A bill to be entitled

An act relating to workers' compensation; amending s. 440.02, F.S.; revising, providing, and deleting definitions; amending s. 440.05, F.S.; revising requirements relating to submitting notice of election of exemption and maintenance of records; amending s. 440.06, F.S.; revising provisions relating to failure to secure compensation; amending s. 440.077, F.S.; providing that a corporate officer electing to be exempt may not receive benefits under ch. 440, F.S.; amending s. 440.09, F.S.; requiring that certain compensable injuries be established by medical evidence; clarifying compensation for subsequent injuries; amending s. 440.10, F.S.; revising provisions relating to contractors and subcontractors with regard to liability for compensation; requiring subcontractors to provide evidence of workers' compensation coverage or proof of exemption to a contractor; deleting provisions relating to independent contractors; amending s. 440.11, F.S.; clarifying employer immunity from liability for injury or death with regard to intent; amending s. 440.13, F.S.; revising definition of the term "medically necessary" as "medical necessity"; requiring the Agency for Health Care Administration to ensure establishment of practice parameters for physician medical services; specifying circumstances under which employers or carriers are responsible for attendant care; providing additional criteria for calculation of the value of nonprofessional attendant care; revising procedures for provision of medical services and supplies; revising hearing procedures; revising provisions that provide for

reimbursement allowances; expanding membership of the panel that determines schedules of reimbursement allowances to five members; requiring revision of specified reimbursement schedules; prohibiting specified health care providers from charging certain fees; providing timetable for revision of schedules of maximum reimbursement allowances; revising certain reimbursement allowances; revising procedure for determination of fee-for-service, pharmaceutical, and hospital per diem schedules; amending s. 440.134, F.S.; revising a definition; amending s. 440.14, F.S.; revising provisions relating to calculation of average weekly wage for injured employees; amending s. 440.15, F.S.; providing additional limitations on compensation for permanent total disability and temporary total disability; revising payment schedule for impairment benefits; specifying criteria for payment of impairment benefits for psychiatric impairment; amending s. 440.151, F.S.; revising provisions relating to compensation for certain occupational diseases; revising the definition of "occupational disease"; amending s. 440.192, F.S.; revising procedures for resolving benefit disputes; providing conditions for claims to be adjudicated by a judge of compensation claims; correcting a cross reference, to conform; amending s. 440.20, F.S.; revising requirements for settlement of contested claims; clarifying responsibility of employer and carrier with regard to child support information; amending s. 440.25, F.S.; revising procedures for mediation and hearings; specifying conditions for granting of continuance; amending s. 440.271, F.S.; revising provisions for review

of order; amending s. 440.29, F.S.; revising provisions relating to evidentiary procedures; creating s. 440.315, F.S.; providing for attorney's fees; amending s. 440.39, F.S.; revising provisions relating to third-party liability; providing for application with regard to preservation of evidence; creating s. 440.4415, F.S.; creating the Workers' Compensation Appeals Commission; providing for membership, authority, powers, duties, and responsibilities; providing that the commission shall review final orders of the judges of compensation claims, under specified circumstances; providing procedures for review; providing for the location, property, personnel, and appropriations of the commission; authorizing destruction of certain records; providing for travel expenses; providing rulemaking authority; amending s. 440.45, F.S.; deleting provision for establishment of certain training by the Deputy Chief Judge; correcting references; amending s. 440.51, F.S., relating to expenses of administration; revising limitation of certain expenses; deleting requirement for legislative appropriation in order to transfer certain funds to the workers' compensation joint underwriting plan; repealing s. 440.34, F.S., relating to attorney's fees and costs; providing for severability; providing an effective date.

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

Section 1. Subsections (1), (8), (15), and (16), paragraph (c) of subsection (17), and subsections (38), (41), and (42) of section 440.02, Florida Statutes, are amended to read:

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

(1) "Accident" means only an unexpected or unusual event or result that happens suddenly. A mental or nervous injury due to stress, fright, or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual's race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment. If a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident is compensable, with respect to death or permanent impairment. An injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus and mold, is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.

(8) "Construction industry" means any business that carries out for-profit activities involving ~~the carrying out of~~ any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. ~~When appropriate to the context,~~

~~"construction" refers to the act of construction or the result of construction.~~ However, "construction" does ~~shall~~ not mean a homeowner's ~~landowner's~~ act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, ~~or~~ resold, or leased by the owner within 1 year after the commencement of the construction. The division may, by rule, establish those standard industrial classification codes and their definitions which meet the criteria of the term "construction industry" as set forth in this section.

(15)(a) "Employee" means any person who receives remuneration from an employer for the performance of any work or service, whether by ~~engaged in any employment under any~~ appointment or contract for ~~of~~ hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

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

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

2. As to officers of a corporation who are ~~actively~~ engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05. Officers must be shareholders, each owning at

least 10 percent of the stock of such corporation, in order to elect exemptions under this chapter. ~~However, any exemption obtained by a corporate officer of a corporation actively engaged in the construction industry is not applicable with respect to any commercial building project estimated to be valued at $250,000 or greater.~~

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

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

(c)~~1.~~ "Employee" includes:

1. A sole proprietor or a partner who devotes full time to the proprietorship or partnership and~~, except as provided in this paragraph,~~ elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

2. Any person who is being paid by a construction contractor, except as otherwise permitted by this chapter, for work performed by or as a subcontractor or employee of a subcontractor.

3. An independent contractor working or performing services in the construction industry. ~~Partners or sole proprietors actively engaged in the construction industry are considered employees unless they elect to be excluded from the definition of employee by filing written notice of the election with the department as provided in s. 440.05. However, no more than three partners in a partnership that is actively engaged in the construction industry may elect to be excluded.~~

4. A sole proprietor ~~or partner~~ who is ~~actively~~ engaged in the construction industry and a partner or partnership that is engaged in the construction industry. ~~who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee~~. ~~For purposes of this chapter, an independent contractor is an employee unless he or she meets all of the conditions set forth in subparagraph (d)1.~~

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

(d) "Employee" does not include:

1. An independent contractor that is not engaged in the construction industry.~~, if:~~

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

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

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

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

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

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

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

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

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

~~However, the determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449, or a newspaper delivery person, is an independent contractor is governed not by the criteria in this paragraph but by common-law principles, giving due consideration to the business activity of the individual. Notwithstanding the provisions of this paragraph or any other provision of this chapter, with respect to any commercial building project estimated to be valued at $250,000 or greater, a person who is actively engaged in the construction industry is not an independent contractor and is either an~~

~~employer or an employee who may not be exempt from the coverage requirements of this chapter.~~

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

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

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

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

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

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

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

7. Unless otherwise prohibited by this chapter, any officer of a corporation who elects to be exempt from this chapter.

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

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

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing,

insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

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

(16)(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105 and 440.106.

(b) However, a landowner shall not be considered the employer of a person hired by the landowner to carry out

construction on the landowner's own premises if those premises are not intended for immediate sale or resale.

(17)

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

1. Domestic servants in private homes.

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

3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08.

4. Persons performing labor under a sentence of a court to perform community services as provided in s. 316.193.

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

(38) "Catastrophic injury" means a permanent impairment constituted by:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

(b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

(c) Severe brain or closed-head injury as evidenced by:

1. Severe sensory or motor disturbances;

2. Severe communication disturbances;

3. Severe complex integrated disturbances of cerebral function;

4. Severe episodic neurological disorders; or

5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.;

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

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

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

(41) "Specificity" means information on the petition for benefits sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period of benefits being requested and includes a detailed explanation of any benefits received that should be increased, decreased, changed, or otherwise modified. If the petition is for medical benefits, the information shall include specific details as to why such benefits are being requested, why such benefits are

medically necessary, and why current treatment, if any, is not sufficient.

~~(41) "Commercial building" means any building or structure intended for commercial or industrial use, or any building or structure intended for multifamily use of more than four dwelling units, as well as any accessory use structures constructed in conjunction with the principal structure. The term, "commercial building," does not include the conversion of any existing residential building to a commercial building.~~

~~(42) "Residential building" means any building or structure intended for residential use containing four or fewer dwelling units and any structures intended as an accessory use to the residential structure.~~

Section 2. Subsections (3), (6), (10), and (13) of section 440.05, Florida Statutes, are amended to read:

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

(3) Each ~~sole proprietor, partner, or~~ officer of a corporation who is ~~actively~~ engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is submitted to the department by the ~~sole proprietor, partner, or~~ officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, social security number, all certified or registered licenses issued pursuant to chapter 489 held by the

person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and~~, for corporate officers and partners,~~ the registration number of the corporation ~~or partnership~~ filed with the Division of Corporations of the Department of State along with a copy of the stock certificate evidencing the required ownership under this chapter. The notice of election to be exempt must identify each ~~sole proprietorship, partnership, or~~ corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the ~~sole proprietor, partner, or~~ officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers ~~and partnerships~~ provided in s. 440.02, and must certify that any employees of the corporation whose ~~sole proprietor, partner, or~~ officer elects ~~electing~~ an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the ~~sole proprietor, partner, or~~ officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person

does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name ~~names~~ of the ~~sole proprietorship, partnership, or~~ corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new ~~sole proprietorship, partnership,~~ or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an ~~a sole proprietor, partner, or~~ officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. Any person who has received from the division a construction industry certificate of election to be exempt which is in effect on December 31, 1998, shall file a new notice of election to be exempt by the last day in his or her birth month following December 1, 1998. A construction industry certificate of election to be exempt may be revoked before its expiration by

the ~~sole proprietor, partner, or~~ officer for whom it was issued or by the department for the reasons stated in this section. At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the department shall send notice of the expiration date and an application for renewal to the certificateholder at the address on the certificate.

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

(13) Any corporate officer permitted by this chapter to claim ~~claiming~~ an exemption ~~under this section~~ must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. ~~If the person who claims an exemption as a corporate officer is not so listed on the records of the Secretary of State, the individual must provide to the division, upon request by the division, a notarized affidavit stating that the individual is a bona fide officer of the corporation and stating the date his or her appointment or election as a corporate officer became or will become effective. The statement must be signed under oath by both the officer and the president or chief operating officer of the corporation and must be notarized.~~ The division shall issue a stop-work order under s. 440.107(1) to any corporation who employs a person who

claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the division within 3 business days after the request is made.

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

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

Section 4. Section 440.077, Florida Statutes, is amended to read:

440.077 When a corporate ~~sole proprietor, partner, or~~ officer rejects chapter, effect.--An ~~A sole proprietor, partner, or~~ officer of a corporation who is permitted to elect an exemption under this chapter ~~actively engaged in the construction industry~~ and who elects to be exempt from the provisions of this chapter may not recover benefits under this chapter.

Section 5. Subsection (1) of section 440.09, Florida Statutes, is amended to read:

440.09 Coverage.--

(1) The employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an

accidental compensable injury or death arising out of work performed in the course and the scope of employment. The injury, its occupational cause, and any resulting manifestations or disability shall be established to a reasonable degree of medical certainty and by objective medical findings. Mental or nervous injuries occurring as a manifestation of an injury compensable under this section shall be demonstrated by clear and convincing evidence. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation shall be proven by clear and convincing evidence.

(a) This chapter does not require any compensation or benefits for any subsequent injury the employee suffers as a result of an original injury arising out of and in the course of employment unless the original injury is the major contributing cause of the subsequent injury. The work-related accident must be more than 50-percent responsible for the injury and subsequent disability or need for treatment in order for it to be the major contributing cause.

(b) If an injury arising out of and in the course of employment combines with a preexisting disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this chapter only to the extent that the injury arising out of and in the course of employment is and remains more than 50-percent responsible for the injury and therefore remains the major contributing cause of the disability or need for treatment.

(c) Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in

s. 440.15(6) shall for the purpose of this chapter be considered to be a death resulting from the accident causing the hernia.

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

Section 6. Subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.--

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

(b) In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment; and the contractor shall be liable for, and shall secure, the

payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

(c) A contractor shall ~~may~~ require a subcontractor to provide evidence of workers' compensation insurance ~~or a copy of his or her certificate of election~~. A subcontractor that is a corporation and that has an officer who elects ~~electing~~ to be exempt as permitted under this chapter ~~a sole proprietor, partner, or officer of a corporation~~ shall provide a copy of his or her certificate of exemption ~~election~~ to the contractor.

(d)1. If a contractor becomes liable for the payment of compensation to the employees of a subcontractor who has failed to secure such payment in violation of s. 440.38, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage.

2. If a contractor or third-party payor becomes liable for the payment of compensation to the corporate officer ~~employee~~ of a subcontractor who is ~~actively~~ engaged in the construction industry and has elected to be exempt from the provisions of this chapter, but whose election is invalid, the contractor or third-party payor may recover from the claimant~~, partnership,~~ or corporation all benefits paid or payable plus interest, unless the contractor and the subcontractor have agreed in writing that the contractor will provide coverage.

(e) A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness-of-liability provisions of s. 440.11 from action at law or in

admiralty on account of injury of such employee of another subcontractor.

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

~~(g) For purposes of this section, a person is conclusively presumed to be an independent contractor if:~~

~~1. The independent contractor provides the general contractor with an affidavit stating that he or she meets all the requirements of s. 440.02; and~~

~~2. The independent contractor provides the general contractor with a valid certificate of workers' compensation insurance or a valid certificate of exemption issued by the department.~~

An ~~A sole proprietor, partner, or~~ officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 may not recover benefits or compensation under this chapter. ~~An independent contractor who provides the general contractor with both an affidavit stating that he or she meets the requirements of s. 440.02 and a certificate of exemption is not an employee under s. 440.02 and may not recover benefits under this chapter.~~ For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any officer of a corporation

~~person~~ who validly meets the requirements of this subsection ~~paragraph~~ to be an employee.

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

440.11 Exclusiveness of liability.--

(1) Except if an employer acts with the intent to cause injury or death, the liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including any vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation, in accordance with s. 440.38 ~~as required by this chapter~~, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard

or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any ~~sole proprietor,~~ partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days' imprisonment as set forth in s. 775.082. The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the board of county commissioners. "Intent" includes only those actions or conduct of the employer where the employer actually intended that the consequences of its actions or conduct would be injury or death. Proof of intent shall include only evidence of a deliberate and knowing intent to harm. In the event that an employee recovers damages from an employer either by judgment or settlement under this subsection, the workers' compensation carrier for the employer, or the employer if self-insured, shall have an offset against any workers' compensation benefits to which the employee would be entitled under this chapter and a lien against recovery for any benefits paid prior to the recovery pursuant to this

chapter after deduction for attorney's fees and taxable costs expended by the employee in the prosecution of the claim against the employer.

Section 8. Paragraph (m) of subsection (1), paragraphs (b) and (f) of subsection (2), paragraphs (d) and (j) of subsection (3), paragraphs (a), (c), and (e) of subsection (5), subsection (12), and paragraphs (a) and (c) of subsection (15) of section 440.13, Florida Statutes, are amended to read:

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

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

(m) "Medical necessity ~~Medically necessary~~" means any medical service or medical supply which is used to identify or treat an illness or injury, is appropriate to the patient's diagnosis and status of recovery and recommended to the employer or carrier in writing by an authorized treating physician, and is consistent with the location of service, the level of care provided, and applicable practice parameters. The service should be widely accepted among practicing health care providers, based on scientific criteria, and determined to be reasonably safe. The service must not be of an experimental, investigative, or research nature, except in those instances in which prior approval of the Agency for Health Care Administration has been obtained. The Agency for Health Care Administration shall adopt rules providing for such approval on a case-by-case basis when the service or supply is shown to have significant benefits to the recovery and well-being of the patient. The Agency for Health Care Administration shall ensure that applicable practice parameters are established for physician medical services,

including, but not limited to, pain management and psychiatric treatment.

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

(b) The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The physician shall prescribe such care in writing. The employer or carrier is not responsible for such care until the prescription for attendant care, which shall specify the time periods for such care, the level of care required, and the type of assistance required, has been received by the employer or carrier from the authorized treating physician. The value of nonprofessional attendant care provided by a family member must be determined as follows:

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

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

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

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

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

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

(d) A carrier must respond, by telephone or in writing, to a request for authorization from an authorized health care provider by the close of the third business day after receipt of the request. A carrier who fails to respond to a written request for authorization for referral for medical treatment by the close of the third business day after receipt of the request consents to the medical necessity for such treatment. All such requests must be made to the carrier from an authorized health care provider. Notice to the carrier does not include notice to the employer.

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

(5) INDEPENDENT MEDICAL EXAMINATIONS.--

(a) In any dispute concerning overutilization, medical benefits, compensability, or disability under this chapter, the carrier or the employee may select an independent medical examiner. If the parties agree, the examiner may be a health care provider treating or providing other care to the employee. An independent medical examiner may not render an opinion outside his or her area of expertise, as demonstrated by licensure and applicable practice parameters. The independent medical examiner may not provide followup care unless both parties agree on when such recommendation for care is found to be medically necessary. Upon the written request of the employee, the carrier shall pay the cost of only one independent medical examination per accident. The cost of any additional independent medical examination, including the cost of any independent medical examination deposition, shall be borne by the party requesting the additional independent medical examination. Only the cost of independent medical examinations and the cost of such depositions expressly relied upon by the judge of compensation claims to award benefits in the final compensation order shall be taxable costs under s. 440.34(3).

(c) The carrier may, at its election, contact the claimant directly to schedule a reasonable time for an independent medical examination. The carrier must confirm the scheduling agreement in writing within 5 days and notify claimant's counsel, if any, at least 7 days before the date upon which the independent medical examination is scheduled to occur. An attorney representing a claimant is not authorized to schedule the employer or the carrier for independent medical evaluations under this subsection. Neither the employer nor the carrier shall be responsible for scheduling any independent medical

examination other than an employer or a carrier independent medical examination.

(e) No medical opinion other than the opinion of a medical advisor appointed by the judge of compensation claims or agency, an independent medical examiner, or an authorized treating provider is admissible in proceedings before the judges of compensation claims. The employee and the carrier may each submit into evidence, and the judge of compensation claims shall admit, the medical opinion of no more than one qualified independent medical examiner per specialty. In cases involving occupational disease or repetitive trauma, medical opinions are not admissible unless based on reliable scientific principles sufficiently established to have gained general acceptance in the pertinent area of specialty.

(12) CREATION OF FIVE-MEMBER ~~THREE-MEMBER~~ PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.--

(a) A five-member ~~three-member~~ panel is created, consisting of the Insurance Commissioner, or the Insurance Commissioner's designee, and four ~~two~~ members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers;~~,~~ the second ~~other~~ member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees; effective September 1, 2003, the third member who shall be a physician licensed in this state experienced in workers' compensation medical provision; and, effective September 1, 2003, the fourth member who is an accredited insurer actuary experienced in workers' compensation medical provision. The panel shall determine statewide schedules

of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the ~~three-member~~ panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the agency. All compensable charges for hospital outpatient surgical care shall be reimbursed at the same per diem schedule for inpatient hospital and ambulatory surgical centers care, effective January 1, 2004 ~~75 percent of usual and customary charges~~. Effective January 1, 2004, medical treatment other than surgical care, including, but not limited to, laboratory, radiology, and occupational therapy and physical therapy services, performed at a hospital or ambulatory surgical center shall be paid at the lesser of the workers' compensation health care provider fee-for-service schedule otherwise applicable; 75 percent of the usual and customary charges; at an amount mutually negotiated between the hospital or ambulatory surgical center and the employer or insurer; or at the amount billed by the health care provider. Through and including December 31, 2003 ~~Until the three-member panel approves a schedule of per diem rates for inpatient hospital care and it becomes effective~~, all compensable charges for hospital outpatient ~~inpatient~~ care must be reimbursed at 75 percent of their usual and customary charges. The five-member panel shall establish a revised per diem charge for hospitals to cover all the costs associated with hospital inpatient and outpatient care, including, but not limited to, medical hardware used in the human body. This revised

per diem fee schedule shall reduce the current fee schedule by not less than 15 percent and shall be implemented effective January 1, 2004. The per diem charge applicable shall be prorated on the basis of four 6-hour periods of hospitalization. Irrespective of the length of stay ordered by the physician, the amount to be reimbursed shall be determined by the actual length of hospitalization. The applicable fee schedule may take into account a distinction between a surgical and a nonsurgical stay, as well as the distinction between acute and trauma care. The five-member panel shall revise the current workers' compensation health care provider fee-for-service schedule applicable to physicians and other health care providers, which shall be implemented on January 1, 2004. This fee-for-service schedule shall include, but not be limited to, office visits, inpatient or outpatient care in a hospital or at an ambulatory surgical center, and physical therapy, work-hardening, and pain programs; provided, however, that the health care provider and the employer or its insurer may contract with each other to pay an amount less than the fee-for-service schedule amount. Notwithstanding any rule issued by any administrative agency, effective January 1, 2004, no hospital, ambulatory surgical center, physician, or other health care provider may charge a workers' compensation health care provider fee-for-service fee or hospital per diem fee, other than a negotiated fee for an initial consultation, higher than the applicable fee-for-service schedule, regardless of its actual cost. No hospital, ambulatory surgical center, physician, or other health care provider may charge the employer, insurer, or injured worker for any difference above the amount allowed in such schedule. The revised fee-for-service and per diem schedules shall be implemented no later than January 1,

2004. In addition to complying with all applicable provisions in paragraph (c), revisions must result in no overall increase in costs to employers or insurers over the total cost of the current fee-for-service schedule and the hospital per diem fee schedule, as well as the usual and customary cost, to the extent applicable. Within that restriction, it is the intention and mandate of the Legislature that the health care provider fee-for-service schedule be raised, using the savings produced by a no less than 15-percent overall reduction from the current hospital per diem schedule. The health care provider fee-for-service schedule and the hospital per diem schedules may be adjusted to achieve the standards otherwise applicable to paragraph (c). This provision shall be applicable only to the health care provider fee-for-service and the hospital per diem schedules effective January 1, 2004, but need not be implemented with regard to the subsequent biennial adjustments. Every 2 years after January 1, 2004, the five-member panel shall review, revise, and ~~Annually, the three-member panel shall~~ adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. The revisions shall take effect no later than January 1 of each even-numbered year and shall be published at least 6 months prior to that date. However, the maximum percentage of increase in the individual reimbursement allowance may not exceed the percentage of increase in the Consumer Price Index for the previous year. ~~An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed either the usual and customary charge for treatment, care, and attendance, the agreed-upon contract price, or the maximum~~

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

(b) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price ~~times 1.2~~ plus $2 ~~$4.18~~ for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lowest ~~lower~~.

(c) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. Until December 31, 2003, or until the ~~three-member~~ panel approves a uniform schedule of maximum reimbursement allowances, whichever occurs first, and it becomes effective, all compensable charges for treatment, care, and attendance provided by physicians, ambulatory surgical centers, work-hardening programs, or pain programs shall be reimbursed at the lowest maximum reimbursement allowance across all 1992 schedules of maximum reimbursement allowances for the services provided regardless of the place of service. In determining the health

care provider fee-for-service schedule, the pharmaceutical schedule, and the hospital per diem ~~uniform~~ schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. The most current American Medical Association procedural terminology codes with associated modified relative values as published by the Centers for Medicare and Medicaid Services shall be adopted for uniform reporting by health care providers, hospitals, employers, and insurers and updated annually no later than 45 days after the Centers for Medicare and Medicaid Services notices are published in the annual update in the Federal Reporter. The most current medical fee-for-service and hospital per diem schedules adopted from time to time by the Centers for Medicare and Medicaid Services shall serve as the basis upon which the schedules for this state shall be calculated, adjusted, and set. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

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

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

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including

trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The effectiveness of utilization review procedures and practice parameters, whether they need to be changed, and how to improve the quality of care at a reasonable price. ~~The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.~~

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

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

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

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

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

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

(15) PRACTICE PARAMETERS.--

(a) The Agency for Health Care Administration, in conjunction with the department and appropriate health professional associations and health-related organizations shall develop and shall ~~may~~ adopt by rule scientifically sound practice parameters for medical procedures relevant to workers' compensation claimants. Practice parameters developed under this section must focus on identifying effective remedial treatments and promoting the appropriate utilization of health care resources. Priority must be given to those procedures that involve the greatest utilization of resources either because they are the most costly or because they are the most frequently performed. Practice parameters for treatment of the 10 top procedures associated with workers' compensation injuries, including the remedial treatment of lower-back injuries, pain management, and psychiatry, must be developed by December 31, 2003 ~~1994~~.

(c) Procedures must be instituted which provide for the periodic review and revision of practice parameters based on the latest outcomes data, research findings, technological advancements, and clinical experiences, at least once every 2 ~~3~~ years.

Section 9. Paragraph (d) of subsection (1) of section 440.134, Florida Statutes, is amended to read:

440.134 Workers' compensation managed care arrangement.--

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

(d) "Grievance" means a written complaint, other than a petition for benefits, filed by the injured worker pursuant to the requirements of the managed care arrangement expressing dissatisfaction with the ~~medical care provided by an~~ insurer's workers' compensation managed care arrangement's refusal to provide medical care or dissatisfaction with the medical care provided ~~arrangement health care providers, expressed in writing by an injured worker~~.

Section 10. Subsection (1) of section 440.14, Florida Statutes, is amended to read:

440.14 Determination of pay.--

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

(a) If the injured employee has worked in the employment in which she or he was working on the date of the accident ~~at the time of the injury~~, whether for the same or another employer, during substantially the whole of 13 weeks immediately preceding the accident ~~injury~~, her or his average weekly wage

shall be one-thirteenth of the total amount of wages earned in such employment during the 13 weeks. As used in this paragraph, the term "substantially the whole of 13 weeks" means the calendar ~~shall be deemed to mean and refer to a constructive~~ period of 13 weeks as a whole, which shall be defined as the 13 calendar weeks before the date of the accident, excluding the week during which the accident occurred. ~~a consecutive period of 91 days, and~~ The term "during substantially the whole of 13 weeks" shall be deemed to mean during not less than 75 ~~90~~ percent of the total customary ~~full-time~~ hours of employment within such period considered as a whole.

(b) If the injured employee has not worked in such employment during substantially the whole of 13 weeks immediately preceding the accident ~~injury~~, the wages of a similar employee in the same employment who has worked substantially the whole of such 13 weeks shall be used in making the determination under the preceding paragraph.

(c) If an employee is a seasonal worker and the foregoing method cannot be fairly applied in determining the average weekly wage, then the employee may use, instead of the 13 weeks immediately preceding the accident ~~injury~~, the calendar year or the 52 weeks immediately preceding the accident ~~injury~~. The employee will have the burden of proving that this method will be more reasonable and fairer than the method set forth in paragraphs (a) and (b) and, further, must document prior earnings with W-2 forms, written wage statements, or income tax returns. The employer shall have 30 days following the receipt of this written proof to adjust the compensation rate, including the making of any additional payment due for prior weekly payments, based on the lower rate compensation.

(d) If any of the foregoing methods cannot reasonably and fairly be applied, the full-time weekly wages of the injured employee shall be used, except as otherwise provided in paragraph (e) or paragraph (f).

(e) If it is established that the injured employee was under 22 years of age when the accident occurred ~~injured~~ and that under normal conditions her or his wages should be expected to increase during the period of disability, the fact may be considered in arriving at her or his average weekly wages.

(f) If it is established that the injured employee was a part-time worker on the date of the accident ~~at the time of the injury~~, that she or he had adopted part-time employment as a customary practice, and that under normal working conditions she or he probably would have remained a part-time worker during the period of disability, these factors shall be considered in arriving at her or his average weekly wages. For the purpose of this paragraph, the term "part-time worker" means an individual who customarily works less than the full-time hours or full-time workweek of a similar employee in the same employment.

(g) If compensation is due for a fractional part of the week, the compensation for such fractional part shall be determined by dividing the weekly compensation rate by the number of days employed per week to compute the amount due for each day.

Section 11. Subsections (1), (2), and (3) of section 440.15, Florida Statutes, are amended to read:

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

(1) PERMANENT TOTAL DISABILITY.--

(a) In case of total disability adjudged to be permanent, $66^{2}/_{3}$ percent of the average weekly wages shall be paid to the employee during the continuance of such total disability.

(b) In the absence of conclusive proof of a substantial earning capacity, only a catastrophic injury as defined in s. 440.02(38) shall be presumed to~~, in the absence of conclusive proof of a substantial earning capacity,~~ constitute permanent total disability. No compensation shall be payable under paragraph (a) if the employee is engaged in or is physically capable of engaging in any work, including sheltered employment. The burden is on the employee to establish that he or she is unable to work on a full-time or part-time basis as a result of the industrial accident, if such work is available within a 50-mile radius of the employee's residence or within a greater distance as determined by the judge to be reasonable under the circumstances. Such benefits shall be payable until the employee reaches his or her 70th birthday, notwithstanding any age limits. If the accident occurred on or after the employee's 65th birthday, benefits shall be payable during the continuance of permanent total disability, not to exceed 5 years following the determination of permanent total disability. Only claimants with catastrophic injuries are eligible for permanent total benefits. In no other case may permanent total disability be awarded.

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

(d) If an employee who is being paid compensation for permanent total disability becomes rehabilitated to the extent that she or he establishes an earning capacity, the employee shall be paid, instead of the compensation provided in paragraph

(a), benefits pursuant to subsection (3). The department shall adopt rules to enable a permanently and totally disabled employee who may have reestablished an earning capacity to undertake a trial period of reemployment without prejudicing her or his return to permanent total status in the case that such employee is unable to sustain an earning capacity.

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

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

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

(f)1. If permanent total disability results from injuries that occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been

discharged under s. 440.20(11), the injured employee shall receive additional weekly compensation benefits equal to 5 percent of her or his weekly compensation rate, as established pursuant to the law in effect on the date of her or his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable under this paragraph, when combined, may not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12(2). ~~Entitlement to~~ These supplemental payments shall not be paid or payable after the employee attains ~~cease at~~ age 62, whether or not ~~if~~ the employee has applied for or is ineligible to apply ~~is eligible~~ for social security benefits under 42 U.S.C. ss. 402 and 423~~, whether or not the employee has applied for such benefits~~. These supplemental benefits shall be paid by the department out of the Workers' Compensation Administration Trust Fund when the injury occurred subsequent to June 30, 1955, and before July 1, 1984. These supplemental benefits shall be paid by the employer when the injury occurred on or after July 1, 1984. Supplemental benefits are not payable for any period prior to October 1, 1974.

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

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

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

(2) TEMPORARY TOTAL DISABILITY.--

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

(b) Notwithstanding the provisions of paragraph (a), an employee who has sustained the loss of an arm, leg, hand, or foot, has been rendered a paraplegic, paraparetic, quadriplegic, or quadriparetic, or has lost the sight of both eyes shall be

paid temporary total disability of 80 percent of her or his average weekly wage. The increased temporary total disability compensation provided for in this paragraph must not extend beyond 6 months from the date of the accident; however, such benefits are not due or payable if the employee is eligible for, entitled to, or collecting permanent total disability benefits. The compensation provided by this paragraph is not subject to the limits provided in s. 440.12(2), but instead is subject to a maximum weekly compensation rate of $700. If, at the conclusion of this period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraphs (a) and (c). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not paragraph (c).

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

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

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

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

(a) *Impairment benefits.*--

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

2. The three-member panel, in cooperation with the department, shall establish and use a uniform permanent impairment rating schedule. This schedule must be based on medically or scientifically demonstrable findings as well as the systems and criteria set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment; the Snellen Charts, published by American Medical Association Committee for Eye Injuries; and the Minnesota Department of Labor and Industry Disability Schedules. The schedule should be based upon objective findings. The schedule shall be more comprehensive than the AMA Guides to the Evaluation of Permanent Impairment and shall expand the areas already addressed and address additional areas not currently contained in the guides. On August 1, 1979, and pending the adoption, by rule, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, 1988, by the American Medical

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

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

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

b. The death of the employee.

4. After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in subparagraph 2. Compensation is not payable for the mental, psychological, or emotional injury arising out of depression from being out of work, from preexisting mental, psychological, or emotional conditions, or due to chronic pain which cannot be substantiated by objective medical findings. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation must be submitted to the treating doctor, and the treating doctor must indicate agreement or disagreement with the certification and evaluation. The certifying doctor shall issue a written report to the department, the employee, and the carrier certifying that maximum medical improvement has been reached, stating the impairment rating, and providing any other information required by the department by rule. If the employee has not been certified as having reached maximum medical improvement before the expiration of 102 weeks after the date temporary total disability benefits begin to accrue, the carrier shall notify the treating doctor of the requirements of this section.

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

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

Impairment benefits as defined by this paragraph are only payable for impairment ratings for physical impairments. Impairment benefits for permanent psychiatric impairment are limited to the payment of impairment benefits, as calculated under subparagraph 3., for a 1-percent permanent psychiatric impairment resulting from the work injury.

(b) *Supplemental benefits.*--

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

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

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

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

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

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

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

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

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

4. After the initial determination of supplemental benefits, the employee must file a statement with the carrier stating that the employee has earned less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment, stating the amount of wages the employee earned in the filing period, and stating that the employee has in good faith sought employment commensurate with the employee's ability to work. The statement must be filed quarterly on a form and in the manner prescribed by the department. The department may modify the filing period as appropriate to an individual case. Failure to file a statement relieves the carrier of

liability for supplemental benefits for the period during which a statement is not filed.

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

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

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

8. The department may by rule define terms that are necessary for the administration of this section and forms and procedures governing the method of payment of supplemental benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

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

Section 12. Paragraph (e) of subsection (1) and subsection (2) of section 440.151, Florida Statutes, are amended to read:

440.151 Occupational diseases.--

(1)

(e) No compensation shall be payable for disability or death resulting from tuberculosis arising out of and in the course of employment by the Department of Health at a state tuberculosis hospital, or aggravated by such employment, when the employee had suffered from said disease at any time prior to the commencement of such employment. Both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation shall be proven by clear and convincing evidence.

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. "Occupational disease" means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was

exposed, can cause the precise disease sustained by the employee.

Section 13. Subsections (1), (2), (5), (7), and (8) of section 440.192, Florida Statutes, are amended, and a new subsection (9) is added to said section, to read:

440.192 Procedure for resolving benefit disputes.--

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

(2) Upon receipt of a petition, the Office of the Judges of Compensation Claims shall review each petition and shall dismiss each petition or any portion of such a petition, upon the judge's own motion. A judge of compensation claims shall dismiss, upon the judge's own motion or upon the motion of any party, a petition for benefits or any portion thereof that does not on its face specifically identify or itemize the following:

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

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

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

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

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

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

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

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

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

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

(k) Any other information and documentation the Deputy

Chief Judge may require by rule.

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

(5) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must file an amended petition within ~~be allowed~~ 20 days after the date of the order of dismissal ~~in which to file an amended petition~~. Any grounds for dismissal for lack of specificity under this section which are not asserted by a response to petition or motion to dismiss within 60 ~~30~~ days after receipt of the petition for benefits are thereby waived.

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

(8) Within 30 ~~14~~ days after receipt of a petition for benefits by certified mail, the carrier must either pay or deny the requested benefits and ~~without prejudice to its right to deny within 120 days from receipt of the petition or~~ file a response to petition with the Office of the Judges of Compensation Claims that lists~~. The carrier must list~~ all benefits requested but not paid and explains ~~explain~~ its justification for nonpayment in the response to petition. ~~A carrier that does not deny compensability in accordance with s.~~

~~440.20(4) is deemed to have accepted the employee's injuries as compensable, unless it can establish material facts relevant to the issue of compensability that could not have been discovered through reasonable investigation within the 120-day period.~~ The carrier shall provide copies of the response to the filing party, employer, and claimant by certified mail.

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

Section 14. Paragraphs (a) and (d) of subsection (11) of section 440.20, Florida Statutes, are amended to read:

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

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

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

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

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

Section 15. Subsection (1) and paragraph (d) of subsection (4) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.--

(1) Within 90 days after a petition for benefits is filed under s. 440.192, a mediation conference concerning such petition shall be held. Within 40 days, but not sooner than 30 days after such petition is filed, the judge of compensation claims shall notify the interested parties by order that a state mediation conference concerning such petition will be held unless the parties have notified the Office of the Judges of Compensation Claims that a private mediation has been held. Such order must give the date by which the mediation conference must be held if a state mediation has not been or will not be scheduled. Such order may be served personally upon the interested parties or may be sent to the interested parties by mail. The claimant or the adjuster of the employer or carrier may, at the mediator's discretion, attend the mediation conference by telephone or, if agreed to by the parties, other electronic means. A continuance may be granted if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control. Any order granting a continuance must set forth the date of the rescheduled mediation conference. A mediation conference may not be used solely for the purpose of mediating attorney's fees. (4)

(d) The final hearing shall be held within 210 days after receipt of the petition for benefits in the county where the injury occurred, if the injury occurred in this state, unless otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury

occurred. If the injury occurred outside the state and is one for which compensation is payable under this chapter, then the final hearing may be held in the county of the employer's residence or place of business, or in any other county of the state that will, in the discretion of the Deputy Chief Judge, be the most convenient for a hearing. Continuances may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control. The written consent of the claimant must be obtained before any request from a claimant's attorney is granted for an additional continuance after the initial continuance has been granted. The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues. The judge of compensation claims may enter an abbreviated final order in cases in which compensability is not disputed. Either party may request separate findings of fact and conclusions of law. At the final hearing, the claimant and employer may each present evidence with respect to the claims presented by the petition for benefits and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the provisions of s. 440.13 shall apply. The report or testimony of the expert medical advisor shall be made a part of the record of the proceeding and shall be given the same consideration by the judge of compensation claims as is accorded other medical evidence submitted in the proceeding; and all costs incurred in connection with such examination and testimony may be assessed

as costs in the proceeding, subject to the provisions of s. 440.13. No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing is waived.

Section 16. Section 440.271, Florida Statutes, is amended to read:

440.271 Appeal of order of Workers' Compensation Appeals Commission ~~judge of compensation claims~~.--Review of any order of the Workers' Compensation Appeals Commission ~~a judge of compensation claims~~ entered pursuant to this chapter shall be subject to review only by notice of ~~by~~ appeal to the District Court of Appeal in the appellate district in which the issues were decided before the judge of compensation claims~~, First District~~. Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders. The department shall be given notice of any proceedings pertaining to s. 440.25, regarding indigency, or s. 440.49, regarding the Special Disability Trust Fund, and shall have the right to intervene in any proceedings.

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

440.29 Procedure before the judge of compensation claims.--

(4) All medical reports of authorized treating health care providers or independent medical examiners, whose medical opinions are submitted under s. 440.13(5)(e), relating to the claimant and subject accident shall be received into evidence by

the judge of compensation claims upon proper motion. However, such records must be served on the opposing party at least 30 days before the final hearing. This section does not limit any right of further discovery, including, but not limited to, depositions.

Section 18. Section 440.315, Florida Statutes, is created to read:

440.315 Attorney's fees.--

(1) All attorney's fees owed for services rendered to a claimant under this chapter shall be the sole responsibility of the claimant and shall be paid by the claimant in the amount equal to 20 percent of the first $5,000 of the amount of the benefits secured, 15 percent of the next $5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured, to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years after the date the claim is filed. The term "benefits secured" means benefits obtained as a result of the claimant's attorney's legal services rendered in connection with a petition for benefits. As to any settlement under s. 440.20(11)(c), the attorney's fee shall be paid by the claimant in an amount up to and including 15 percent of the settlement amount.

(2) Notwithstanding subsection (1), a claimant shall be entitled to recover a reasonable attorney's fee, which shall be in an amount equal to the formula set out in subsection (1), from an employer or carrier against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a petition for benefits seeking disability, permanent impairment, wage

loss, or death benefits, or any other compensation benefit under this chapter arising out of the same accident. If any attorney's fee is owed under this subsection, the judge of compensation claims may approve an additional attorney's fee, not to exceed $1,000 per accident, based on a reasonable hourly rate, if the judge of compensation claims expressly finds that the attorney's fee, based on benefits secured, fails to fairly compensate the attorney for disputed medical claims only as provided in this subsection and as the circumstances of the particular case warrant such action.

(3) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability at a final hearing, the carrier or employer shall be responsible for the claimant's attorney's fees based on the formula set forth in subsection (1).

(4) In awarding a reasonable claimant's attorney's fee under this section, the judge of compensation claims shall consider only those benefits to the claimant that the attorney is responsible for securing. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney's fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" means benefits obtained as a result of the claimant's attorney's legal services rendered in connection with the petition for benefits. However, such term does not include future medical benefits to be provided on any date more than 5 years after the date of the petition for benefits is filed.

(5) The judge of compensation claims shall not approve a compensation order, a joint stipulation for a lump-sum

settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this chapter that provides for an attorney's fee in excess of the amount permitted by this section.

(6) The employee, the employer, or the carrier shall not be responsible for attorney's fees, whether or not a petition for benefits is filed, for securing payment of a medical bill, when the claimant has, in fact, received the medical service, treatment, care, or attendance for which the provider seeks payment. In such cases, the provider claiming such payment by way of a petition or otherwise shall be solely responsible for any attorney's fees for securing payment for services that have been provided to the claimant.

(7) Regardless of the date benefits were initially requested, any right to attorney's fees to be paid by the employer or carrier shall not attach under this subsection unless the basis for such fee exists as of the 30th day after the date the employer, if self-insured, or the carrier, receives the petition.

Section 19. Section 440.39, Florida Statutes, is amended to read:

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

(1) If an employee, subject to the provisions of the Workers' Compensation Law, is injured or killed in the course of his or her employment by the negligence or wrongful act of a third-party tortfeasor, such injured employee or, in the case of his or her death, the employee's dependents may accept compensation benefits under the provisions of this law, and at the same time such injured employee or his or her dependents or

personal representatives may pursue his or her remedy by action at law or otherwise against such third-party tortfeasor.

(2)(a) If the employee or his or her dependents accept compensation or other benefits under this law or begin proceedings therefor, the employer or, in the event the employer is insured against liability hereunder, the insurer shall be subrogated to the rights of the employee or his or her dependents against such third-party tortfeasor, to the extent of the amount of compensation benefits paid or to be paid as provided by subsection (3). If the injured employee or his or her dependents recovers from a third-party tortfeasor by judgment or settlement, either before or after the filing of suit, before the employee has accepted compensation or other benefits under this chapter or before the employee has filed a written claim for compensation benefits, the amount recovered from the tortfeasor shall be set off against any compensation benefits other than for remedial care, treatment and attendance as well as rehabilitative services payable under this chapter. The amount of such offset shall be reduced by the amount of all court costs expended in the prosecution of the third-party suit or claim, including reasonable attorney's ~~attorney~~ fees for the plaintiff's attorney. In no event shall the setoff provided in this section in lieu of payment of compensation benefits diminish the period for filing a claim for benefits as provided in s. 440.19.

(b) The employer or, in the event the employer is insured against liability hereunder, its workers' compensation carrier shall be entitled to subrogate to the rights of the employee on an employer's uninsured/underinsured (UI/UIM) motorist coverage under a commercial automobile policy, to the extent of the

amount of compensation benefits paid or to be paid as provided by this section.

(3)(a) In all claims or actions at law against a third-party tortfeasor, the employee, or his or her dependents or those entitled by law to sue in the event he or she is deceased, shall sue for the employee individually and for the use and benefit of the employer, if a self-insurer, or employer's insurance carrier, in the event compensation benefits are claimed or paid; and such suit may be brought in the name of the employee, or his or her dependents or those entitled by law to sue in the event he or she is deceased, as plaintiff or, at the option of such plaintiff, may be brought in the name of such plaintiff and for the use and benefit of the employer or insurance carrier, as the case may be. Upon suit being filed, the employer or the insurance carrier, as the case may be, may file in the suit a notice of payment of compensation and medical benefits to the employee or his or her dependents, which notice shall constitute a lien upon any judgment or settlement recovered to the extent that the court may determine to be their pro rata share for compensation and medical benefits paid or to be paid under the provisions of this law, less their pro rata share of all court costs expended by the plaintiff in the prosecution of the suit including reasonable attorney's fees for the plaintiff's attorney. In determining the employer's or carrier's pro rata share of those costs and attorney's fees, the employer or carrier shall have deducted from its recovery a percentage amount equal to the percentage of the judgment or settlement which is for costs and attorney's fees. Subject to this deduction, the employer or carrier shall recover from the judgment or settlement, after costs and attorney's fees incurred

by the employee or dependent in that suit have been deducted, 100 percent of what it has paid and future benefits to be paid, except, if the employee or dependent can demonstrate to the court that he or she did not recover the full value of damages sustained, the employer or carrier shall recover from the judgment or settlement, after costs and attorney's fees incurred by the employee or dependent in that suit have been deducted, a percentage of what it has paid and future benefits to be paid equal to the percentage that the employee's net recovery is of the full value of the employee's damages; provided, the failure by the employer or carrier to comply with the duty to cooperate imposed by subsection (7) may be taken into account by the trial court in determining the amount of the employer's or carrier's recovery, and such recovery may be reduced, as the court deems equitable and appropriate under the circumstances, including as a mitigating factor whether a claim or potential claim against a third party is likely to impose liability upon the party whose cooperation is sought, if it finds such a failure has occurred. The burden of proof will be upon the employee. The determination of the amount of the employer's or carrier's recovery shall be made by the judge of the trial court upon application therefor and notice to the adverse party. Notice of suit being filed shall be served upon the employer and compensation carrier and upon all parties to the suit or their attorneys of record by the employee. Notice of payment of compensation benefits shall be served upon the employee and upon all parties to the suit or their attorneys of record by the employer and compensation carrier. However, if a migrant worker prevails under a private cause of action under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) 96 Stat. 2583, as amended, 29

U.S.C. ss. 1801 et seq. (1962 ed. and Supp. V), any recovery by the migrant worker under this act shall be offset 100 percent against any recovery under AWPA.

(b) If the employer or insurance carrier has given written notice of his or her rights of subrogation to the third-party tortfeasor, and, thereafter, settlement of any such claim or action at law is made, either before or after suit is filed, and the parties fail to agree on the proportion to be paid to each, the circuit court of the county in which the cause of action arose shall determine the amount to be paid to each by such third-party tortfeasor in accordance with the provisions of paragraph (a).

(4)(a) If the injured employee or his or her dependents, as the case may be, fail to bring suit against such third-party tortfeasor within 1 year after the cause of action thereof has accrued, the employer, if a self-insurer, and if not, the insurance carrier, may, after giving 30 days' notice to the injured employee or his or her dependents and the injured employee's attorney, if represented by counsel, institute suit against such third-party tortfeasor, either in his or her own name or as provided by subsection (3), and, in the event suit is so instituted, shall be subrogated to and entitled to retain from any judgment recovered against, or settlement made with, such third party, the following: All amounts paid as compensation and medical benefits under the provisions of this law and the present value of all future compensation benefits payable, to be reduced to its present value, and to be retained as a trust fund from which future payments of compensation are to be made, together with all court costs, including attorney's fees expended in the prosecution of such suit, to be prorated as

provided by subsection (3). The remainder of the moneys derived from such judgment or settlement shall be paid to the employee or his or her dependents, as the case may be.

(b) If the carrier or employer does not bring suit within 2 years following the accrual of the cause of action against a third-party tortfeasor, the right of action shall revert to the employee or, in the case of the employee's death, those entitled by law to sue, and in such event the provisions of subsection (3) shall apply.

(5) In all cases under subsection (4) involving third-party tortfeasors in which compensation benefits under this law are paid or are to be paid, settlement may not be made either before or after suit is instituted except upon agreement of the injured employee or his or her dependents and the employer or his or her insurance carrier, as the case may be.

(6) Any amounts recovered under this section by the employer or his or her insurance carrier shall be credited against the loss experience of such employer.

(7) The employee, employer, and carrier have a duty to cooperate with each other in investigating and prosecuting claims and potential claims against third-party tortfeasors by producing nonprivileged documents and allowing inspection of premises, but only to the extent necessary for such purpose. Such documents and the results of such inspections are confidential and exempt from the provisions of s. 119.07(1), and shall not be used or disclosed for any other purpose.

(8) This section does not impose on the employer a duty to preserve evidence pertaining to third-party actions arising out of the industrial accident unless the injured employee or claimant has placed the employer on specific written notice

within 60 days after the industrial accident of the injured employee or claimant's desire that any item of evidence should be preserved.

(9) This section does not impose on the carrier a duty to preserve evidence pertaining to third-party actions arising out of the industrial accident.

Section 20. Section 440.4415, Florida Statutes, is created to read:

440.4415 Workers' Compensation Appeals Commission.--

(1)(a)1. There is created under the Cabinet a Workers' Compensation Appeals Commission to consist of a presiding commissioner and four other commissioners, all to be appointed by the Governor after October 1, 2003, but before May 15, 2004, and all to serve full-time. Each commissioner shall be selected by the Governor from a list of three commissioners nominated by the judges of each of the five district courts of appeal. The seats on the commission shall be numbered one through five. Nominations for the commissioner of seat one shall be made by the judges of the First District Court of Appeal. Nominations for the commissioner of seat two shall be made by all the judges of the Second District Court of Appeal. Nominations for the commissioner of seat three shall be made by all the judges of the Third District Court of Appeal. Nominations for the commissioner of seat four shall be made by all the judges of the Fourth District Court of Appeal. Nominations for the commissioner of seat five shall be made by all the judges of the Fifth District Court of Appeal. The commissioners shall elect a presiding commissioner from among their number by majority vote. Each commissioner shall have the qualifications required by law for judges of the district courts of appeal. In addition to

these qualifications, the commissioners nominated by the judges from the five district courts of appeal shall be substantially experienced in the field of workers' compensation.

2. Each commissioner shall be appointed for a term of 4 years but may be removed for cause by the Governor.

3. Each appeal from an order of a judge of compensation claims shall be considered by a commission panel which shall consist of two commissioners and the presiding commissioner.

4. Prior to the expiration of the term of office of a commissioner, the conduct of such commissioner shall be reviewed by the statewide nominating commission. A report of the statewide nominating commission regarding retention shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the commissioner. If the statewide nominating commission recommends retention, the Governor shall reappoint the commissioner. However, if the statewide nominating commission does not recommend retention, the judges of the respective district courts of appeal shall issue a report to the Governor which shall include a list of three candidates for appointment. In the event a vacancy occurs during an unexpired term of a commissioner on the Workers' Compensation Appeals Commission, the judges of the respective district courts of appeal shall nominate at least three candidates in accordance with the procedures set forth in this section.

5. The commission is subject to the Code of Judicial Conduct set forth in s. 440.442.

(b) The presiding commissioner may, by order filed in the records of the commission and with the approval of the Governor, appoint associate commissioners to serve as temporary commissioners on the commission. Such appointment may be made

only of a currently commissioned judge of compensation claims. This appointment shall be for such period of time as not to cause an undue burden on the caseload in the judge's jurisdiction. Each associate commissioner appointed shall receive no additional pay during the appointment, except for expenses incurred in the performance of the additional duties.

(c) The total salaries and benefits of all commissioners on the commission are to be paid from the Workers' Compensation Administration Trust Fund established in s. 440.50. Notwithstanding any other provision of law, the commissioners shall be paid a salary equal to that paid under state law to the judges of district courts of appeal.

(2)(a) The commission is vested with all authority, powers, duties, and responsibilities relating to review of orders of judges of compensation claims in workers' compensation proceedings under this chapter. The commission shall review by appeal final orders of the judges of compensation claims entered pursuant to this chapter. The First District Court of Appeal shall retain jurisdiction over all workers' compensation proceedings pending before it on October 1, 2003. The commission may hold sessions and conduct hearings at any place within the state. A panel of three commissioners shall consider each case and the concurrence of two shall be necessary for a decision. Any commissioner may request an en banc hearing for review of a final order of a judge of compensation claims.

(b) The commission shall be located within the State Board of Administration but, in the performance of its powers and duties under this chapter, shall not be subject to control, supervision, or direction by the state board. The commission is not an agency for purposes of chapter 120.

(c) The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(3) The commission shall make such expenditures, including expenditures for personnel services and rent at the seat of the government and elsewhere, law books, reference materials, periodicals, furniture, equipment, and supplies, and for printing and binding, as may be necessary in exercising its authority and powers and in carrying out its duties and responsibilities. Expenditures of the commission shall be allowed and paid from the Workers' Compensation Administration Trust Fund, upon the presentation of itemized vouchers therefor approved by the presiding commissioner.

(4) The commission may charge, in its discretion, for publications, subscriptions, and copies of records and documents. Such fees shall be deposited in the Workers' Compensation Administration Trust Fund.

(5)(a) The presiding commissioner shall exercise administrative supervision over the Workers' Compensation Appeals Commission and shall have the power to:

1. Assign commissioners to hear appeals from final orders of judges of compensation claims.

2. Hire and assign clerks and staff.

3. Regulate the use of courtrooms.

4. Supervise dockets and calendars.

5. Do everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she presides.

(b) The presiding commissioner may appoint an executive

assistant to perform such duties as the presiding commissioner may direct. The commission shall be authorized to employ research assistants or law clerks to assist the commissioners in performing their duties under this section.

(6)(a) The commission shall maintain and keep open during reasonable business hours a clerk's office, provided in the Capitol Complex or some other suitable building in Leon County, for the transaction of its business. All books, papers, records, files, and the seal of the commission shall be kept at this office. The office shall be furnished and equipped by the commission.

(b) The commission shall appoint a clerk who shall hold office at the pleasure of the commission. Before entering upon discharge of his or her duties, the clerk shall give bond in the sum of $5,000, payable to the Governor, to be approved by a majority of the members of the commission conditioned upon the faithful discharge of the duties of the office, which bond shall be filed in the office of the Secretary of State.

(c) The clerk shall be paid an annual salary pursuant to chapter 25.

(d) The clerk is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the commission and paid from the annual appropriation for the commission from the Workers' Compensation Administration Trust Fund.

(e) The clerk, upon filing of a certified copy of a notice of appeal or petition, shall charge and collect a filing fee of $250 for each case docketed and shall charge and collect for copying, certifying, or furnishing opinions, records, papers, or other instruments and for other services the same service

charges as provided for in s. 28.24. The state or an agency thereof, when appearing as appellant or petitioner, is exempt from the filing fee required in this paragraph.

(f) The clerk of the commission shall prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by the clerk, to the Chief Financial Officer, who shall place the same to the credit of the Workers' Compensation Administration Trust Fund.

(7) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida Workers' Compensation Appeals Commission-Seal," and it shall be judicially noticed.

(8) The commission is expressly authorized to destroy obsolete records of the commission.

(9) Commissioners shall be reimbursed for travel expenses as provided in s. 112.061.

(10) The practice and procedure before the commission and judges of compensation claims shall be governed by rules adopted by the commission pursuant to ss. 120.536(1) and 120.54, except to the extent that such rules conflict with the provisions of this chapter.

Section 21. Paragraph (c) of subsection (2) and subsection (3) of section 440.45, Florida Statutes, are amended, and present subsections (4) and (5) of said section are renumbered as subsections (3) and (4), respectively, to read:

440.45 Office of the Judges of Compensation Claims.--

(2)

(c) Each judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be

removed by the Governor for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. Effective July 1, 2002, in determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of ss. 440.25(1) and (4)(a)-(f), 440.315 ~~440.34(2)~~, and 440.442. If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office. The Governor shall review the commission's report and may reappoint the judge for an additional 4-year term. If the Governor does not reappoint the judge, the Governor shall inform the commission. The judge shall remain in office until the Governor has appointed a successor judge in accordance with paragraphs (a) and (b). If a vacancy occurs during a judge's unexpired term, the statewide nominating commission does not find the judge's performance is satisfactory, or the Governor does not reappoint the judge, the Governor shall appoint a successor judge for a term of 4 years in accordance with paragraph (b).

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

Section 22. Paragraph (b) of subsection (13) and subsection (14) of section 440.51, Florida Statutes, are amended to read:

440.51 Expenses of administration.--

(13) As used in s. 440.50 and this section, the term:

(b) "Fixed administrative expenses" means the expenses of the plan, not to exceed $1,500,000 ~~$750,000~~, which are directly related to the plan's administration but which do not vary in direct relationship to the amount of premium written by the plan and which do not include loss adjustment premiums.

(14) Before July 1 in each year, the plan shall notify the department of the amount of the plan's gross written premiums for the preceding calendar year. Whenever the plan's gross written premiums reported to the department are less than $30 million, the department shall transfer to the plan~~, subject to appropriation by the Legislature,~~ an amount not to exceed the plan's fixed administrative expenses for the preceding calendar year.

Section 23. Section 440.34, Florida Statutes, is repealed.

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

Section 25. This act shall take effect upon becoming a law.