partnership,~~ or corporation listed in the request for exemption.  
363 A new certificate of election must be obtained each time the  
364 person is employed by a ~~new sole proprietorship, partnership, or~~  
365 corporation that is not listed on the certificate of election. A  
366 copy of the certificate of election must be sent to each  
367 workers' compensation carrier identified in the request for  
368 exemption. Upon filing a notice of revocation of election, an a  
369 ~~sole proprietor, partner, or~~ officer who is a subcontractor must  
370 notify her or his contractor. Upon revocation of a certificate  
371 of election of exemption by the department, the department shall  
372 notify the workers' compensation carriers identified in the  
373 request for exemption.

374 ~~(4) The notice of election to be exempt from the~~  
375 ~~provisions of this chapter must contain a notice that clearly~~  
376 ~~states in substance the following: "Any person who, knowingly~~  
377 ~~and with intent to injure, defraud, or deceive the department or~~  
378 ~~any employer or employee, insurance company, or purposes~~  
379 ~~program, files a notice of election to be exempt containing any~~  
380 ~~false or misleading information is guilty of a felony of the~~  
381 ~~third degree." Each person filing a notice of election to be~~  
382 ~~exempt shall personally sign the notice and attest that he or~~  
383 ~~she has reviewed, understands, and acknowledges the foregoing~~  
384 ~~notice.~~

385 (4)(5) A notice given under subsection (1) or, subsection  
386 ~~(2), or subsection (3)~~ shall become effective when issued by the  
387 department or 30 days after an application for an exemption is  
388 received by the department, whichever occurs first. However, if



HB 1539

2003

389 an accident or occupational disease occurs less than 30 days  
390 after the effective date of the insurance policy under which the  
391 payment of compensation is secured or the date the employer  
392 qualified as a self-insurer, such notice is effective as of  
393 12:01 a.m. of the day following the date it is mailed to the  
394 department in Tallahassee.

395 (5)~~(6)~~ A construction industry certificate of election to  
396 be exempt which is issued in accordance with this section shall  
397 be valid for 2 years after the effective date stated thereon.  
398 Both the effective date and the expiration date must be listed  
399 on the face of the certificate by the department. The  
400 construction industry certificate must expire at midnight, 2  
401 years from its issue date, as noted on the face of the exemption  
402 certificate. Any person who has received from the division a  
403 construction industry certificate of election to be exempt which  
404 is in effect on December 31, 1998, shall file a new notice of  
405 election to be exempt by the last day in his or her birth month  
406 following December 1, 1998. A construction industry certificate  
407 of election to be exempt may be revoked before its expiration by  
408 the sole proprietor, partner, or officer for whom it was issued  
409 or by the department for the reasons stated in this section. At  
410 least 60 days prior to the expiration date of a construction  
411 industry certificate of exemption issued after December 1, 1998,  
412 the department shall send notice of the expiration date and an  
413 application for renewal to the certificateholder at the address  
414 on the certificate.

415 (6)~~(7)~~ Any contractor responsible for compensation under  
416 s. 440.10 may register in writing with the workers' compensation  
417 carrier for any subcontractor and shall thereafter be entitled



HB 1539

2003

418 to receive written notice from the carrier of any cancellation  
419 or nonrenewal of the policy.

420 (7)~~(8)~~(a) The department must assess a fee of \$50 with  
421 each request for a construction industry certificate of election  
422 to be exempt or renewal of election to be exempt under this  
423 section.

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

428 ~~(9) The department may by rule prescribe forms and  
429 procedures for filing an election of exemption, revocation of  
430 election to be exempt, and notice of election of coverage for  
431 all employers and require specified forms to be submitted by all  
432 employers in filing for the election of exemption. The  
433 department may by rule prescribe forms and procedures for  
434 issuing a certificate of the election of exemption.~~

435 (8)~~(10)~~ Each sole proprietor, partner, or officer of a  
436 corporation who is actively engaged in the construction industry  
437 and who elects an exemption from this chapter shall maintain  
438 business records as specified by the division by rule, which  
439 rules must include the provision that any corporation with  
440 exempt officers and any partnership actively engaged in the  
441 construction industry with exempt partners must maintain written  
442 statements of those exempted persons affirmatively acknowledging  
443 each such individual's exempt status.

444 ~~(11) Any sole proprietor or partner actively engaged in  
445 the construction industry claiming an exemption under this  
446 section shall maintain a copy of his or her federal income tax  
447 records for each of the immediately previous 3 years in which he~~



HB 1539

2003

448 ~~or she claims an exemption. Such federal income tax records must~~  
449 ~~include a complete copy of the following for each year in which~~  
450 ~~an exemption is claimed:~~

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

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

456

457 ~~A sole proprietor or partner shall produce, upon request by the~~  
458 ~~division, a copy of those documents together with a statement by~~  
459 ~~the sole proprietor or partner that the tax records provided are~~  
460 ~~true and accurate copies of what the sole proprietor or partner~~  
461 ~~has filed with the federal Internal Revenue Service. The~~  
462 ~~statement must be signed under oath by the sole proprietor or~~  
463 ~~partner and must be notarized. The division shall issue a stop-~~  
464 ~~work order under s. 440.107(5) to any sole proprietor or partner~~  
465 ~~who fails or refuses to produce a copy of the tax records and~~  
466 ~~affidavit required under this paragraph to the division within 3~~  
467 ~~business days after the request is made.~~

468 ~~(12) For those sole proprietors or partners that have not~~  
469 ~~been in business long enough to provide the information required~~  
470 ~~of an established business, the division shall require such sole~~  
471 ~~proprietor or partner to provide copies of the most recently~~  
472 ~~filed Federal Income Tax Form 1040. The division shall establish~~  
473 ~~by rule such other criteria to show that the sole proprietor or~~  
474 ~~partner intends to engage in a legitimate enterprise within the~~  
475 ~~construction industry and is not otherwise attempting to evade~~  
476 ~~the requirements of this section. The division shall establish~~





HB 1539

2003

477 ~~by rule the form and format of financial information required to~~  
 478 ~~be submitted by such employers.~~

479 (9)~~(13)~~ Any corporate officer claiming an exemption under  
 480 this section must be listed on the records of this state's  
 481 Secretary of State, Division of Corporations, as a corporate  
 482 officer. If the person who claims an exemption as a corporate  
 483 officer is not so listed on the records of the Secretary of  
 484 State, the individual must provide to the division, upon request  
 485 by the division, a notarized affidavit stating that the  
 486 individual is a bona fide officer of the corporation and stating  
 487 the date his or her appointment or election as a corporate  
 488 officer became or will become effective. The statement must be  
 489 signed under oath by both the officer and the president or chief  
 490 operating officer of the corporation and must be notarized. The  
 491 division shall issue a stop-work order under s. 440.107(1) to  
 492 any corporation who employs a person who claims to be exempt as  
 493 a corporate officer but who fails or refuses to produce the  
 494 documents required under this subsection to the division within  
 495 3 business days after the request is made.

496 Section 3. Subsection (4) of section 440.11, Florida  
 497 Statutes, is amended to read:

498 440.11 Exclusiveness of liability.--

499 (4) Except as provided in ~~Notwithstanding the provisions~~  
 500 ~~of s. 624.155, the liability of a carrier or a self-insured~~  
 501 employer to an employee or to anyone entitled to bring suit in  
 502 the name of the employee for acts related to the handling of a  
 503 workers' compensation claim shall be as provided in this  
 504 chapter, which shall be exclusive and in place of all other  
 505 liability.



HB 1539

2003

506 Section 4. Paragraph (r) of subsection (1), subsection  
507 (2), paragraph (c) of subsection (4), and subsections (5), (7),  
508 (12), and (14) of section 440.13, Florida Statutes, are amended  
509 to read:

510 440.13 Medical services and supplies; penalty for  
511 violations; limitations.--

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

513 (r) "Physician" or "doctor" means a physician licensed  
514 under chapter 458, an osteopathic physician licensed under  
515 chapter 459, a chiropractic physician licensed under chapter  
516 460, a podiatric physician licensed under chapter 461, an  
517 optometrist licensed under chapter 463, a psychologist licensed  
518 under chapter 490 or chapter 491, or a dentist licensed under  
519 chapter 466, each of whom the agency may require to be ~~must be~~  
520 certified by the agency as a health care provider.

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

522 (a) Subject to the limitations specified elsewhere in this  
523 chapter, the employer shall furnish to the employee such  
524 medically necessary remedial treatment, care, and attendance for  
525 such period as the nature of the injury or the process of  
526 recovery may require, including medicines, medical supplies,  
527 durable medical equipment, orthoses, prostheses, and other  
528 medically necessary apparatus. Remedial treatment, care, and  
529 attendance, including work-hardening programs or pain-management  
530 programs accredited by the Commission on Accreditation of  
531 Rehabilitation Facilities or Joint Commission on the  
532 Accreditation of Health Organizations or pain-management  
533 programs affiliated with medical schools, shall be considered as  
534 covered treatment only when such care is given based on a  
535 referral by a physician as defined in this chapter. Each



HB 1539

2003

536 facility shall maintain outcome data, including work status at  
537 discharges, total program charges, total number of visits, and  
538 length of stay. ~~The department shall utilize such data and~~  
539 ~~report to the President of the Senate and the Speaker of the~~  
540 ~~House of Representatives regarding the efficacy and cost-~~  
541 ~~effectiveness of such program, no later than October 1, 1994.~~  
542 ~~Medically necessary treatment, care, and attendance does not~~  
543 ~~include chiropractic services in excess of 18 treatments or~~  
544 ~~rendered 8 weeks beyond the date of the initial chiropractic~~  
545 ~~treatment, whichever comes first, unless the carrier authorizes~~  
546 ~~additional treatment or the employee is catastrophically~~  
547 ~~injured.~~

548 (b) An employer may tender to an employee the right to  
549 select those medical providers who will furnish medically  
550 necessary treatment and care to the employee. An employer  
551 electing to tender the selection of health care providers to an  
552 employee shall do so by certified mail to the employee and, if  
553 applicable, the employee's legal representative. An employee who  
554 is permitted to select his or her health care providers shall  
555 not be entitled to an independent medical examination at the  
556 expense of the carrier under subsection (5). An employer who  
557 does not tender the right to select medical providers to an  
558 employee shall not be entitled to require the employee to submit  
559 to an independent medical examination under subsection (5).

560 (c)~~(b)~~ The employer shall provide appropriate professional  
561 or nonprofessional attendant care performed only at the  
562 direction and control of a physician when such care is medically  
563 necessary. The value of nonprofessional attendant care provided  
564 by a family member must be determined as follows:



HB 1539

2003

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

567 2. If the family member is employed and elects to leave  
568 that employment to provide attendant or custodial care, the per-  
569 hour value of that care equals the per-hour value of the family  
570 member's former employment, not to exceed the per-hour value of  
571 such care available in the community at large. A family member  
572 or a combination of family members providing nonprofessional  
573 attendant care under this paragraph may not be compensated for  
574 more than a total of 12 hours per day.

575 ~~(d)(e)~~ If the employer fails to provide treatment or care  
576 required by this section after request by the injured employee,  
577 the employee may obtain such treatment at the expense of the  
578 employer, ~~if the treatment is compensable and medically~~  
579 ~~necessary.~~ The employee must make a specific written request for  
580 the treatment or care being sought. The employer shall have 14  
581 days after receipt of the specific written request for treatment  
582 or care to authorize the requested treatment or care. It shall  
583 be presumed that treatment and care requested by the employee  
584 which the employer has failed, refused, or neglected to  
585 authorize in accordance with this paragraph is reasonable and  
586 medically necessary absent clear and convincing evidence that  
587 the employer's failure to authorize the treatment or care was  
588 for reasons beyond its control or that the treatment or care is  
589 contrary to the employee's health, safety, and welfare. The  
590 timelines afforded employers under this subsection shall not  
591 apply to requests for emergency treatment or care. ~~There must be~~  
592 ~~a specific request for the treatment, and the employer or~~  
593 ~~carrier must be given a reasonable time period within which to~~  
594 ~~provide the treatment or care. However, the employee is not~~



HB 1539

2003

595 ~~entitled to recover any amount personally expended for the~~  
596 ~~treatment or service unless he or she has requested the employer~~  
597 ~~to furnish that treatment or service and the employer has~~  
598 ~~failed, refused, or neglected to do so within a reasonable time~~  
599 ~~or unless the nature of the injury requires such treatment,~~  
600 ~~nursing, and services and the employer or his or her~~  
601 ~~superintendent or foreman, having knowledge of the injury, has~~  
602 ~~neglected to provide the treatment or service.~~

603 (e)(d) If the employee selected his or her health care  
604 provider pursuant to paragraph (b), the carrier has the right to  
605 transfer the care of the an injured employee from the attending  
606 health care provider if an independent medical examination  
607 determines that the employee is not making appropriate progress  
608 in recuperation. An independent medical examination that does  
609 not involve an actual physical examination of the employee may  
610 not serve as the basis for a transfer of care under this  
611 paragraph. An employee who challenges a transfer of care  
612 decision by a carrier must show that the deauthorized care was  
613 appropriate to his or her injuries, medically necessary, and  
614 that he or she was making appropriate progress in recuperation.

615 (f)(e) Except in emergency situations and for treatment  
616 rendered by a managed care arrangement, after any initial  
617 examination and diagnosis by a physician providing remedial  
618 treatment, care, and attendance, and before a proposed course of  
619 medical treatment begins, each insurer shall review, in  
620 accordance with the requirements of this chapter, the proposed  
621 course of treatment, to determine whether such treatment would  
622 be recognized as reasonably prudent. The review must be in  
623 accordance with all applicable workers' compensation practice  
624 parameters. The insurer must accept any such proposed course of



HB 1539

2003

625 treatment unless the insurer notifies the physician of its  
 626 specific objections to the proposed course of treatment by the  
 627 close of the tenth business day after notification by the  
 628 physician, or a supervised designee of the physician, of the  
 629 proposed course of treatment.

630 (g)~~(f)~~ Upon the written request of the employee, the  
 631 carrier shall give the employee the opportunity for one change  
 632 of physician during the course of treatment for any one  
 633 accident. The employee shall be entitled to select another  
 634 physician from among not fewer than three carrier-authorized  
 635 physicians who are not professionally affiliated.

636 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
 637 DEPARTMENT.--

638 (c) It is the policy for the administration of the  
 639 workers' compensation system that there be reasonable access to  
 640 medical information by all parties to facilitate the self-  
 641 executing features of the law. Notwithstanding the limitations  
 642 in s. 456.057 and subject to the limitations in s. 381.004, upon  
 643 the request of the employer, the carrier, an authorized  
 644 qualified rehabilitation provider, or the attorney for the  
 645 employer or carrier, the medical records of an injured employee  
 646 must be furnished to those persons and the medical condition of  
 647 the injured employee must be discussed with those persons, if  
 648 the records and the discussions are restricted to conditions  
 649 relating to the workplace injury. Upon 5 days' advance written  
 650 notice to the employee or the employee's legal representative,  
 651 any such discussions may be held before or after the filing of a  
 652 claim without the ~~knowledge, consent, or~~ presence of any other  
 653 party or his or her agent or representative. A health care  
 654 provider who willfully refuses to provide medical records or to



HB 1539

2003

655 discuss the medical condition of the injured employee, after a  
656 reasonable request is made for such information pursuant to this  
657 subsection, shall be subject by the agency to one or more of the  
658 penalties set forth in paragraph (8)(b).

659 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

660 (a) Subject to the provisions of paragraph (2)(b), in any  
661 dispute concerning overutilization, medical benefits,  
662 compensability, or disability under this chapter, the carrier or  
663 the employee may, at the expense of the carrier, select an  
664 independent medical examiner. The examiner may be a health care  
665 provider treating or providing other care to the employee. An  
666 independent medical examiner may not render an opinion outside  
667 his or her area of expertise, as demonstrated by licensure and  
668 applicable practice parameters.

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

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

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

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

679 4. The parties agree to an alternate examiner.

680

681 Any party may request, or a judge of compensation claims may  
682 require, designation of an agency medical advisor as an  
683 independent medical examiner. The opinion of the advisors acting



HB 1539

2003

684 as examiners shall not be afforded the presumption set forth in  
685 paragraph (9)(c).

686 (c) The carrier shall ~~may, at its election,~~ contact the  
687 employee or the employee's legal representative ~~claimant~~  
688 ~~directly~~ to schedule a reasonable time for an independent  
689 medical examination. The carrier must confirm the scheduling  
690 agreement in writing within 5 days and notify the employee and  
691 the employee's legal representative ~~claimant's counsel,~~ if any,  
692 at least 7 days before the date upon which the independent  
693 medical examination is scheduled to occur. ~~An attorney~~  
694 ~~representing a claimant is not authorized to schedule~~  
695 ~~independent medical evaluations under this subsection.~~

696 (d) If the employee fails to appear for the independent  
697 medical examination without good cause and fails to advise the  
698 physician at least 24 hours before the scheduled date for the  
699 examination that he or she cannot appear, the employee is barred  
700 from recovering compensation for any period during which he or  
701 she has refused to submit to such examination. Further, the  
702 employee shall reimburse the carrier 50 percent of the  
703 physician's cancellation or no-show fee unless the carrier that  
704 schedules the examination fails to timely provide to the  
705 employee a written confirmation of the date of the examination  
706 pursuant to paragraph (c) which includes an explanation of why  
707 he or she failed to appear. The employee may appeal to a judge  
708 of compensation claims for reimbursement when the carrier  
709 withholds payment in excess of the authority granted by this  
710 section.

711 ~~(e) No medical opinion other than the opinion of a medical~~  
712 ~~advisor appointed by the judge of compensation claims or agency,~~  
713 ~~an independent medical examiner, or an authorized treating~~





HB 1539

2003

714 ~~provider is admissible in proceedings before the judges of~~  
715 ~~compensation claims.~~

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

720 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

721 (a) Any health care provider, ~~carrier, or employer~~ who  
722 elects to contest the disallowance or adjustment of payment by a  
723 carrier under subsection (6) may file a petition for benefits in  
724 accordance with s. 440.192 and proceed in the same manner as an  
725 employee must, within 30 days after receipt of notice of  
726 disallowance or adjustment of payment, petition the agency to  
727 resolve the dispute. A health care provider who prevails in  
728 contesting a disallowance or adjustment of payment shall be  
729 entitled to recover taxable costs and attorney's fees as  
730 provided in s. 440.34(3)(a). ~~The petitioner must serve a copy~~  
731 ~~of the petition on the carrier and on all affected parties by~~  
732 ~~certified mail. The petition must be accompanied by all~~  
733 ~~documents and records that support the allegations contained in~~  
734 ~~the petition. Failure of a petitioner to submit such~~  
735 ~~documentation to the agency results in dismissal of the~~  
736 ~~petition.~~

737 ~~(b) The carrier must submit to the agency within 10 days~~  
738 ~~after receipt of the petition all documentation substantiating~~  
739 ~~the carrier's disallowance or adjustment. Failure of the carrier~~  
740 ~~to submit the requested documentation to the agency within 10~~  
741 ~~days constitutes a waiver of all objections to the petition.~~

742 ~~(c) Within 60 days after receipt of all documentation, the~~  
743 ~~agency must provide to the petitioner, the carrier, and the~~



HB 1539

2003

744 ~~affected parties a written determination of whether the carrier~~  
745 ~~properly adjusted or disallowed payment. The agency must be~~  
746 ~~guided by standards and policies set forth in this chapter,~~  
747 ~~including all applicable reimbursement schedules, in rendering~~  
748 ~~its determination.~~

749 ~~(d) If the agency finds an improper disallowance or~~  
750 ~~improper adjustment of payment by an insurer, the insurer shall~~  
751 ~~reimburse the health care provider, facility, insurer, or~~  
752 ~~employer within 30 days, subject to the penalties provided in~~  
753 ~~this subsection.~~

754 ~~(e) The agency shall adopt rules to carry out this~~  
755 ~~subsection. The rules may include provisions for consolidating~~  
756 ~~petitions filed by a petitioner and expanding the timetable for~~  
757 ~~rendering a determination upon a consolidated petition.~~

758 ~~(b)(f)~~ Any carrier that engages in a pattern or practice  
759 of arbitrarily or unreasonably disallowing or reducing payments  
760 to health care providers may be subject to an administrative  
761 fine assessed by the agency in an amount not to exceed \$5,000  
762 per instance of improperly disallowing or reducing payments. one  
763 or more of the following penalties imposed by the agency:

764 ~~1. Repayment of the appropriate amount to the health care~~  
765 ~~provider.~~

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

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

771 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
772 REIMBURSEMENT ALLOWANCES. --



HB 1539

2003

773 (a) A three-member panel is created, consisting of the  
774 Insurance Commissioner, or the Insurance Commissioner's  
775 designee, and two members to be appointed by the Governor,  
776 subject to confirmation by the Senate, one member who, on  
777 account of present or previous vocation, employment, or  
778 affiliation, shall be classified as a representative of  
779 employers, the other member who, on account of previous  
780 vocation, employment, or affiliation, shall be classified as a  
781 representative of employees. The panel shall determine statewide  
782 schedules of maximum reimbursement allowances for medically  
783 necessary treatment, care, and attendance provided by  
784 physicians, hospitals, ambulatory surgical centers, work-  
785 hardening programs, pain programs, and durable medical  
786 equipment. The reimbursement for medical services furnished  
787 pursuant to this chapter shall not be less than 100 percent of  
788 the applicable reimbursement allowance as determined in  
789 accordance with the American Medical Association Current  
790 Procedural Terminology codes as adopted and updated annually by  
791 the Centers for Medicare and Medicaid Services of the U.S.  
792 Department of Health and Human Services. ~~The maximum~~  
793 ~~reimbursement allowances for inpatient hospital care shall be~~  
794 ~~based on a schedule of per diem rates, to be approved by the~~  
795 ~~three member panel no later than March 1, 1994, to be used in~~  
796 ~~conjunction with a precertification manual as determined by the~~  
797 ~~agency. All compensable charges for hospital outpatient care~~  
798 ~~shall be reimbursed at 75 percent of usual and customary~~  
799 ~~charges. Until the three member panel approves a schedule of per~~  
800 ~~diem rates for inpatient hospital care and it becomes effective,~~  
801 ~~all compensable charges for hospital inpatient care must be~~  
802 ~~reimbursed at 75 percent of their usual and customary charges.~~



HB 1539

2003

803 Annually, the three-member panel shall adopt schedules of  
804 maximum reimbursement allowances for physicians, hospital  
805 inpatient care, hospital outpatient care, ambulatory surgical  
806 centers, work-hardening programs, and pain programs. ~~However,~~  
807 The maximum percentage of increase in the individual  
808 reimbursement allowance may not exceed the percentage of annual  
809 increase as determined by the Centers of Medicare and Medicaid  
810 Services in the Consumer Price Index for the previous year. ~~An~~  
811 ~~individual physician, hospital, ambulatory surgical center, pain~~  
812 ~~program, or work-hardening program shall be reimbursed either~~  
813 ~~the usual and customary charge for treatment, care, and~~  
814 ~~attendance, the agreed-upon contract price, or the maximum~~  
815 ~~reimbursement allowance in the appropriate schedule, whichever~~  
816 ~~is less.~~

817 (b) As to reimbursement for a prescription medication, the  
818 reimbursement amount for a prescription shall be the average  
819 wholesale price times 1.2 plus \$4.18 for the dispensing fee,  
820 except where the carrier has contracted for a lower amount. Fees  
821 for pharmaceuticals and pharmaceutical services shall be  
822 reimbursable at the applicable fee schedule amount. Where the  
823 employer or carrier has contracted for such services and the  
824 employee elects to obtain them through a provider not a party to  
825 the contract, the carrier shall reimburse at the schedule,  
826 negotiated, or contract price, whichever is lower.

827 (c) Reimbursement for all fees and other charges for such  
828 treatment, care, and attendance, including treatment, care, and  
829 attendance provided by any hospital or other health care  
830 provider, ambulatory surgical center, work-hardening program, or  
831 pain program, for which the Centers for Medicare and Medicaid  
832 Services do not provide a maximum rate of reimbursement must not



HB 1539

2003

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

- 855 1. The levels of reimbursement for similar treatment,  
 856 care, and attendance made by other health care programs or  
 857 third-party providers;
- 858 2. The impact upon cost to employers for providing a level  
 859 of reimbursement for treatment, care, and attendance which will  
 860 ensure the availability of treatment, care, and attendance  
 861 required by injured workers;



HB 1539

2003

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

873 4. The most recent average maximum allowable rate of  
874 increase for hospitals determined by the Health Care Board under  
875 chapter 408.

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

878 1. Take testimony, receive records, and collect data to  
879 evaluate the adequacy of the workers' compensation fee schedule,  
880 nationally recognized fee schedules and alternative methods of  
881 reimbursement to certified health care providers and health care  
882 facilities for inpatient and outpatient treatment and care.

883 2. Survey certified health care providers and health care  
884 facilities to determine the availability and accessibility of  
885 workers' compensation health care delivery systems for injured  
886 workers.

887 3. Survey carriers to determine the estimated impact on  
888 carrier costs and workers' compensation premium rates by  
889 implementing changes to the carrier reimbursement schedule or  
890 implementing alternative reimbursement methods.



HB 1539

2003

891 4. Submit recommendations on or before January 1, 2003,  
892 and biennially thereafter, to the President of the Senate and  
893 the Speaker of the House of Representatives on methods to  
894 improve the workers' compensation health care delivery system.

895  
896 The division shall provide data to the panel, including but not  
897 limited to, utilization trends in the workers' compensation  
898 health care delivery system. The division shall provide the  
899 panel with an annual report regarding the resolution of medical  
900 reimbursement disputes and any actions pursuant to s. 440.13(8).  
901 The division shall provide administrative support and service to  
902 the panel to the extent requested by the panel.

903 (14) PAYMENT OF MEDICAL FEES.--

904 (a) Except for emergency care treatment, fees for medical  
905 services are payable only to a health care provider certified  
906 and authorized to render remedial treatment, care, or attendance  
907 under this chapter. A health care provider may not collect or  
908 receive a fee from an injured employee within this state, except  
909 as otherwise provided by this chapter. Any authorized health  
910 care provider who attempts to recover from the employee payment  
911 for medical services authorized and provided pursuant to this  
912 chapter shall forfeit the right to payment for such medical  
913 services. Such providers have recourse against the employer or  
914 carrier for payment for services rendered in accordance with  
915 this chapter.

916 (b) Any health care provider seeking payment of fees for  
917 medical services may file a petition for benefits in accordance  
918 with s. 440.192 and proceed in the same manner as an employee  
919 filing a petition for benefits. A health care provider who  
920 prevails in seeking payment for medical services shall be



HB 1539

2003

921 entitled to recover taxable costs and attorney's fees as  
 922 provided in s. 440.34(3)(a).

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

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

931 Section 5. Paragraph (c) of subsection (10) and  
 932 subsections (16) and (17) of section 440.134, Florida Statutes,  
 933 are amended to read:

934 440.134 Workers' compensation managed care arrangement.--

935 (10) Written procedures and methods for the management of  
 936 an injured worker's medical care by a medical care coordinator  
 937 including:

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

946 (16) When a carrier enters into a managed care arrangement  
 947 pursuant to this section, the medical benefits available to  
 948 employees must, at a minimum, equal those afforded employees  
 949 under s. 440.13 ~~employees who are covered by the provisions of~~  
 950 ~~such arrangement shall be deemed to have received all the~~





HB 1539

2003

951 ~~benefits to which they are entitled pursuant to s. 440.13(2)(a)~~  
 952 ~~and (b). In addition, the employer shall be deemed to have~~  
 953 ~~complied completely with the requirements of such provisions.~~  
 954 The provisions governing managed care arrangements shall govern  
 955 exclusively unless said arrangements are contrary to s. 440.13,  
 956 in which case the provisions of said section shall apply  
 957 ~~specifically stated otherwise in this section.~~

958 (17) Notwithstanding any other provisions of this chapter,  
 959 when a carrier provides medical care through a workers'  
 960 compensation managed care arrangement, pursuant to this section,  
 961 those workers who are subject to the arrangement must receive  
 962 medical services for work-related injuries and diseases as  
 963 prescribed in the contract, provided the employer and carrier  
 964 have provided notice to the employees of the arrangement in a  
 965 manner approved by the agency. Treatment received outside the  
 966 workers' compensation managed care arrangement is not  
 967 compensable unless authorized by the carrier prior to the  
 968 treatment date or as provided under s. 440.13(2)(d).

969 Section 6. Subsection (3) of section 440.15, Florida  
 970 Statutes, is amended to read:

971 440.15 Compensation for disability.--Compensation for  
 972 disability shall be paid to the employee, subject to the limits  
 973 provided in s. 440.12(2), as follows:

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

975 (a) *Impairment benefits.*--

976 1. Once the employee has reached the date of maximum  
 977 medical improvement, impairment benefits are due and payable  
 978 within 20 days after the carrier has knowledge of the  
 979 impairment, unless the employee is entitled to supplemental  
 980 benefits under paragraph (b).



HB 1539

2003

981           2. The three-member panel, in cooperation with the  
982 department, shall establish and use a uniform permanent  
983 impairment rating schedule. This schedule must be based on  
984 medically or scientifically demonstrable findings as well as the  
985 systems and criteria set forth in the American Medical  
986 Association's Guides to the Evaluation of Permanent Impairment;  
987 the Snellen Charts, published by American Medical Association  
988 Committee for Eye Injuries; and the Minnesota Department of  
989 Labor and Industry Disability Schedules. The schedule should be  
990 based upon objective findings. The schedule shall be more  
991 comprehensive than the AMA Guides to the Evaluation of Permanent  
992 Impairment and shall expand the areas already addressed and  
993 address additional areas not currently contained in the guides.  
994 On August 1, 1979, and pending the adoption, by rule, of a  
995 permanent schedule, Guides to the Evaluation of Permanent  
996 Impairment, copyright 1977, 1971, 1988, by the American Medical  
997 Association, shall be the temporary schedule and shall be used  
998 for the purposes hereof. For injuries after July 1, 1990,  
999 pending the adoption by rule of a uniform disability rating  
1000 agency schedule, the Minnesota Department of Labor and Industry  
1001 Disability Schedule shall be used unless that schedule does not  
1002 address an injury. In such case, the Guides to the Evaluation of  
1003 Permanent Impairment by the American Medical Association shall  
1004 be used. Determination of permanent impairment under this  
1005 schedule must be made by a physician licensed under chapter 458,  
1006 a doctor of osteopathic medicine licensed under chapters 458 and  
1007 459, a chiropractic physician licensed under chapter 460, a  
1008 podiatric physician licensed under chapter 461, an optometrist  
1009 licensed under chapter 463, or a dentist licensed under chapter  
1010 466, as appropriate considering the nature of the injury. No



HB 1539

2003

1011 other persons are authorized to render opinions regarding the  
1012 existence of or the extent of permanent impairment.

1013 3. All impairment income benefits shall be based on an  
1014 impairment rating using the impairment schedule referred to in  
1015 subparagraph 2. Impairment income benefits are paid weekly at  
1016 the rate of 50 percent of the employee's average weekly  
1017 temporary total disability benefit not to exceed the maximum  
1018 weekly benefit under s. 440.12. An employee's entitlement to  
1019 impairment income benefits begins the day after the employee  
1020 reaches maximum medical improvement or the expiration of  
1021 temporary benefits, whichever occurs earlier, and continues  
1022 until the earlier of:

1023 a. The expiration of a period computed at the rate of 3  
1024 weeks for each percentage point of impairment; or

1025 b. The death of the employee.

1026 4. After the employee has been certified by a doctor as  
1027 having reached maximum medical improvement or 6 weeks before the  
1028 expiration of temporary benefits, whichever occurs earlier, the  
1029 certifying doctor shall evaluate the condition of the employee  
1030 and assign an impairment rating, using the impairment schedule  
1031 referred to in subparagraph 2. Compensation is not payable for  
1032 the mental, psychological, or emotional injury arising out of  
1033 depression from being out of work. If the certification and  
1034 evaluation are performed by a doctor other than the employee's  
1035 treating doctor, the certification and evaluation must be  
1036 submitted to the treating doctor, and the treating doctor must  
1037 indicate agreement or disagreement with the certification and  
1038 evaluation. The certifying doctor shall issue a written report  
1039 to the department, the employee, and the carrier certifying that  
1040 maximum medical improvement has been reached, stating the



HB 1539

2003

1041 impairment rating, and providing any other information required  
 1042 by the department by rule. If the employee has not been  
 1043 certified as having reached maximum medical improvement before  
 1044 the expiration of 102 weeks after the date temporary total  
 1045 disability benefits begin to accrue, the carrier shall notify  
 1046 the treating doctor of the requirements of this section.

1047 5. The carrier shall pay the employee impairment income  
 1048 benefits for a period based on the impairment rating.

1049 6. The department may by rule specify forms and procedures  
 1050 governing the method of payment of wage loss and impairment  
 1051 benefits for dates of accidents before January 1, 1994, and for  
 1052 dates of accidents on or after January 1, 1994.

1053 (b) *Supplemental benefits.*--

1054 1. All supplemental benefits must be paid in accordance  
 1055 with this subsection. An employee is entitled to supplemental  
 1056 benefits as provided in this paragraph as of the expiration of  
 1057 the impairment period, if:

1058 a. The employee has an impairment rating from the  
 1059 compensable injury of 10 ~~20~~ percent or more as determined  
 1060 pursuant to this chapter;

1061 b. The employee has not returned to work or has returned  
 1062 to work earning less than 80 percent of the employee's average  
 1063 weekly wage as a direct result of the employee's impairment; and

1064 c. The employee has in good faith attempted to obtain  
 1065 employment commensurate with the employee's ability to work.

1066 2. Any employee entitled to supplemental benefits pursuant  
 1067 to this paragraph shall not be entitled to receive impairment  
 1068 benefits under paragraph (a).

1069 ~~3.2.~~ If an employee is not entitled to supplemental  
 1070 benefits at the time of payment of the final weekly impairment



HB 1539

2003

1071 income benefit because the employee is earning at least 80  
1072 percent of the employee's average weekly wage, the employee may  
1073 become entitled to supplemental benefits at any time within 1  
1074 year after the impairment income benefit period ends if:

1075 a. The employee earns wages that are less than 80 percent  
1076 of the employee's average weekly wage for a period of at least  
1077 90 days;

1078 b. The employee meets the other requirements of  
1079 subparagraph 1.; and

1080 c. The employee's decrease in earnings is a direct result  
1081 of the employee's impairment from the compensable injury.

1082 ~~4.3.~~ If an employee earns wages that are at least 80  
1083 percent of the employee's average weekly wage for a period of at  
1084 least 90 days during which the employee is receiving  
1085 supplemental benefits, the employee ceases to be entitled to  
1086 supplemental benefits for the filing period. Supplemental  
1087 benefits that have been terminated shall be reinstated when the  
1088 employee satisfies the conditions enumerated in subparagraph 3.  
1089 ~~2.~~ and files the statement required under subparagraph 5. ~~4.~~  
1090 Notwithstanding any other provision, if an employee is not  
1091 entitled to supplemental benefits for 12 consecutive months, the  
1092 employee ceases to be entitled to any additional income benefits  
1093 for the compensable injury. If the employee is discharged within  
1094 12 months after losing entitlement under this subsection,  
1095 benefits may be reinstated if the employee was discharged at  
1096 that time with the intent to deprive the employee of  
1097 supplemental benefits.

1098 ~~5.4.~~ After the initial determination of supplemental  
1099 benefits, the employee must file a statement with the carrier  
1100 stating that the employee has earned less than 80 percent of the



HB 1539

2003

1101 employee's average weekly wage as a direct result of the  
1102 employee's impairment, stating the amount of wages the employee  
1103 earned in the filing period, and stating that the employee has  
1104 in good faith sought employment commensurate with the employee's  
1105 ability to work. The statement must be filed quarterly on a form  
1106 and in the manner prescribed by the department. The department  
1107 may modify the filing period as appropriate to an individual  
1108 case. Failure to file a statement relieves the carrier of  
1109 liability for supplemental benefits for the period during which  
1110 a statement is not filed.

1111 ~~6.5-~~ The carrier shall begin payment of supplemental  
1112 benefits not later than the seventh day after the expiration  
1113 date of the impairment income benefit period and shall continue  
1114 to timely pay those benefits. The carrier may request a  
1115 mediation conference for the purpose of contesting the  
1116 employee's entitlement to or the amount of supplemental income  
1117 benefits.

1118 ~~7.6-~~ Supplemental benefits are calculated quarterly and  
1119 paid monthly. For purposes of calculating supplemental benefits,  
1120 80 percent of the employee's average weekly wage and the average  
1121 wages the employee has earned per week are compared quarterly.  
1122 For purposes of this paragraph, if the employee is offered a  
1123 bona fide position of employment that the employee is capable of  
1124 performing, given the physical condition of the employee and the  
1125 geographic accessibility of the position, the employee's weekly  
1126 wages are considered equivalent to the weekly wages for the  
1127 position offered to the employee.

1128 ~~8.7-~~ Supplemental benefits are payable at the rate of 80  
1129 percent of the difference between 80 percent of the employee's  
1130 average weekly wage determined pursuant to s. 440.14 and the



HB 1539

2003

1131 weekly wages the employee has earned during the reporting  
 1132 period, not to exceed the maximum weekly income benefit under s.  
 1133 440.12.

1134 ~~9.8-~~ The department may by rule define terms that are  
 1135 necessary for the administration of this section and forms and  
 1136 procedures governing the method of payment of supplemental  
 1137 benefits for dates of accidents before January 1, 1994, and for  
 1138 dates of accidents on or after January 1, 1994.

1139 (c) *Duration of temporary impairment and supplemental*  
 1140 *income benefits.*--The employee's eligibility for temporary  
 1141 benefits, impairment income benefits, and supplemental benefits  
 1142 terminates on the expiration of 401 weeks after the date of  
 1143 injury.

1144 Section 7. Subsections (1) and (7) of section 440.16,  
 1145 Florida Statutes, are amended to read:

1146 440.16 Compensation for death.--

1147 (1) If death results from the accident within 1 year  
 1148 thereafter or follows continuous disability and results from the  
 1149 accident within 5 years thereafter, the employer shall pay:

1150 (a) Within 14 days after receiving the bill, actual  
 1151 funeral expenses not to exceed \$10,000 ~~\$5,000~~.

1152 (b) Compensation, in addition to the above, in the  
 1153 following percentages of the average weekly wages to the  
 1154 following persons entitled thereto on account of dependency upon  
 1155 the deceased, and in the following order of preference, subject  
 1156 to the limitation provided in subparagraph 2., but such  
 1157 compensation shall be subject to the limits provided in s.  
 1158 440.12(2), shall not exceed \$200,000 ~~\$100,000~~, and may be less  
 1159 than, but shall not exceed, for all dependents or persons  
 1160 entitled to compensation, 66<sup>2</sup>/<sub>3</sub> percent of the average wage:



HB 1539

2003

1161 1. To the spouse, if there is no child, 50 percent of the  
1162 average weekly wage, such compensation to cease upon the  
1163 spouse's death.

1164 2. To the spouse, if there is a child or children, the  
1165 compensation payable under subparagraph 1. and, in addition,  
1166  $16\frac{2}{3}$  percent on account of the child or children. However, when  
1167 the deceased is survived by a spouse and also a child or  
1168 children, whether such child or children are the product of the  
1169 union existing at the time of death or of a former marriage or  
1170 marriages, the judge of compensation claims may provide for the  
1171 payment of compensation in such manner as may appear to the  
1172 judge of compensation claims just and proper and for the best  
1173 interests of the respective parties and, in so doing, may  
1174 provide for the entire compensation to be paid exclusively to  
1175 the child or children; and, in the case of death of such spouse,  
1176  $33\frac{1}{3}$  percent for each child. However, upon the surviving  
1177 spouse's remarriage, the spouse shall be entitled to a lump-sum  
1178 payment equal to 26 weeks of compensation at the rate of 50  
1179 percent of the average weekly wage as provided in s. 440.12(2),  
1180 unless the \$200,000 ~~\$100,000~~ limit provided in this paragraph is  
1181 exceeded, in which case the surviving spouse shall receive a  
1182 lump-sum payment equal to the remaining available benefits in  
1183 lieu of any further indemnity benefits. In no case shall a  
1184 surviving spouse's acceptance of a lump-sum payment affect  
1185 payment of death benefits to other dependents.

1186 3. To the child or children, if there is no spouse,  $33\frac{1}{3}$   
1187 percent for each child.

1188 4. To the parents, 25 percent to each, such compensation  
1189 to be paid during the continuance of dependency.





HB 1539

2003

1190 5. To the brothers, sisters, and grandchildren, 15 percent  
1191 for each brother, sister, or grandchild.

1192 (c) To the surviving spouse, payment of postsecondary  
1193 student fees for instruction at any area technical center  
1194 established under s. 1001.44 for up to 1,800 classroom hours or  
1195 payment of student fees at any community college established  
1196 under part III of chapter 1004 for up to 80 semester hours. The  
1197 spouse of a deceased state employee shall be entitled to a full  
1198 waiver of such fees as provided in ss. 1009.22 and 1009.23 in  
1199 lieu of the payment of such fees. The benefits provided for in  
1200 this paragraph shall be in addition to other benefits provided  
1201 for in this section and shall terminate 7 years after the death  
1202 of the deceased employee, or when the total payment in eligible  
1203 compensation under paragraph (b) has been received. To qualify  
1204 for the educational benefit under this paragraph, the spouse  
1205 shall be required to meet and maintain the regular admission  
1206 requirements of, and be registered at, such area technical  
1207 center or community college, and make satisfactory academic  
1208 progress as defined by the educational institution in which the  
1209 student is enrolled.

1210 (7) Compensation under this chapter to aliens not  
1211 residents (or about to become nonresidents) of the United States  
1212 or Canada shall be the same in amount as provided for residents,  
1213 except that dependents in any foreign country shall be limited  
1214 to surviving spouse and child or children, or if there be no  
1215 surviving spouse or child or children, to surviving father or  
1216 mother whom the employee has supported, either wholly or in  
1217 part, for the period of 1 year prior to the date of the injury,  
1218 and except that the judge of compensation claims may, at the  
1219 option of the judge of compensation claims, or upon the



HB 1539

2003

1220 application of the insurance carrier, commute all future  
 1221 installments of compensation to be paid to such aliens by paying  
 1222 or causing to be paid to them one-half of the commuted amount of  
 1223 such future installments of compensation as determined by the  
 1224 judge of compensation claims, and provided further that  
 1225 compensation to dependents referred to in this subsection shall  
 1226 in no case exceed \$100,000 ~~\$50,000~~.

1227 Section 8. Subsection (2) of section 440.19, Florida  
 1228 Statutes, is amended to read:

1229 440.19 Time bars to filing petitions for benefits.--

1230 (2) Payment of any indemnity benefit or the furnishing of  
 1231 remedial treatment, care, or attendance pursuant to either a  
 1232 notice of injury or a petition for benefits shall toll the  
 1233 limitations period set forth above for 2 years after ~~1 year from~~  
 1234 the date of such payment. This tolling period does not apply to  
 1235 the issues of compensability, date of maximum medical  
 1236 improvement, or permanent impairment.

1237 Section 9. Section 440.205, Florida Statutes, is amended  
 1238 to read:

1239 440.205 Coercion of employees.--

1240 (1) An ~~Ne~~ employer shall not discharge, threaten to  
 1241 discharge, intimidate, or coerce any employee by reason of such  
 1242 employee's valid claim for compensation or attempt to claim  
 1243 compensation under the Workers' Compensation Law. Any employer  
 1244 who violates this subsection shall be subject to civil suit for  
 1245 damages to be filed in any circuit court of this state where the  
 1246 employer resides or transacts business. The immunity afforded  
 1247 employers under s. 440.11 does not extend to the conduct  
 1248 prohibited by this subsection.



HB 1539

2003

1249       (2) A carrier shall not engage in conduct prohibited under  
 1250 s. 440.105. Any carrier who engages in conduct prohibited under  
 1251 s. 440.105 is subject to civil suit for damages which may be  
 1252 filed in any circuit court of this state where the carrier  
 1253 resides or transacts business. The immunity afforded carriers  
 1254 under s. 440.11 does not extend to conduct prohibited under this  
 1255 subsection or s. 440.105.

1256           Section 10. Subsection (2) of section 440.25, Florida  
 1257 Statutes, is amended to read:

1258           440.25 Procedures for mediation and hearings.--

1259           (2) Any party who participates in a mediation conference  
 1260 shall not be precluded from requesting a hearing following the  
 1261 mediation conference should both parties not agree to be bound  
 1262 by the results of the mediation conference. A mediation  
 1263 conference is required to be held on every petition for  
 1264 benefits, except in cases where the parties file a joint motion  
 1265 to waive mediation or in cases where ~~unless~~ this requirement is  
 1266 waived by the Deputy Chief Judge. Mediation may not be waived by  
 1267 joint motion of the parties in any case involving a detail of  
 1268 compensability or a petition seeking benefits under s.  
 1269 440.15(1). No later than 3 days prior to the mediation  
 1270 conference, all parties must submit any applicable motions,  
 1271 including, but not limited to, a motion to waive the mediation  
 1272 conference, to the judge of compensation claims.

1273           Section 11. Paragraphs (b) and (c) of subsection (2) and  
 1274 subsection (4) of section 440.45, Florida Statutes, are amended  
 1275 to read:

1276           440.45 Office of the Judges of Compensation Claims.--

1277           (2)



HB 1539

2003

1278 (b) Except as provided in paragraph (c), the Governor  
 1279 shall appoint a judge of compensation claims from a list of  
 1280 three persons nominated by a statewide nominating commission.  
 1281 The statewide nominating commission shall be composed of the  
 1282 following:

1283 1. Five members, at least one of whom must be a member of  
 1284 a minority group as defined in s. 288.703(3), one of each who  
 1285 resides in each of the territorial jurisdictions of the district  
 1286 courts of appeal, appointed by the Board of Governors of The  
 1287 Florida Bar from among The Florida Bar members who are engaged  
 1288 in the practice of law. Two of the members must be board  
 1289 certified in workers' compensation law by The Florida Bar and  
 1290 represent employers and carriers exclusively, and two of the  
 1291 members must be board certified in workers' compensation law by  
 1292 The Florida Bar and represent employees exclusively. On July 1,  
 1293 1999, the term of office of each person appointed by the Board  
 1294 of Governors of The Florida Bar to the commission expires. The  
 1295 Board of Governors shall appoint members who reside in the odd-  
 1296 numbered district court of appeal jurisdictions to 4-year terms  
 1297 each, beginning July 1, 1999, and members who reside in the  
 1298 even-numbered district court of appeal jurisdictions to 2-year  
 1299 terms each, beginning July 1, 1999. Thereafter, each member  
 1300 shall be appointed for a 4-year term;

1301 2. Five electors, at least one of whom must be a member of  
 1302 a minority group as defined in s. 288.703(3), one of each who  
 1303 resides in each of the territorial jurisdictions of the district  
 1304 courts of appeal, appointed by the Governor. On July 1, 1999,  
 1305 the term of office of each person appointed by the Governor to  
 1306 the commission expires. The Governor shall appoint members who  
 1307 reside in the odd-numbered district court of appeal



HB 1539

2003

1308 jurisdictions to 2-year terms each, beginning July 1, 1999, and  
1309 members who reside in the even-numbered district court of appeal  
1310 jurisdictions to 4-year terms each, beginning July 1, 1999.  
1311 Thereafter, each member shall be appointed for a 4-year term;  
1312 and

1313 3. Five electors, at least one of whom must be a member of  
1314 a minority group as defined in s. 288.703(3), one of each who  
1315 resides in the territorial jurisdictions of the district courts  
1316 of appeal, selected and appointed by a majority vote of the  
1317 other 10 members of the commission. On October 1, 1999, the term  
1318 of office of each person appointed to the commission by its  
1319 other members expires. A majority of the other members of the  
1320 commission shall appoint members who reside in the odd-numbered  
1321 district court of appeal jurisdictions to 2-year terms each,  
1322 beginning October 1, 1999, and members who reside in the even-  
1323 numbered district court of appeal jurisdictions to 4-year terms  
1324 each, beginning October 1, 1999. Thereafter, each member shall  
1325 be appointed for a 4-year term.

1326  
1327 A vacancy occurring on the commission shall be filled by the  
1328 original appointing authority for the unexpired balance of the  
1329 term. No attorney who appears before any judge of compensation  
1330 claims more than four times a year is eligible to serve on the  
1331 statewide nominating commission except as an appointee pursuant  
1332 to subparagraph 1. The meetings and determinations of the  
1333 nominating commission as to the judges of compensation claims  
1334 shall be open to the public and shall be recorded.

1335 (c) Each judge of compensation claims shall be appointed  
1336 for a term of 4 years, but during the term of office may be  
1337 removed by the Governor for cause. Prior to the expiration of a



HB 1539

2003

1338 judge's term of office, the statewide nominating commission  
1339 shall review the judge's conduct and determine whether the  
1340 judge's performance is satisfactory. Effective July 1, 2002, in  
1341 determining whether a judge's performance is satisfactory, the  
1342 commission shall consider the extent to which the judge has met  
1343 the requirements of this chapter, including, but not limited to,  
1344 the requirements of ss. 440.25(1) and (4)(a)-(f), 440.34(2), and  
1345 440.442. A judge of compensation claims appearing before the  
1346 commission shall testify under oath and shall be subject to  
1347 penalties for perjury. If the judge's performance is deemed  
1348 satisfactory, the commission shall report its finding to the  
1349 Governor no later than 6 months prior to the expiration of the  
1350 judge's term of office. The Governor shall review the  
1351 commission's report and may reappoint the judge for an  
1352 additional 4-year term. If the Governor does not reappoint the  
1353 judge, the Governor shall inform the commission. The judge shall  
1354 remain in office until the Governor has appointed a successor  
1355 judge in accordance with paragraphs (a) and (b). If a vacancy  
1356 occurs during a judge's unexpired term, the statewide nominating  
1357 commission does not find the judge's performance is  
1358 satisfactory, or the Governor does not reappoint the judge, the  
1359 Governor shall appoint a successor judge for a term of 4 years  
1360 in accordance with paragraph (b).

1361 (4) The Office of the Judges of Compensation Claims shall  
1362 adopt rules to effect the purposes of this section. Such rules  
1363 shall include ~~procedural rules applicable to workers'~~  
1364 ~~compensation claim resolution and~~ uniform criteria for measuring  
1365 the performance of the office, including, but not limited to,  
1366 the number of cases assigned and disposed, the age of pending  
1367 and disposed cases, timeliness of decisionmaking, extraordinary



HB 1539

2003

1368 fee awards, and other data necessary for the judicial nominating  
 1369 commission to review the performance of judges as required in  
 1370 paragraph (2)(c). Such rules shall be subject to approval by  
 1371 the Supreme Court. ~~The workers' compensation rules of procedure~~  
 1372 ~~approved by the Supreme Court apply until the rules adopted by~~  
 1373 ~~the Office of the Judges of Compensation Claims pursuant to this~~  
 1374 ~~section become effective.~~

1375 Section 12. Subsections (3) and (6) of section 627.041,  
 1376 Florida Statutes, are amended to read:

1377 627.041 Definitions.--As used in this part:

1378 (3) "Rating organization" means every person, other than  
 1379 an authorized insurer, whether located within or outside this  
 1380 state, who has as his or her object or purpose the making of  
 1381 prospective loss costs, rates, rating plans, or rating systems.  
 1382 Two or more authorized insurers that act in concert for the  
 1383 purpose of making prospective loss costs, rates, rating plans,  
 1384 or rating systems, and that do not operate within the specific  
 1385 authorizations contained in ss. 627.311, 627.314(2), (4), and  
 1386 627.351, shall be deemed to be a rating organization. No single  
 1387 insurer shall be deemed to be a rating organization.

1388 (6) "Subscriber" means an insurer which is furnished at  
 1389 its request:

1390 (a) With prospective loss costs, rates, and rating manuals  
 1391 by a rating organization of which it is not a member; or

1392 (b) With advisory services by an advisory organization of  
 1393 which it is not a member.

1394 Section 13. Section 627.091, Florida Statutes, is amended  
 1395 to read:

1396 627.091 Rate filings; workers' compensation and employer's  
 1397 liability insurances.--



HB 1539

2003

1398 (1) As used in this section, the term:

1399 (a) "Expenses" means that portion of a rate attributable  
 1400 to acquisition, field supervision, collection expenses, and  
 1401 general expenses.

1402 (b) "Multiplier" means the profit and expenses, other than  
 1403 loss adjustment expenses associated with writing workers'  
 1404 compensation and employer's liability insurance, expressed as a  
 1405 single nonintegral number to be applied to the prospective loss  
 1406 costs approved by the department in making rates for each  
 1407 classification of risks utilized by that insurer.

1408 (c) "Prospective loss costs" means that portion of a rate  
 1409 reflecting historical aggregate losses and loss adjustment  
 1410 expenses projected through development to their ultimate value  
 1411 and through trending to a future point in time. The term does  
 1412 not include provisions for profit or expenses, other than loss  
 1413 adjustment expenses.

1414 (2)~~(1)~~ As to workers' compensation and employer's  
 1415 liability insurances, every insurer shall file with the  
 1416 department every manual of classifications, rules, and rates,  
 1417 every rating plan, and every modification of any of the  
 1418 foregoing which it proposes to use. Every insurer is authorized  
 1419 to include deductible provisions in its manual of  
 1420 classifications, rules, and rates. Such deductibles shall in all  
 1421 cases be in a form and manner which is consistent with the  
 1422 underlying purpose of chapter 440.

1423 (3)~~(2)~~ Every such filing shall state the proposed  
 1424 effective date thereof, and shall indicate the character and  
 1425 extent of the coverage contemplated. When a filing is not  
 1426 accompanied by the information upon which the insurer supports  
 1427 the filing and the department does not have sufficient





HB 1539

2003

1428 information to determine whether the filing meets the applicable  
1429 requirements of this part, it shall within 15 days after the  
1430 date of filing require the insurer to furnish the information  
1431 upon which it supports the filing. The information furnished in  
1432 support of a filing may include:

1433 (a) The experience or judgment of the insurer or rating  
1434 organization making the filing;

1435 (b) Its interpretation of any statistical data it relies  
1436 upon;

1437 (c) The experience of other insurers or rating  
1438 organizations; or

1439 (d) Any other factors which the insurer or rating  
1440 organization deems relevant.

1441 ~~(4)(3)~~ A filing and any supporting information shall be  
1442 open to public inspection as provided in s. 119.07(1).

1443 ~~(5)(4)~~ An insurer may satisfy its obligation to make ~~such~~  
1444 filings of prospective loss costs by becoming a member of, or a  
1445 subscriber to, a licensed rating organization which makes such  
1446 filings and by authorizing the department to accept such filings  
1447 in its behalf; but nothing contained in this chapter shall be  
1448 construed as requiring any insurer to become a member or a  
1449 subscriber to any rating organization.

1450 (6)(a) A licensed rating organization may develop and file  
1451 for approval with the department reference filings containing  
1452 prospective loss costs and the underlying loss data and other  
1453 supporting statistical and actuarial information. A rating  
1454 organization may not develop or file final rates or multipliers  
1455 for expenses and profit. After a loss costs reference filing has  
1456 been filed with the department and approved, the rating



HB 1539

2003

1457 organization shall provide its member insurers with a copy of  
1458 the approved reference filing.

1459 (b) Each insurer shall independently and individually file  
1460 with the department the final rates it will use and the  
1461 effective date of any rate changes. An insurer may independently  
1462 file its rates, including prospective loss costs, as authorized  
1463 by this section. An insurer that is a member of or subscribes to  
1464 a rating organization may use the prospective loss costs in an  
1465 approved reference filing by the rating organization or the  
1466 insurer may file for a deviation from the loss costs reference  
1467 filing under s. 627.211.

1468 (c) If an insurer uses the prospective loss costs in the  
1469 approved reference filing, the insurer must independently and  
1470 individually file with the department its multiplier for  
1471 expenses and profit. The insurer's rates shall be the  
1472 combination of the prospective loss costs and the multiplier for  
1473 expenses and profit. Insurers shall file data in accordance with  
1474 the uniform statistical plan approved by the department.  
1475 Insurers may use variable or fixed expense loads or a  
1476 combination of these and may vary the expense load by class, if  
1477 the insurer files supporting data justifying such variations. An  
1478 insurer that uses the prospective loss costs in an approved  
1479 reference filing may use its multiplier and final rates  
1480 immediately upon filing with the department, subject to  
1481 disapproval by the department.

1482 (d) Insurers may file with the department premium  
1483 discounts, credits, and surcharges, that bear a reasonable  
1484 relationship to the expected loss and expense experience of an  
1485 individual policyholder, subject to a maximum surcharge of 40  
1486 percent above the approved rate and a maximum discount or credit



HB 1539

2003

1487 of 50 percent below the approved rate. An insurer that uses the  
1488 prospective loss costs in an approved reference filing may use  
1489 premium discounts, credits, and surcharges immediately upon  
1490 filing with the department, subject to disapproval by the  
1491 department.

1492 (e) An insurer may request to have its multiplier for  
1493 expenses and profit remain on file and reference all subsequent  
1494 prospective loss costs reference filings. Upon the effective  
1495 date of approval of subsequent reference loss costs filings, the  
1496 insurer's rates shall be the combination of the prospective loss  
1497 costs and the multiplier contained in its filing with the  
1498 department. The insurer's filed multiplier shall remain in  
1499 effect until the insurer withdraws it and files a revised  
1500 multiplier. If the insurer elects to use the prospective loss  
1501 costs as filed but with a different effective date, then the  
1502 insurer must file notice with the department of the effective  
1503 date.

1504 (7) A rating organization may file supplementary rating  
1505 information that includes policy-writing rules, rating plans  
1506 classification codes and descriptions, and rules that include  
1507 factors or relativities, such as increased limits factors,  
1508 classification relativities, or similar factors, but excludes  
1509 minimum premiums. An insurer may elect to use such supplementary  
1510 rating information approved by the department.

1511 (8) A rating organization may file:

1512 (a) Final rates and rating plans for the residual market.

1513 (b) The uniform classification plan and rules.

1514 (c) The uniform experience rating plan and rules.



HB 1539

2003

1515        (d) Advisory manual workers' compensation rates to be used  
1516        for the sole purpose of computing the assessment liability of  
1517        self-insurers.

1518        ~~(9)(5)~~ Pursuant to the provisions of s. 624.3161, the  
1519        department may examine the underlying statistical data used in  
1520        such filings.

1521        ~~(10)(6)~~ Whenever the committee of a recognized rating  
1522        organization with responsibility for workers' compensation and  
1523        employer's liability insurance rates in this state meets to  
1524        discuss the necessity for, or a request for, Florida rate  
1525        increases or decreases, the determination of Florida rates, the  
1526        rates to be requested, and any other matters pertaining  
1527        specifically and directly to such Florida rates, such meetings  
1528        shall be held in this state and shall be subject to s. 286.011.  
1529        The committee of such a rating organization shall provide at  
1530        least 3 weeks' prior notice of such meetings to the department  
1531        and shall provide at least 14 days' prior notice of such  
1532        meetings to the public by publication in the Florida  
1533        Administrative Weekly.

1534        Section 14. Subsection (1) of section 627.096, Florida  
1535        Statutes, is amended to read:

1536        627.096 Workers' Compensation Rating Bureau.--

1537        (1) There is created within the department a Workers'  
1538        Compensation Rating Bureau, which shall make an investigation  
1539        and study of all insurers authorized to issue workers'  
1540        compensation and employer's liability coverage in this state.  
1541        Such bureau shall study the data, statistics, schedules, or  
1542        other information as it may deem necessary to assist and advise  
1543        the department in its review of filings made by or on behalf of  
1544        workers' compensation and employer's liability insurers. The



HB 1539

2003

1545 department shall have the authority to promulgate rules  
1546 requiring all workers' compensation and employer's liability  
1547 insurers to submit to the rating bureau any data, statistics,  
1548 schedules, and other information deemed necessary to the rating  
1549 bureau's study and advisement. All data, statistics, schedules,  
1550 and other information submitted to, or considered by, the  
1551 Workers' Compensation Rating Bureau shall be considered public  
1552 record for purposes of s. 119.07(1) and s. 24(a), Art. I of the  
1553 State Constitution.

1554 Section 15. Section 627.101, Florida Statutes, is amended  
1555 to read:

1556 627.101 When filing becomes effective; workers'  
1557 compensation and employer's liability insurances.--

1558 (1) The department shall review prospective loss costs  
1559 filings and final rate filings as to workers' compensation and  
1560 employer's liability insurances as soon as reasonably possible  
1561 after they have been made in order to determine whether they  
1562 meet the applicable requirements of this part. If the department  
1563 determines that part of a rate filing does not meet the  
1564 applicable requirements of this part, it may reject so much of  
1565 the filing as does not meet these requirements, and approve the  
1566 remainder of the filing.

1567 (2) The department shall specifically approve a  
1568 prospective loss costs ~~the~~ filing before it becomes effective,  
1569 unless the department has concluded it to be in the public  
1570 interest to hold a public hearing to determine whether the  
1571 filing meets the requirements of this chapter and has given  
1572 notice of such hearing to the insurer or rating organization  
1573 that made the filing, and in which case the effectiveness of the  
1574 filing shall be subject to the further order of the department



HB 1539

2003

1575 made as provided in s. 627.111. An insurer that uses the  
1576 prospective loss costs in an approved reference filing may use  
1577 its multiplier and final rates immediately upon filing with the  
1578 department, as provided in s. 627.091, subject to disapproval by  
1579 the department. If the department specifically disapproves  
1580 either a prospective loss costs filing or a final rate the  
1581 filing, the provisions of subsection (4) shall apply.

1582 (3) An insurer or rating organization may, at the time it  
1583 makes a prospective loss costs filing with the department,  
1584 request a public hearing thereon. In such event, the department  
1585 shall give notice of the hearing.

1586 (4) If the department disapproves a prospective loss costs  
1587 or final rate filing, it shall promptly give notice of such  
1588 disapproval to the insurer or rating organization that made the  
1589 filing, stating the respects in which it finds that the filing  
1590 does not meet the requirements of this chapter. If the  
1591 department approves a filing, it shall give prompt notice  
1592 thereof to the insurer or rating organization that made the  
1593 filing, and in which case the filing shall become effective upon  
1594 such approval or upon such subsequent date as may be  
1595 satisfactory to the department and the insurer or rating  
1596 organization that made the filing.

1597 Section 16. Subsection (1) of section 627.211, Florida  
1598 Statutes, is amended to read:

1599 627.211 Deviations; workers' compensation and employer's  
1600 liability insurances.--

1601 (1) Every member or subscriber to a rating organization  
1602 shall, as to workers' compensation or employer's liability  
1603 insurance, adhere to the filings made on its behalf by such  
1604 organization; except that any such insurer may make written



HB 1539

2003

1605 application to the department for permission to file a uniform  
1606 percentage decrease or increase to be applied to the premiums  
1607 produced by the rating system so filed for a kind of insurance,  
1608 for a class of insurance which is found by the department to be  
1609 a proper rating unit for the application of such uniform  
1610 percentage decrease or increase, or for a subdivision of  
1611 workers' compensation or employer's liability insurance:

1612 (a) Comprised of a group of manual classifications which  
1613 is treated as a separate unit for ratemaking purposes; or

1614 (b) For which separate ~~expense~~ provisions for loss  
1615 adjustment expenses are included in the filings of the rating  
1616 organization.

1617

1618 Such application shall specify the basis for the modification  
1619 and shall be accompanied by the data upon which the applicant  
1620 relies. A copy of the application and data shall be sent  
1621 simultaneously to the rating organization.

1622 Section 17. If any provision of this act or its  
1623 application to any person or circumstance is held invalid, the  
1624 invalidity does not affect other provisions or applications of  
1625 the act which can be given effect without the invalid provision  
1626 or application, and to this end the provisions of this act are  
1627 declared severable.

1628 Section 18. This act shall take effect January 1, 2004.