



CHAMBER ACTION

The Committee on State Administration recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to workers' compensation; amending s. 440.02, F.S.; providing, revising, and deleting definitions; amending s. 440.05, F.S.; revising authorization to claim exemptions and requirements relating to submitting notice of election of exemption; specifying effect of exemption; 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; amending s. 440.09, F.S.; revising provisions relating to compensation for subsequent injuries; providing definitions; revising provisions relating to drug testing; specifying effect of criminal acts; creating s. 440.093, F.S.; providing for compensability of mental and nervous 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'



29 compensation coverage or proof of exemption to a
30 contractor; deleting provisions relating to independent
31 contractors; amending s. 440.1025, F.S.; revising
32 requirements relating to workplace safety programs;
33 amending s. 440.103, F.S.; providing conditions for
34 applying for building permits; amending s. 440.105, F.S.;
35 increasing criminal penalties for certain violations;
36 providing sanctions for violation of stop-work orders and
37 presentation of certain false or misleading statements as
38 evidence; amending s. 440.1051, F.S.; increasing criminal
39 penalty for false reports; amending s. 440.107, F.S.;
40 providing additional powers to the Department of Financial
41 Services relating to compliance and enforcement; providing
42 a definition; providing penalties; amending s. 440.11,
43 F.S.; providing exclusiveness of liability; revising
44 provisions relating to employer and safety consultant
45 immunity from liability; amending s. 440.13, F.S.;
46 providing for practice parameters and treatment protocols;
47 revising provisions relating to provider reimbursement;
48 requiring revision of specified reimbursement schedules;
49 providing for release of information; providing additional
50 criteria for independent medical examinations; providing a
51 definition; providing standards for medical care under ch.
52 440, F.S.; providing penalties; amending s. 440.134, F.S.;
53 revising provisions relating to managed care arrangements;
54 revising definitions; providing for assignment of a
55 medical care coordinator; amending s. 440.14, F.S.;
56 revising provisions relating to calculation of average



57 | weekly wage for injured employees; conforming cross
58 | references; amending s. 440.15, F.S.; providing additional
59 | limitations on compensation for permanent total
60 | disability; providing a definition; specifying impairment
61 | benefits and providing for partial reduction under certain
62 | circumstances; deleting provisions relating to
63 | supplemental benefits; amending s. 440.151, F.S.;
64 | specifying compensability of occupational disease;
65 | providing a definition; amending s. 440.16, F.S.;
66 | increasing the limits on the amount of certain benefits
67 | paid as compensation for death; amending s. 440.185, F.S.;
68 | specifying duty of employer upon receipt of notice of
69 | injury or death; increasing penalties for noncompliance;
70 | amending s. 440.192, F.S.; revising procedure for
71 | resolving benefit disputes; requiring a petition for
72 | benefits to include all claims which are ripe, due, and
73 | owing; providing that the Chief Judge, rather than the
74 | Deputy Chief Judge, shall refer petitions for benefits;
75 | creating s. 440.1926, F.S.; providing for alternative
76 | dispute resolution and arbitration of claims; amending s.
77 | 440.20, F.S.; revising provisions relating to timely
78 | payment of compensation and medical bills and penalties
79 | for late payment; amending s. 440.25, F.S.; revising
80 | procedures for mediation and hearings; amending s. 440.34,
81 | F.S.; revising provisions relating to the award of
82 | attorney's fees; amending s. 440.38, F.S.; providing
83 | requirement for employers with coverage provided by
84 | insurers from outside the state; amending s. 440.381,



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85 F.S.; providing criminal penalty for unlawful
86 applications; requiring on-site audits of employers under
87 certain circumstances; amending s. 440.42, F.S.; revising
88 provision relating to notice of cancellation of coverage;
89 amending ss. 440.49 and 440.491, F.S., to conform cross
90 references; amending s. 440.525, F.S.; providing for
91 audits, examinations, and investigations of claims-handling
92 entities; providing penalties; providing for rules;
93 amending s. 627.162, F.S.; revising delinquency and
94 collection fee for late payment of premium installments;
95 amending s. 627.311, F.S.; requiring participation in
96 safety programs; providing for an additional subplan
97 within the joint underwriting plan for workers'
98 compensation insurance; providing for rates, surcharges,
99 and assessments; limiting assessment powers; amending s.
100 921.0022, F.S.; revising the offense severity ranking
101 chart to reflect changes in penalties under the act;
102 requiring a report to the Legislature from the Department
103 of Financial Services regarding provisions of law relating
104 to enforcement; amending ss. 946.523 and 985.315, F.S.,
105 to conform cross references; repealing s. 440.1925, F.S.,
106 relating to procedure for resolving maximum medical
107 improvement or permanent impairment disputes; providing
108 effective dates.

109
110 Be It Enacted by the Legislature of the State of Florida:
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112 Section 1. Effective upon this act becoming a law,
113 Subsections (1), (15), (29), (38), (40), (41), and (42) of
114 section 440.02, Florida Statutes, are amended to read:

115 440.02 Definitions.-- When used in this chapter, unless
116 the context clearly requires otherwise, the following terms
117 shall have the following meanings:

118 (1) "Accident" means only an unexpected or unusual event
119 or result that happens suddenly. ~~A mental or nervous injury due~~
120 ~~to stress, fright, or excitement only, or~~ Disability or death
121 due to the accidental acceleration or aggravation of a venereal
122 disease or of a disease due to the habitual use of alcohol or
123 controlled substances or narcotic drugs, or a disease that
124 manifests itself in the fear of or dislike for an individual
125 because of the individual's race, color, religion, sex, national
126 origin, age, or handicap is not an injury by accident arising
127 out of the employment. Subject to s. 440.15(5), if a preexisting
128 disease or anomaly is accelerated or aggravated by an accident
129 arising out of and in the course of employment, only
130 acceleration of death or acceleration or aggravation of the
131 preexisting condition reasonably attributable to the accident is
132 compensable, with respect to any compensation otherwise payable
133 under this chapter ~~death or permanent impairment.~~ An injury or
134 disease caused by exposure to a toxic substance, including, but
135 not limited to, fungus or mold, is not an injury by accident
136 arising out of the employment unless there is clear and
137 convincing evidence establishing that exposure to the specific
138 substance involved, at the levels to which the employee was



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139 | exposed, can cause the injury or disease sustained by the
140 | employee.

141 | (15)(a) "Employee" means any person engaged in any
142 | employment under any appointment or contract of hire or
143 | apprenticeship, express or implied, oral or written, whether
144 | lawfully or unlawfully employed, and includes, but is not
145 | limited to, aliens and minors.

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

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

153 | 2. As to officers of a corporation who are actively
154 | engaged in the construction industry, no more than three
155 | officers may elect to be exempt from this chapter by filing
156 | written notice of the election with the department as provided
157 | in s. 440.05. ~~However, any exemption obtained by a corporate~~
158 | ~~officer of a corporation actively engaged in the construction~~
159 | ~~industry is not applicable with respect to any commercial~~
160 | ~~building project estimated to be valued at \$250,000 or greater.~~

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

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

168 (c)~~1.~~ "Employee" includes a sole proprietor or a partner
169 who devotes full time to the proprietorship or partnership and,
170 except as provided in this paragraph, elects to be included in
171 the definition of employee by filing notice thereof as provided
172 in s. 440.05. Partners or sole proprietors actively engaged in
173 the construction industry are considered employees unless they
174 elect to be excluded from the definition of employee by filing
175 written notice of the election with the department as provided
176 in s. 440.05. However, no more than three partners in a
177 partnership that is actively engaged in the construction
178 industry may elect to be excluded. A sole proprietor or partner
179 who is actively engaged in the construction industry and who
180 elects to be exempt from this chapter by filing a written notice
181 of the election with the department as provided in s. 440.05 is
182 not an employee. For purposes of this chapter, an independent
183 contractor is an employee unless he or she meets all of the
184 conditions set forth in subparagraph (d)1.

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

191 (d) "Employee" does not include:

192 1. An independent contractor, if:



- 193 a. The independent contractor maintains a separate
194 business with his or her own work facility, truck, equipment,
195 materials, or similar accommodations;
- 196 b. The independent contractor holds or has applied for a
197 federal employer identification number, unless the independent
198 contractor is a sole proprietor who is not required to obtain a
199 federal employer identification number under state or federal
200 requirements;
- 201 c. The independent contractor performs or agrees to
202 perform specific services or work for specific amounts of money
203 and controls the means of performing the services or work;
- 204 d. The independent contractor incurs the principal
205 expenses related to the service or work that he or she performs
206 or agrees to perform;
- 207 e. The independent contractor is responsible for the
208 satisfactory completion of work or services that he or she
209 performs or agrees to perform and is or could be held liable for
210 a failure to complete the work or services;
- 211 f. The independent contractor receives compensation for
212 work or services performed for a commission or on a per-job or
213 competitive-bid basis and not on any other basis;
- 214 g. The independent contractor may realize a profit or
215 suffer a loss in connection with performing work or services;
- 216 h. The independent contractor has continuing or recurring
217 business liabilities or obligations; and
- 218 i. The success or failure of the independent contractor's
219 business depends on the relationship of business receipts to
220 expenditures.



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222 However, the determination as to whether an individual included
223 in the Standard Industrial Classification Manual of 1987,
224 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
225 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
226 or a newspaper delivery person, is an independent contractor is
227 governed not by the criteria in this paragraph but by common-law
228 principles, giving due consideration to the business activity of
229 the individual. ~~Notwithstanding the provisions of this paragraph~~
230 ~~or any other provision of this chapter, with respect to any~~
231 ~~commercial building project estimated to be valued at \$250,000~~
232 ~~or greater, a person who is actively engaged in the construction~~
233 ~~industry is not an independent contractor and is either an~~
234 ~~employer or an employee who may not be exempt from the coverage~~
235 ~~requirements of this chapter.~~

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

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

244 4. An owner-operator of a motor vehicle who transports
245 property under a written contract with a motor carrier which
246 evidences a relationship by which the owner-operator assumes the
247 responsibility of an employer for the performance of the
248 contract, if the owner-operator is required to furnish the



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249 necessary motor vehicle equipment and all costs incidental to
250 the performance of the contract, including, but not limited to,
251 fuel, taxes, licenses, repairs, and hired help; and the owner-
252 operator is paid a commission for transportation service and is
253 not paid by the hour or on some other time-measured basis.

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

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

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

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

275 7. Any officer of a corporation who elects to be exempt
276 from this chapter.



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

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

289 10. A taxicab, limousine, or other passenger vehicle-for-
290 hire driver who operates said vehicles pursuant to a written
291 agreement with a company which provides any dispatch, marketing,
292 insurance, communications, or other services under which the
293 driver and any fees or charges paid by the driver to the company
294 for such services are not conditioned upon, or expressed as a
295 proportion of, fare revenues.

296 11. A person who performs services as a sports official
297 for an entity sponsoring an interscholastic sports event or for
298 a public entity or private, nonprofit organization that sponsors
299 an amateur sports event. For purposes of this subparagraph, such
300 a person is an independent contractor. For purposes of this
301 subparagraph, the term "sports official" means any person who is
302 a neutral participant in a sports event, including, but not
303 limited to, umpires, referees, judges, linespersons,
304 scorekeepers, or timekeepers. This subparagraph does not apply



305 to any person employed by a district school board who serves as
 306 a sports official as required by the employing school board or
 307 who serves as a sports official as part of his or her
 308 responsibilities during normal school hours.

309 (29) "Weekly compensation rate" means and refers to the
 310 amount of compensation payable for a period of 7 consecutive
 311 calendar days, including any Saturdays, Sundays, holidays, and
 312 other nonworking days which fall within such period of 7
 313 consecutive calendar days. When Saturdays, Sundays, holidays, or
 314 other nonworking days follow the first 7 calendar days of
 315 disability or occur at the end of a period of disability as the
 316 last day or days of such period, such nonworking days constitute
 317 a part of the period of disability with respect to which
 318 compensation is payable.

319 (38) "Catastrophic injury" means a permanent impairment
 320 constituted by the loss of both hands, both arms, both feet,
 321 both legs, or both eyes, or any two thereof, or paraplegia or
 322 quadriplegia.÷

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

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

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

328 ~~1. Severe sensory or motor disturbances;~~

329 ~~2. Severe communication disturbances;~~

330 ~~3. Severe complex integrated disturbances of cerebral~~
 331 ~~function;~~

332 ~~4. Severe episodic neurological disorders; or~~



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

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

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

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

347 (40) "Statement," for the purposes of ss. 440.105 and
 348 440.106, shall include the exact fraud statement language in s.
 349 440.105(7). This requirement includes, but is not limited to,
 350 any notice, representation, statement, proof of injury, bill for
 351 services, diagnosis, prescription, hospital or doctor record, X
 352 ray, test result, or other evidence of loss, injury, or expense.

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



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361 medically necessary, and why current treatment, if any, is not
362 sufficient. Any petition requesting alternate or other medical
363 care, including, but not limited to, petitions requesting
364 psychiatric or psychological treatment, must specifically
365 identify the physician, as defined in s. 440.13(1), that is
366 recommending such treatment. A copy of a report from such
367 physician making the recommendation for alternate or other
368 medical care shall also be attached to the petition. A judge of
369 compensation claims shall not order such treatment if a
370 physician is not recommending such treatment. "Commercial
371 building" means any building or structure intended for
372 commercial or industrial use, or any building or structure
373 intended for multifamily use of more than four dwelling units,
374 as well as any accessory use structures constructed in
375 conjunction with the principal structure. The term, "commercial
376 building," does not include the conversion of any existing
377 residential building to a commercial building.

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

382 Section 2. Effective January 1, 2004, subsections (8),
383 (15), and (16) of section 440.02, Florida Statutes, as amended
384 by this act, are amended to read:

385 440.02 Definitions.--When used in this chapter, unless the
386 context clearly requires otherwise, the following terms shall
387 have the following meanings:



388 (8) "Construction industry" means for-profit activities
 389 involving ~~the carrying out of~~ any building, clearing, filling,
 390 excavation, or substantial improvement in the size or use of any
 391 structure or the appearance of any land. ~~When appropriate to the~~
 392 ~~context, "construction" refers to the act of construction or the~~
 393 ~~result of construction.~~ However, "construction" does ~~shall~~ not
 394 mean a homeowner's ~~landowner's~~ act of construction or the result
 395 of a construction upon his or her own premises, provided such
 396 premises are not intended to be sold, ~~or~~ resold, or leased by
 397 the owner within 1 year after the commencement of construction.
 398 The division may, by rule, establish standard industrial
 399 classification codes and definitions thereof which meet the
 400 criteria of the term "construction industry" as set forth in
 401 this section.

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

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

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



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415 2. As to officers of a corporation who are ~~actively~~
416 engaged in the construction industry, no more than three
417 officers of a corporation or of any group of affiliated
418 corporations may elect to be exempt from this chapter by filing
419 written notice of the election with the department as provided
420 in s. 440.05. Officers must be shareholders, each owning at
421 least 10 percent of the stock of such corporation and listed as
422 an officer of such corporation with the Division of Corporations
423 of the Department of State, in order to elect exemptions under
424 this chapter. For purposes of this subparagraph, the term
425 "affiliated" means and includes one or more corporations or
426 entities, any one of which is a corporation engaged in the
427 construction industry, under the same or substantially the same
428 control of a group of business entities which are connected or
429 associated so that one entity controls or has the power to
430 control each of the other business entities. The term
431 "affiliated" includes, but is not limited to, the officers,
432 directors, executives, shareholders active in management,
433 employees, and agents of the affiliated corporation. The
434 ownership by one business entity of a controlling interest in
435 another business entity or a pooling of equipment or income
436 among business entities shall be prima facie evidence that one
437 business is affiliated with the other.

438 3. An officer of a corporation who elects to be exempt
439 from this chapter by filing a written notice of the election
440 with the department as provided in s. 440.05 is not an employee.
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442 Services are presumed to have been rendered to the corporation
443 if the officer is compensated by other than dividends upon
444 shares of stock of the corporation which the officer owns.

445 (c) "Employee" includes:

446 1. A sole proprietor or a partner who is not engaged in
447 the construction industry, devotes full time to the
448 proprietorship or partnership, ~~and, except as provided in this~~
449 ~~paragraph,~~ elects to be included in the definition of employee
450 by filing notice thereof as provided in s. 440.05. ~~Partners or~~
451 ~~sole proprietors actively engaged in the construction industry~~
452 ~~are considered employees unless they elect to be excluded from~~
453 ~~the definition of employee by filing written notice of the~~
454 ~~election with the department as provided in s. 440.05. However,~~
455 ~~no more than three partners in a partnership that is actively~~
456 ~~engaged in the construction industry may elect to be excluded. A~~
457 ~~sole proprietor or partner who is actively engaged in the~~
458 ~~construction industry and who elects to be exempt from this~~
459 ~~chapter by filing a written notice of the election with the~~
460 ~~department as provided in s. 440.05 is not an employee. For~~
461 ~~purposes of this chapter, an independent contractor is an~~
462 ~~employee unless he or she meets all of the conditions set forth~~
463 ~~in subparagraph (d)1.~~

464 2. All persons who are being paid by a construction
465 contractor as a subcontractor, unless the subcontractor has
466 validly elected an exemption as permitted by this chapter, or
467 has otherwise secured the payment of compensation coverage as a
468 subcontractor, consistent with s. 440.10, for work performed by
469 or as a subcontractor.



470 3. An independent contractor working or performing
 471 services in the construction industry.

472 4. A sole proprietor who engages in the construction
 473 industry and a partner or partnership that is engaged in the
 474 construction industry.

475 (d) "Employee" does not include:

476 1. An independent contractor who is not engaged in the
 477 construction industry., if:

478 a. In order to meet the definition of independent
 479 contractor, at least four of the following criteria must be met:

480 (I) The independent contractor maintains a separate
 481 business with his or her own work facility, truck, equipment,
 482 materials, or similar accommodations;

483 (II) The independent contractor holds or has applied for a
 484 federal employer identification number, unless the independent
 485 contractor is a sole proprietor who is not required to obtain a
 486 federal employer identification number under state or federal
 487 regulations;

488 (III) The independent contractor receives compensation for
 489 services rendered or work performed and such compensation is
 490 paid to a business rather than to an individual;

491 (IV) The independent contractor holds one or more bank
 492 accounts in the name of the business entity for purposes of
 493 paying business expenses or other expenses related to services
 494 rendered or work performed for compensation;

495 (V) The independent contractor performs work or is able to
 496 perform work for any entity in addition to or besides the



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497 employer at his or her own election without the necessity of
498 completing an employment application or process; or
499 (VI) The independent contractor receives compensation for
500 work or services rendered on a competitive-bid basis or
501 completion of a task or a set of tasks as defined by a
502 contractual agreement, unless such contractual agreement
503 expressly states that an employment relationship exists. The
504 ~~independent contractor maintains a separate business with his or~~
505 ~~her own work facility, truck, equipment, materials, or similar~~
506 ~~accommodations;~~
507 b. If four of the criteria listed in sub-subparagraph a.
508 do not exist, an individual may still be presumed to be an
509 independent contractor and not an employee based on full
510 consideration of the nature of the individual situation with
511 regard to satisfying any of the following conditions:
512 (I) The independent contractor performs or agrees to
513 perform specific services or work for a specific amount of money
514 and controls the means of performing the services or work.
515 (II) The independent contractor incurs the principal
516 expenses related to the service or work that he or she performs
517 or agrees to perform.
518 (III) The independent contractor is responsible for the
519 satisfactory completion of the work or services that he or she
520 performs or agrees to perform.
521 (IV) The independent contractor receives compensation for
522 work or services performed for a commission or on a per-job
523 basis and not on any other basis.



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524 (V) The independent contractor may realize a profit or
525 suffer a loss in connection with performing work or services.

526 (VI) The independent contractor has continuing or
527 recurring business liabilities or obligations.

528 (VII) The success or failure of the independent
529 contractor's business depends on the relationship of business
530 receipts to expenditures. The independent contractor holds or
531 has applied for a federal employer identification number, unless
532 the independent contractor is a sole proprietor who is not
533 required to obtain a federal employer identification number
534 under state or federal requirements;

535 c. Notwithstanding anything to the contrary in this
536 subparagraph, an individual claiming to be an independent
537 contractor has the burden of proving that he or she is an
538 independent contractor for purposes of this chapter. The
539 independent contractor performs or agrees to perform specific
540 services or work for specific amounts of money and controls the
541 means of performing the services or work;

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

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

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



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

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

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

559

560 ~~However, the determination as to whether an individual included~~
561 ~~in the Standard Industrial Classification Manual of 1987,~~
562 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
563 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
564 ~~or a newspaper delivery person, is an independent contractor is~~
565 ~~governed not by the criteria in this paragraph but by common-law~~
566 ~~principles, giving due consideration to the business activity of~~
567 ~~the individual.~~

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

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

576 4. An owner-operator of a motor vehicle who transports
577 property under a written contract with a motor carrier which
578 evidences a relationship by which the owner-operator assumes the
579 responsibility of an employer for the performance of the



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580 contract, if the owner-operator is required to furnish the
581 necessary motor vehicle equipment and all costs incidental to
582 the performance of the contract, including, but not limited to,
583 fuel, taxes, licenses, repairs, and hired help; and the owner-
584 operator is paid a commission for transportation service and is
585 not paid by the hour or on some other time-measured basis.

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

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

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

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



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607 7. Unless otherwise prohibited by this chapter, any
608 officer of a corporation who elects to be exempt from this
609 chapter. Such officer is not an employee for any reason under
610 this chapter until the notice of revocation of election filed
611 pursuant to s. 440.05 is effective.

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

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

625 10. A taxicab, limousine, or other passenger vehicle-for-
626 hire driver who operates said vehicles pursuant to a written
627 agreement with a company which provides any dispatch, marketing,
628 insurance, communications, or other services under which the
629 driver and any fees or charges paid by the driver to the company
630 for such services are not conditioned upon, or expressed as a
631 proportion of, fare revenues.

632 11. A person who performs services as a sports official
633 for an entity sponsoring an interscholastic sports event or for
634 a public entity or private, nonprofit organization that sponsors



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635 an amateur sports event. For purposes of this subparagraph, such
636 a person is an independent contractor. For purposes of this
637 subparagraph, the term "sports official" means any person who is
638 a neutral participant in a sports event, including, but not
639 limited to, umpires, referees, judges, linespersons,
640 scorekeepers, or timekeepers. This subparagraph does not apply
641 to any person employed by a district school board who serves as
642 a sports official as required by the employing school board or
643 who serves as a sports official as part of his or her
644 responsibilities during normal school hours.

645 12. Medicaid-enrolled clients under chapter 393 who are
646 excluded from the definition of employment under s.
647 443.036(21)(d)5. and served by Adult Day Training Services under
648 the Home and Community-Based Medicaid Waiver program in a
649 sheltered workshop setting licensed by the United States
650 Department of Labor for the purpose of training and earning less
651 than the federal hourly minimum wage.

652 (16)(a) "Employer" means the state and all political
653 subdivisions thereof, all public and quasi-public corporations
654 therein, every person carrying on any employment, and the legal
655 representative of a deceased person or the receiver or trustees
656 of any person. If the employer is a corporation, parties in
657 actual control of the corporation, including, but not limited
658 to, the president, officers who exercise broad corporate powers,
659 directors, and all shareholders who directly or indirectly own a
660 controlling interest in the corporation, are considered the
661 employer for the purposes of ss. 440.105, ~~and~~ 440.106, and
662 440.107.



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663 (b) A homeowner shall not be considered the employer of
 664 persons hired by the homeowner to carry out construction on the
 665 homeowner's own premises if those premises are not intended for
 666 immediate lease, sale, or resale.

667 (c) Facilities serving individuals under subparagraph
 668 (15)(d)12. shall be considered agents of the Agency for Health
 669 Care Administration as it relates to providing Adult Day
 670 Training Services under the Home and Community-Based Medicaid
 671 Waiver program and not employers or third parties for the
 672 purpose of limiting or denying Medicaid benefits.

673 Section 3. Effective January 1, 2004, subsections (3),
 674 (4), (6), (10), (11), and (12) of section 440.05, Florida
 675 Statutes, are amended, present subsection (13) is renumbered as
 676 subsection (11) and amended, and new subsections (12), (13), and
 677 (14) are added to said section, to read:

678 440.05 Election of exemption; revocation of election;
 679 notice; certification.--

680 (3) Each ~~sole proprietor, partner, or~~ officer of a
 681 corporation who is ~~actively~~ engaged in the construction industry
 682 and who elects an exemption from this chapter or who, after
 683 electing such exemption, revokes that exemption, must mail a
 684 written notice to such effect to the department on a form
 685 prescribed by the department. The notice of election to be
 686 exempt from the provisions of this chapter must be notarized and
 687 under oath. The notice of election to be exempt which is
 688 submitted to the department by the ~~sole proprietor, partner, or~~
 689 officer of a corporation who is allowed to claim an exemption as
 690 provided by this chapter must list the name, federal tax



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691 identification number, social security number, all certified or
692 registered licenses issued pursuant to chapter 489 held by the
693 person seeking the exemption, a copy of relevant documentation
694 as to employment status filed with the Internal Revenue Service
695 as specified by the department, a copy of the relevant
696 occupational license in the primary jurisdiction of the
697 business, and, ~~for corporate officers and partners,~~ the
698 registration number of the corporation ~~or partnership~~ filed with
699 the Division of Corporations of the Department of State along
700 with a copy of the stock certificate evidencing the required
701 ownership under this chapter. The notice of election to be
702 exempt must identify each ~~sole proprietorship, partnership, or~~
703 corporation that employs the person electing the exemption and
704 must list the social security number or federal tax
705 identification number of each such employer and the additional
706 documentation required by this section. In addition, the notice
707 of election to be exempt must provide that the ~~sole proprietor,~~
708 ~~partner, or~~ officer electing an exemption is not entitled to
709 benefits under this chapter, must provide that the election does
710 not exceed exemption limits for officers ~~and partnerships~~
711 provided in s. 440.02, and must certify that any employees of
712 the corporation whose ~~sole proprietor, partner, or~~ officer
713 elects ~~electing~~ an exemption are covered by workers'
714 compensation insurance. Upon receipt of the notice of the
715 election to be exempt, receipt of all application fees, and a
716 determination by the department that the notice meets the
717 requirements of this subsection, the department shall issue a
718 certification of the election to the ~~sole proprietor, partner,~~



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719 ~~or~~ officer, unless the department determines that the
720 information contained in the notice is invalid. The department
721 shall revoke a certificate of election to be exempt from
722 coverage upon a determination by the department that the person
723 does not meet the requirements for exemption or that the
724 information contained in the notice of election to be exempt is
725 invalid. The certificate of election must list the name ~~names~~ of
726 the ~~sole proprietorship, partnership, or~~ corporation listed in
727 the request for exemption. A new certificate of election must be
728 obtained each time the person is employed by a new ~~sole~~
729 ~~proprietorship, partnership,~~ or different corporation that is
730 not listed on the certificate of election. A copy of the
731 certificate of election must be sent to each workers'
732 compensation carrier identified in the request for exemption.
733 Upon filing a notice of revocation of election, an ~~a sole~~
734 ~~proprietor, partner, or~~ officer who is a subcontractor or an
735 officer of a corporate subcontractor must notify her or his
736 contractor. Upon revocation of a certificate of election of
737 exemption by the department, the department shall notify the
738 workers' compensation carriers identified in the request for
739 exemption.

740 (4) The notice of election to be exempt from the
741 provisions of this chapter must contain a notice that clearly
742 states in substance the following: "Any person who, knowingly
743 and with intent to injure, defraud, or deceive the department or
744 any employer or employee, insurance company, or any other person
745 ~~purposes program~~, files a notice of election to be exempt
746 containing any false or misleading information is guilty of a



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747 felony of the third degree." Each person filing a notice of
748 election to be exempt shall personally sign the notice and
749 attest that he or she has reviewed, understands, and
750 acknowledges the foregoing notice.

751 (6) A construction industry certificate of election to be
752 exempt which is issued in accordance with this section shall be
753 valid for 2 years after the effective date stated thereon. Both
754 the effective date and the expiration date must be listed on the
755 face of the certificate by the department. The construction
756 industry certificate must expire at midnight, 2 years from its
757 issue date, as noted on the face of the exemption certificate.
758 Any person who has received from the division a construction
759 industry certificate of election to be exempt which is in effect
760 on December 31, 1998, shall file a new notice of election to be
761 exempt by the last day in his or her birth month following
762 December 1, 1998. A construction industry certificate of
763 election to be exempt may be revoked before its expiration by
764 the ~~sole proprietor, partner, or~~ officer for whom it was issued
765 or by the department for the reasons stated in this section. At
766 least 60 days prior to the expiration date of a construction
767 industry certificate of exemption issued after December 1, 1998,
768 the department shall send notice of the expiration date and an
769 application for renewal to the certificateholder at the address
770 on the certificate.

771 (10) Each ~~sole proprietor, partner, or~~ officer of a
772 corporation who is actively engaged in the construction industry
773 and who elects an exemption from this chapter shall maintain
774 business records as specified by the division by rule, which



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775 rules must include the provision that any corporation with
776 exempt officers and any partnership actively engaged in the
777 construction industry with exempt partners must maintain written
778 statements of those exempted persons affirmatively acknowledging
779 each such individual's exempt status.

780 ~~(11) Any sole proprietor or partner actively engaged in~~
781 ~~the construction industry claiming an exemption under this~~
782 ~~section shall maintain a copy of his or her federal income tax~~
783 ~~records for each of the immediately previous 3 years in which he~~
784 ~~or she claims an exemption. Such federal income tax records must~~
785 ~~include a complete copy of the following for each year in which~~
786 ~~an exemption is claimed:~~

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

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

792
793 ~~A sole proprietor or partner shall produce, upon request by the~~
794 ~~division, a copy of those documents together with a statement by~~
795 ~~the sole proprietor or partner that the tax records provided are~~
796 ~~true and accurate copies of what the sole proprietor or partner~~
797 ~~has filed with the federal Internal Revenue Service. The~~
798 ~~statement must be signed under oath by the sole proprietor or~~
799 ~~partner and must be notarized. The division shall issue a stop-~~
800 ~~work order under s. 440.107(5) to any sole proprietor or partner~~
801 ~~who fails or refuses to produce a copy of the tax records and~~



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802 ~~affidavit required under this paragraph to the division within 3~~
803 ~~business days after the request is made.~~

804 ~~(12) For those sole proprietors or partners that have not~~
805 ~~been in business long enough to provide the information required~~
806 ~~of an established business, the division shall require such sole~~
807 ~~proprietor or partner to provide copies of the most recently~~
808 ~~filed Federal Income Tax Form 1040. The division shall establish~~
809 ~~by rule such other criteria to show that the sole proprietor or~~
810 ~~partner intends to engage in a legitimate enterprise within the~~
811 ~~construction industry and is not otherwise attempting to evade~~
812 ~~the requirements of this section. The division shall establish~~
813 ~~by rule the form and format of financial information required to~~
814 ~~be submitted by such employers.~~

815 ~~(11)~~(13) Any corporate officer permitted by this chapter
816 to claim ~~elaiming~~ an exemption under this section must be listed
817 on the records of this state's Secretary of State, Division of
818 Corporations, as a corporate officer. ~~If the person who claims~~
819 ~~an exemption as a corporate officer is not so listed on the~~
820 ~~records of the Secretary of State, the individual must provide~~
821 ~~to the division, upon request by the division, a notarized~~
822 ~~affidavit stating that the individual is a bona fide officer of~~
823 ~~the corporation and stating the date his or her appointment or~~
824 ~~election as a corporate officer became or will become effective.~~
825 ~~The statement must be signed under oath by both the officer and~~
826 ~~the president or chief operating officer of the corporation and~~
827 ~~must be notarized.~~ The division shall issue a stop-work order
828 under s. 440.107(1) to any corporation who employs a person who
829 claims to be exempt as a corporate officer but who fails or



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830 refuses to produce the documents required under this subsection
831 to the division within 3 business days after the request is
832 made.

833 (12) Certificates of election to be exempt issued under
834 subsection (3) shall apply only to the corporate officer named
835 on the notice of election to be exempt and apply only within the
836 scope of the business or trade listed on the notice of election
837 to be exempt.

838 (13) Notices of election to be exempt and certificates of
839 election to be exempt shall be subject to revocation if, at any
840 time after the filing of the notice or the issuance of the
841 certificate, the person named on the notice or certificate no
842 longer meets the requirements of this section for issuance of a
843 certificate. The department shall revoke a certificate at any
844 time for failure of the person named on the certificate to meet
845 the requirements of this section.

846 (14) An officer of a corporation who elects exemption from
847 this chapter by filing a certificate of election under this
848 section may not recover benefits or compensation under this
849 chapter. For purposes of determining the appropriate premium for
850 workers' compensation coverage, carriers may not consider any
851 officer of a corporation who validly meets the requirements of
852 this section to be an employee.

853 Section 4. Section 440.06, Florida Statutes, is amended to
854 read:

855 440.06 Failure to secure compensation; effect.--Every
856 employer who fails to secure the payment of compensation, as
857 provided in s. 440.10, by failing to meet the requirements of



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858 ~~under this chapter as provided in s. 440.38~~ may not, in any suit
 859 brought against him or her by an employee subject to this
 860 chapter to recover damages for injury or death, defend such a
 861 suit on the grounds that the injury was caused by the negligence
 862 of a fellow servant, that the employee assumed the risk of his
 863 or her employment, or that the injury was due to the comparative
 864 negligence of the employee.

865 Section 5. Effective January 1, 2004, section 440.077,
 866 Florida Statutes, is amended to read:

867 440.077 When a corporate ~~sole proprietor, partner, or~~
 868 ~~officer~~ rejects chapter, effect.--~~An A sole proprietor, partner,~~
 869 ~~or~~ officer of a corporation who is permitted to elect an
 870 exemption under this chapter ~~actively engaged in the~~
 871 ~~construction industry~~ and who elects to be exempt from the
 872 provisions of this chapter may not recover benefits under this
 873 chapter.

874 Section 6. Subsections (1) and (4) of section 440.09,
 875 Florida Statutes, are amended and paragraph (e) is added to
 876 subsection (7) of said section, to read:

877 440.09 Coverage.--

878 (1) The employer must ~~shall~~ pay compensation or furnish
 879 benefits required by this chapter if the employee suffers an
 880 accidental compensable injury or death arising out of work
 881 performed in the course and the scope of employment. The injury,
 882 its occupational cause, and any resulting manifestations or
 883 disability must ~~shall~~ be established to a reasonable degree of
 884 medical certainty, based on ~~and by~~ objective relevant medical
 885 findings, and the accidental compensable injury must be the



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886 major contributing cause of any resulting injuries. For purposes
887 of this section, "major contributing cause" means the cause
888 which is more than 50 percent responsible for the injury as
889 compared to all other causes combined for which treatment or
890 benefits are sought. In cases involving occupational disease or
891 repetitive exposure, both causation and sufficient exposure to
892 support causation must be proven by clear and convincing
893 evidence. Pain or other subjective complaints alone, in the
894 absence of objective relevant medical findings, are not
895 compensable. For purposes of this section, "objective relevant
896 medical findings" are those objective findings that correlate to
897 the subjective complaints of the injured employee and are
898 confirmed by physical examination findings or diagnostic
899 testing. Establishment of the causal relationship between a
900 compensable accident and injuries for conditions that are not
901 readily observable must be by medical evidence only, as
902 demonstrated by physical examination findings or diagnostic
903 testing. Major contributing cause must be demonstrated by
904 medical evidence only. ~~Mental or nervous injuries occurring as a~~
905 ~~manifestation of an injury compensable under this section shall~~
906 ~~be demonstrated by clear and convincing evidence.~~

907 (a) This chapter does not require any compensation or
908 benefits for any subsequent injury the employee suffers as a
909 result of an original injury arising out of and in the course of
910 employment unless the original injury is the major contributing
911 cause of the subsequent injury. Major contributing cause must be
912 demonstrated by medical evidence only.



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913 (b) If an injury arising out of and in the course of
914 employment combines with a preexisting disease or condition to
915 cause or prolong disability or need for treatment, the employer
916 must pay compensation or benefits required by this chapter only
917 to the extent that the injury arising out of and in the course
918 of employment is and remains more than 50 percent responsible
919 for the injury as compared to all other causes combined and
920 thereafter remains the major contributing cause of the
921 disability or need for treatment. Major contributing cause must
922 be demonstrated by medical evidence only.

923 (c) Death resulting from an operation by a surgeon
924 furnished by the employer for the cure of hernia as required in
925 s. 440.15(6)[F.S. 1981] shall for the purpose of this chapter be
926 considered to be a death resulting from the accident causing the
927 hernia.

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

937 (4)(a) An employee shall not be entitled to compensation or
938 benefits under this chapter if any judge of compensation claims,
939 administrative law judge, court, or jury convened in this state
940 determines that the employee has knowingly or intentionally



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941 engaged in any of the acts described in s. 440.105 or any
942 criminal act for the purpose of securing workers' compensation
943 benefits. For purposes of this section, the term "intentional"
944 shall include, but is not limited to, pleas of guilty or nolo
945 contendere in criminal matters. This section shall apply to
946 accidents, regardless of the date of the accident. For injuries
947 occurring prior to January 1, 1994, this section shall pertain
948 to the acts of the employee described in s. 440.105 or criminal
949 activities occurring subsequent to January 1, 1994.

950 (b) A judge of compensation claims, administrative law
951 judge, or court of this state shall take judicial notice of a
952 finding of insurance fraud by a court of competent jurisdiction
953 and terminate or otherwise disallow benefits.

954 (c) Upon the denial of benefits in accordance with this
955 section, a judge of compensation claims shall have the
956 jurisdiction to order any benefits payable to the employee to be
957 paid into the court registry or an escrow account during the
958 pendency of an appeal or until such time as the time in which to
959 file an appeal has expired.

960 (7)

961 (e) As a part of rebutting any presumptions under
962 paragraph (b), the injured worker must prove the actual
963 quantitative amounts of the drug or its metabolites as measured
964 on the initial and confirmation post-accident drug tests of the
965 injured worker's urine sample and provide additional evidence
966 regarding the absence of drug influence other than the worker's
967 denial of being under the influence of a drug. No drug test
968 conducted on a urine sample shall be rejected as to its results



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969 | or the presumption imposed under paragraph (b) on the basis of
970 | the urine being bodily fluid tested.

971 | Section 7. Section 440.093, Florida Statutes, is created
972 | to read:

973 | 440.093 Mental and nervous injuries.--

974 | (1) A mental or nervous injury due to stress, fright, or
975 | excitement only is not an injury by accident arising out of the
976 | employment. Nothing in this section shall be construed to allow
977 | for the payment of benefits under this chapter for mental or
978 | nervous injuries without an accompanying physical injury
979 | requiring medical treatment. A physical injury resulting from
980 | mental or nervous injuries unaccompanied by physical trauma
981 | requiring medical treatment shall not be compensable under this
982 | chapter.

983 | (2) Mental or nervous injuries occurring as a
984 | manifestation of an injury compensable under this chapter shall
985 | be demonstrated by clear and convincing medical evidence by a
986 | licensed psychiatrist meeting criteria established in the most
987 | recent edition of the diagnostic and statistical manual of
988 | mental disorders published by the American Psychiatric
989 | Association. The compensable physical injury must be and remain
990 | the major contributing cause of the mental or nervous condition
991 | and the compensable physical injury as determined by reasonable
992 | medical certainty must be at least 50 percent responsible for
993 | the mental or nervous condition as compared to all other
994 | contributing causes combined. Compensation is not payable for
995 | the mental, psychological, or emotional injury arising out of
996 | depression from being out of work or losing employment



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997 opportunities, resulting from a preexisting mental,
998 psychological, or emotional condition or due to pain or other
999 subjective complaints that cannot be substantiated by objective,
1000 relevant medical findings.

1001 (3) Subject to the payment of permanent benefits under s.
1002 440.15, in no event shall benefits for a compensable mental or
1003 nervous injury be paid for more than 3 months after the date of
1004 maximum medical improvement for the injured employee's physical
1005 injury or injuries, which shall be included in the period of 104
1006 weeks as provided in s. 440.15(2) and (4). Mental or nervous
1007 injuries are compensable only in accordance with the terms of
1008 this section.

1009 Section 8. Effective January 1, 2004, subsection (1) of
1010 section 440.10, Florida Statutes, is amended to read:

1011 440.10 Liability for compensation.--

1012 (1)(a) Every employer coming within the provisions of this
1013 ~~chapter, including any brought within the chapter by waiver of~~
1014 ~~exclusion or of exemption,~~ shall be liable for, and shall
1015 secure, the payment to his or her employees, or any physician,
1016 surgeon, or pharmacist providing services under the provisions
1017 of s. 440.13, of the compensation payable under ss. 440.13,
1018 440.15, and 440.16. Any contractor or subcontractor who engages
1019 in any public or private construction in the state shall secure
1020 and maintain compensation for his or her employees under this
1021 chapter as provided in s. 440.38.

1022 (b) In case a contractor sublets any part or parts of his
1023 or her contract work to a subcontractor or subcontractors, all
1024 of the employees of such contractor and subcontractor or



1025 subcontractors engaged on such contract work shall be deemed to
 1026 be employed in one and the same business or establishment, and
 1027 the contractor shall be liable for, and shall secure, the
 1028 payment of compensation to all such employees, except to
 1029 employees of a subcontractor who has secured such payment.

1030 (c) A contractor shall ~~may~~ require a subcontractor to
 1031 provide evidence of workers' compensation insurance ~~or a copy of~~
 1032 ~~his or her certificate of election~~. A subcontractor who is a
 1033 corporation and has an officer who elects ~~electing~~ to be exempt
 1034 as permitted under this chapter ~~a sole proprietor, partner, or~~
 1035 ~~officer of a corporation~~ shall provide a copy of his or her
 1036 certificate of exemption ~~election~~ to the contractor.

1037 (d)1. If a contractor becomes liable for the payment of
 1038 compensation to the employees of a subcontractor who has failed
 1039 to secure such payment in violation of s. 440.38, the contractor
 1040 or other third-party payor shall be entitled to recover from the
 1041 subcontractor all benefits paid or payable plus interest unless
 1042 the contractor and subcontractor have agreed in writing that the
 1043 contractor will provide coverage.

1044 2. If a contractor or third-party payor becomes liable for
 1045 the payment of compensation to the corporate officer ~~employee~~ of
 1046 a subcontractor who is actively engaged in the construction
 1047 industry and has elected to be exempt from the provisions of
 1048 this chapter, but whose election is invalid, the contractor or
 1049 third-party payor may recover from the claimant, ~~partnership,~~ or
 1050 corporation all benefits paid or payable plus interest, unless
 1051 the contractor and the subcontractor have agreed in writing that
 1052 the contractor will provide coverage.



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1053 (e) A subcontractor providing services in conjunction with
1054 a contractor on the same project or contract work is not liable
1055 for the payment of compensation to the employees of another
1056 subcontractor or the contractor on such contract work and is ~~not~~
1057 protected by the exclusiveness-of-liability provisions of s.
1058 440.11 from any action at law or in admiralty on account of
1059 injury to an ~~of such~~ employee of another subcontractor, or of
1060 the contractor, provided that:

1061 1. The subcontractor has secured workers' compensation
1062 insurance for its employees or the contractor has secured such
1063 insurance on behalf of the subcontractor and its employees in
1064 accordance with paragraph (b); and

1065 2. The subcontractor's own gross negligence was not the
1066 major contributing cause of the injury.

1067 (f) If an employer fails to secure compensation as
1068 required by this chapter, the department shall ~~may~~ assess
1069 against the employer a penalty not to exceed \$5,000 for each
1070 employee of that employer who is classified by the employer as
1071 an independent contractor but who is found by the department to
1072 not meet the criteria for an independent contractor that are set
1073 forth in s. 440.02. The division shall adopt rules to administer
1074 the provisions of this paragraph.

1075 (g) Subject to s. 440.38, any employer who has employees
1076 engaged in work in this state shall obtain a Florida policy or
1077 endorsement for such employees which utilizes Florida class
1078 codes, rates, rules, and manuals that are in compliance with and
1079 approved under the provisions of this chapter and the Florida
1080 Insurance Code. Failure to comply with this paragraph is a



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1081 felony of the second degree, punishable as provided in s.
1082 775.082, s. 775.083, or s. 775.084. The department shall adopt
1083 rules for construction industry and nonconstruction-industry
1084 employers with regard to the activities that define what
1085 constitutes being "engaged in work" in this state, using the
1086 following standards:

1087 1. For employees of nonconstruction-industry employers who
1088 have their headquarters outside of Florida and also operate in
1089 Florida and who are routinely crossing state lines, but usually
1090 return to their homes each night, the employee shall be assigned
1091 to the headquarters' state. However, the construction industry
1092 employees performing new construction or alterations in Florida
1093 shall be assigned to Florida even if the employees return to
1094 their home state each night.

1095 2. The payroll of executive supervisors who may visit a
1096 Florida location but who are not in direct charge of a Florida
1097 location shall be assigned to the state in which the
1098 headquarters is located.

1099 3. For construction contractors who maintain a permanent
1100 staff of employees and superintendents, if any of these
1101 employees or superintendents are assigned to a job that is
1102 located in Florida, either for the duration of the job or any
1103 portion thereof, their payroll shall be assigned to Florida
1104 rather than headquarters' state.

1105 4. Employees who are hired for a specific project in
1106 Florida shall be assigned to Florida. ~~For purposes of this~~
1107 ~~section, a person is conclusively presumed to be an independent~~
1108 ~~contractor if:~~



1109 ~~1. The independent contractor provides the general~~
 1110 ~~contractor with an affidavit stating that he or she meets all~~
 1111 ~~the requirements of s. 440.02; and~~

1112 ~~2. The independent contractor provides the general~~
 1113 ~~contractor with a valid certificate of workers' compensation~~
 1114 ~~insurance or a valid certificate of exemption issued by the~~
 1115 ~~department.~~

1116
 1117 ~~A sole proprietor, partner, or officer of a corporation who~~
 1118 ~~elects exemption from this chapter by filing a certificate of~~
 1119 ~~election under s. 440.05 may not recover benefits or~~
 1120 ~~compensation under this chapter. An independent contractor who~~
 1121 ~~provides the general contractor with both an affidavit stating~~
 1122 ~~that he or she meets the requirements of s. 440.02 and a~~
 1123 ~~certificate of exemption is not an employee under s. 440.02 and~~
 1124 ~~may not recover benefits under this chapter. For purposes of~~
 1125 ~~determining the appropriate premium for workers' compensation~~
 1126 ~~coverage, carriers may not consider any person who meets the~~
 1127 ~~requirements of this paragraph to be an employee.~~

1128 Section 9. Section 440.1025, Florida Statutes, is amended
 1129 to read:

1130 440.1025 ~~Consideration of public~~ Employer workplace safety
 1131 program in rate-setting; program requirements; rulemaking.—

1132 (1) For a public or private employer to be eligible for
 1133 receipt of specific identifiable consideration under s. 627.0915
 1134 for a workplace safety program in the setting of rates, the
 1135 ~~public~~ employer must have a workplace safety program. At a
 1136 minimum, the program must include a written safety policy and



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1137 safety rules, and make provision for safety inspections,
 1138 preventative maintenance, safety training, first-aid, accident
 1139 investigation, and necessary recordkeeping. ~~For purposes of this~~
 1140 ~~section, "public employer" means any agency within state,~~
 1141 ~~county, or municipal government employing individuals for~~
 1142 ~~salary, wages, or other remuneration.~~ The division may adopt
 1143 promulgate rules for insurers to utilize in determining public
 1144 employer compliance with the requirements of this section.

1145 (2) The division shall publicize on the Internet, and
 1146 shall encourage insurers to publicize, the availability of free
 1147 safety consultation services and safety program resources.

1148 Section 10. Section 440.103, Florida Statutes, is amended
 1149 to read:

1150 440.103 Building permits; identification of minimum
 1151 premium policy.--~~Except as otherwise provided in this chapter,~~
 1152 Every employer shall, as a condition to applying for and
 1153 receiving a building permit, show proof and certify to the
 1154 permit issuer that it has secured compensation for its employees
 1155 under this chapter as provided in ss. 440.10 and 440.38. Such
 1156 proof of compensation must be evidenced by a certificate of
 1157 coverage issued by the carrier, a valid exemption certificate
 1158 approved by the department ~~or the former Division of Workers'~~
 1159 ~~Compensation of the Department of Labor and Employment Security,~~
 1160 or a copy of the employer's authority to self-insure and shall
 1161 be presented each time the employer applies for a building
 1162 permit. As provided in s. 627.413(5), each certificate of
 1163 coverage must show, on its face, whether or not coverage is
 1164 secured under the minimum premium provisions of rules adopted by



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1165 rating organizations licensed by the department. The words
1166 "minimum premium policy" or equivalent language shall be typed,
1167 printed, stamped, or legibly handwritten.

1168 Section 11. Section 440.105, Florida Statutes, is amended
1169 to read:

1170 440.105 Prohibited activities; reports; penalties;
1171 limitations.--

1172 (1)(a) Any insurance carrier, any individual self-insured,
1173 any commercial or group self-insurance fund, any professional
1174 practitioner licensed or regulated by the Department of Health
1175 ~~Business and Professional Regulation~~, except as otherwise
1176 provided by law, any medical review committee as defined in s.
1177 766.101, any private medical review committee, and any insurer,
1178 agent, or other person licensed under the insurance code, or any
1179 employee thereof, having knowledge or who believes that a
1180 fraudulent act or any other act or practice which, upon
1181 conviction, constitutes a felony or misdemeanor under this
1182 chapter is being or has been committed shall send to the
1183 Division of Insurance Fraud, Bureau of Workers' Compensation
1184 Fraud, a report or information pertinent to such knowledge or
1185 belief and such additional information relative thereto as the
1186 bureau may require. The bureau shall review such information or
1187 reports and select such information or reports as, in its
1188 judgment, may require further investigation. It shall then cause
1189 an independent examination of the facts surrounding such
1190 information or report to be made to determine the extent, if
1191 any, to which a fraudulent act or any other act or practice
1192 which, upon conviction, constitutes a felony or a misdemeanor



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1193 | under this chapter is being committed. The bureau shall report
 1194 | any alleged violations of law which its investigations disclose
 1195 | to the appropriate licensing agency and state attorney or other
 1196 | prosecuting agency having jurisdiction with respect to any such
 1197 | violations of this chapter. If prosecution by the state attorney
 1198 | or other prosecuting agency having jurisdiction with respect to
 1199 | such violation is not begun within 60 days of the bureau's
 1200 | report, the state attorney or other prosecuting agency having
 1201 | jurisdiction with respect to such violation shall inform the
 1202 | bureau of the reasons for the lack of prosecution.

1203 | (b) In the absence of fraud or bad faith, a person is not
 1204 | subject to civil liability for libel, slander, or any other
 1205 | relevant tort by virtue of filing reports, without malice, or
 1206 | furnishing other information, without malice, required by this
 1207 | section or required by the bureau, and no civil cause of action
 1208 | of any nature shall arise against such person:

1209 | 1. For any information relating to suspected fraudulent
 1210 | acts furnished to or received from law enforcement officials,
 1211 | their agents, or employees;

1212 | 2. For any information relating to suspected fraudulent
 1213 | acts furnished to or received from other persons subject to the
 1214 | provisions of this chapter; or

1215 | 3. For any such information relating to suspected
 1216 | fraudulent acts furnished in reports to the bureau, or the
 1217 | National Association of Insurance Commissioners.

1218 | (2) Whoever violates any provision of this subsection
 1219 | commits a misdemeanor of the first ~~second~~ degree, punishable as
 1220 | provided in s. 775.082 or s. 775.083.



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1221 (a) It shall be unlawful for any employer to knowingly:
 1222 1. Coerce or attempt to coerce, as a precondition to
 1223 employment or otherwise, an employee to obtain a certificate of
 1224 election of exemption pursuant to s. 440.05.
 1225 2. Discharge or refuse to hire an employee or job
 1226 applicant because the employee or applicant has filed a claim
 1227 for benefits under this chapter.
 1228 3. Discharge, discipline, or take any other adverse
 1229 personnel action against any employee for disclosing information
 1230 to the department or any law enforcement agency relating to any
 1231 violation or suspected violation of any of the provisions of
 1232 this chapter or rules promulgated hereunder.
 1233 4. Violate a stop-work order issued by the department
 1234 pursuant to s. 440.107.
 1235 (b) It shall be unlawful for any insurance entity to
 1236 revoke or cancel a workers' compensation insurance policy or
 1237 membership because an employer has returned an employee to work
 1238 or hired an employee who has filed a workers' compensation
 1239 claim.
 1240 (3) Whoever violates any provision of this subsection
 1241 commits a felony ~~misdemeanor~~ of the third ~~first~~ degree,
 1242 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 1243 775.084.
 1244 (a) It shall be unlawful for any employer to knowingly
 1245 fail to update applications for coverage as required by s.
 1246 440.381(1) and department ~~of insurance~~ rules within 7 days after
 1247 the reporting date for any change in the required information,
 1248 or to post notice of coverage pursuant to s. 440.40.



1249 (b) It is unlawful for any attorney or other person, in
 1250 his or her individual capacity or in his or her capacity as a
 1251 public or private employee, or for any firm, corporation,
 1252 partnership, or association to receive any fee or other
 1253 consideration or any gratuity from a person on account of
 1254 services rendered for a person in connection with any
 1255 proceedings arising under this chapter, unless such fee,
 1256 consideration, or gratuity is approved by a judge of
 1257 compensation claims or by the Deputy Chief Judge of Compensation
 1258 Claims.

1259 (4) Whoever violates any provision of this subsection
 1260 commits insurance fraud, punishable as provided in paragraph
 1261 (f).

1262 (a) It shall be unlawful for any employer to knowingly:
 1263 1. Present or cause to be presented any false, fraudulent,
 1264 or misleading oral or written statement to any person as
 1265 evidence of compliance with s. 440.38.

1266 2. Make a deduction from the pay of any employee entitled
 1267 to the benefits of this chapter for the purpose of requiring the
 1268 employee to pay any portion of premium paid by the employer to a
 1269 carrier or to contribute to a benefit fund or department
 1270 maintained by such employer for the purpose of providing
 1271 compensation or medical services and supplies as required by
 1272 this chapter.

1273 3. Fail to secure payment of compensation if required to
 1274 do so by this chapter.

1275 (b) It shall be unlawful for any person:



1276 1. To knowingly make, or cause to be made, any false,
1277 fraudulent, or misleading oral or written statement for the
1278 purpose of obtaining or denying any benefit or payment under
1279 this chapter.

1280 2. To present or cause to be presented any written or oral
1281 statement as part of, or in support of, a claim for payment or
1282 other benefit pursuant to any provision of this chapter, knowing
1283 that such statement contains any false, incomplete, or
1284 misleading information concerning any fact or thing material to
1285 such claim.

1286 3. To prepare or cause to be prepared any written or oral
1287 statement that is intended to be presented to any employer,
1288 insurance company, or self-insured program in connection with,
1289 or in support of, any claim for payment or other benefit
1290 pursuant to any provision of this chapter, knowing that such
1291 statement contains any false, incomplete, or misleading
1292 information concerning any fact or thing material to such claim.

1293 4. To knowingly assist, conspire with, or urge any person
1294 to engage in activity prohibited by this section.

1295 5. To knowingly make any false, fraudulent, or misleading
1296 oral or written statement, or to knowingly omit or conceal
1297 material information, required by s. 440.185 or s. 440.381, for
1298 the purpose of obtaining workers' compensation coverage or for
1299 the purpose of avoiding, delaying, or diminishing the amount of
1300 payment of any workers' compensation premiums.

1301 6. To knowingly misrepresent or conceal payroll,
1302 classification of workers, or information regarding an
1303 employer's loss history which would be material to the



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1304 computation and application of an experience rating modification
1305 factor for the purpose of avoiding or diminishing the amount of
1306 payment of any workers' compensation premiums.

1307 7. To knowingly present or cause to be presented any
1308 false, fraudulent, or misleading oral or written statement to
1309 any person as evidence of compliance with s. 440.38, as evidence
1310 of eligibility for a certificate of exemption under s. 440.05.

1311 8. To knowingly violate a stop-work order issued by the
1312 department pursuant to s. 440.107.

1313 9. To knowingly present or cause to be presented any
1314 false, fraudulent, or misleading oral or written statement to
1315 any person as evidence of identity for the purpose of obtaining
1316 employment or filing or supporting a claim for workers'
1317 compensation benefits.

1318 (c) It shall be unlawful for any physician licensed under
1319 chapter 458, osteopathic physician licensed under chapter 459,
1320 chiropractic physician licensed under chapter 460, podiatric
1321 physician licensed under chapter 461, optometric physician
1322 licensed under chapter 463, or any other practitioner licensed
1323 under the laws of this state to knowingly and willfully assist,
1324 conspire with, or urge any person to fraudulently violate any of
1325 the provisions of this chapter.

1326 (d) It shall be unlawful for any person or governmental
1327 entity licensed under chapter 395 to maintain or operate a
1328 hospital in such a manner so that such person or governmental
1329 entity knowingly and willfully allows the use of the facilities
1330 of such hospital by any person, in a scheme or conspiracy to
1331 fraudulently violate any of the provisions of this chapter.



1332 (e) It shall be unlawful for any attorney or other person,
 1333 in his or her individual capacity or in his or her capacity as a
 1334 public or private employee, or any firm, corporation,
 1335 partnership, or association, to knowingly assist, conspire with,
 1336 or urge any person to fraudulently violate any of the provisions
 1337 of this chapter.

1338 (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~
 1339 ~~compensation insurance premium involved in any~~ violation of this
 1340 subsection:

1341 1. Is less than \$20,000, the offender commits a felony of
 1342 the third degree, punishable as provided in s. 775.082, s.
 1343 775.083, or s. 775.084.

1344 2. Is \$20,000 or more, but less than \$100,000, the
 1345 offender commits a felony of the second degree, punishable as
 1346 provided in s. 775.082, . 775.083, or s. 775.084.

1347 3. Is \$100,000 or more, the offender commits a felony of
 1348 the first degree, punishable as provided in s. 775.082, s.
 1349 775.083, or s. 775.084.

1350 (5) It shall be unlawful for any attorney or other person,
 1351 in his or her individual capacity or in his or her capacity as a
 1352 public or private employee or for any firm, corporation,
 1353 partnership, or association, to unlawfully solicit any business
 1354 in and about city or county hospitals, courts, or any public
 1355 institution or public place; in and about private hospitals or
 1356 sanitariums; in and about any private institution; or upon
 1357 private property of any character whatsoever for the purpose of
 1358 making workers' compensation claims. Whoever violates any
 1359 provision of this subsection commits a felony of the second



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1360 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
1361 or s. 775.085.

1362 (6) This section shall not be construed to preclude the
1363 applicability of any other provision of criminal law that
1364 applies or may apply to any transaction.

1365 ~~(7) For the purpose of the section, the term "statement"~~
1366 ~~includes, but is not limited to, any notice, representation,~~
1367 ~~statement, proof of injury, bill for services, diagnosis,~~
1368 ~~prescription, hospital or doctor records, X ray, test result, or~~
1369 ~~other evidence of loss, injury, or expense.~~

1370 (7)(8) An injured employee or any other party making a
1371 claim under this chapter shall provide his or her personal
1372 signature attesting that he or she has reviewed, understands,
1373 and acknowledges All claim forms as provided for in this chapter
1374 shall contain a notice that clearly states in substance the
1375 following statement: "Any person who, knowingly and with intent
1376 to injure, defraud, or deceive any employer or employee,
1377 insurance company, or self-insured program, files a statement of
1378 claim containing any false or misleading information commits
1379 insurance fraud, punishable as provided in s. 817.234." If the
1380 injured employee or other party refuses to sign the document
1381 attesting Each claimant shall personally sign the claim form and
1382 attest that he or she has reviewed, understands, and
1383 acknowledges the statement, benefits or payments under this
1384 chapter shall be suspended until such signature is obtained
1385 foregoing notice.

1386 Section 12. Subsection (3) of section 440.1051, Florida
1387 Statutes, is amended to read:



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1388 440.1051 Fraud reports; civil immunity; criminal
1389 penalties.--

1390 (2) Any person who reports workers' compensation fraud to
1391 the division under subsection (1) is immune from civil liability
1392 for doing so, and the person or entity alleged to have committed
1393 the fraud may not retaliate against him or her for providing
1394 such report, unless the person making the report knows it to be
1395 false.

1396 (3) A person who calls and, knowingly and falsely, reports
1397 workers' compensation fraud or who, in violation of subsection
1398 (2) retaliates against a person for making such report, commits
1399 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,
1400 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
1401 775.084 ~~both~~.

1402 Section 13. Section 440.107, Florida Statutes, is amended
1403 to read:

1404 440.107 Department powers to enforce employer compliance
1405 with coverage requirements.--

1406 (1) The Legislature finds that the failure of an employer
1407 to comply with the workers' compensation coverage requirements
1408 under this chapter poses an immediate danger to public health,
1409 safety, and welfare. ~~The Legislature authorizes the department~~
1410 ~~to secure employer compliance with the workers' compensation~~
1411 ~~coverage requirements and authorizes the department to conduct~~
1412 ~~investigations for the purpose of ensuring employer compliance.~~

1413 (2) For the purposes of this section, "securing the
1414 payment of workers' compensation" means obtaining coverage that
1415 meets the requirements of this chapter and the Florida Insurance



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1416 Code. However, if at any time an employer materially understates
1417 or conceals payroll, materially misrepresents or conceals
1418 employee duties so as to avoid proper classification for premium
1419 calculations, or materially misrepresents or conceals
1420 information pertinent to the computation and application of an
1421 experience rating modification factor, such employer shall be
1422 deemed to have failed to secure payment of workers' compensation
1423 and shall be subject to the sanctions set forth in this section.
1424 A stop-work order issued because an employer is deemed to have
1425 failed to secure the payment of workers' compensation required
1426 under this chapter because the employer has materially
1427 understated or concealed payroll, materially misrepresented or
1428 concealed employee duties so as to avoid proper classification
1429 for premium calculations, or materially misrepresented or
1430 concealed information pertinent to the computation and
1431 application of an experience rating modification factor shall
1432 have no effect upon an employer's or carrier's duty to provide
1433 benefits under this chapter or upon any of the employer's or
1434 carrier's rights and defenses under this chapter, including
1435 exclusive remedy. The department and its authorized
1436 representatives may enter and inspect any place of business at
1437 any reasonable time for the limited purpose of investigating
1438 compliance with workers' compensation coverage requirements
1439 under this chapter. Each employer shall keep true and accurate
1440 business records that contain such information as the department
1441 prescribes by rule. The business records must contain
1442 information necessary for the department to determine compliance
1443 with workers' compensation coverage requirements and must be



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1444 ~~maintained within this state by the business, in such a manner~~
1445 ~~as to be accessible within a reasonable time upon request by the~~
1446 ~~department. The business records must be open to inspection and~~
1447 ~~be available for copying by the department at any reasonable~~
1448 ~~time and place and as often as necessary. The department may~~
1449 ~~require from any employer any sworn or unsworn reports,~~
1450 ~~pertaining to persons employed by that employer, deemed~~
1451 ~~necessary for the effective administration of the workers'~~
1452 ~~compensation coverage requirements.~~

1453 (3) The department shall enforce workers' compensation
1454 coverage requirements, including the requirement that the
1455 employer secure the payment of workers' compensation, and the
1456 requirement that the employer provide the carrier with
1457 information to accurately determine payroll and correctly assign
1458 classification codes. In addition to any other powers under this
1459 chapter, the department shall have the power to:

1460 (a) Conduct investigations for the purpose of ensuring
1461 employer compliance.

1462 (b) Enter and inspect any place of business at any
1463 reasonable time for the purpose of investigating employer
1464 compliance.

1465 (c) Examine and copy business records.

1466 (d) Administer oaths and affirmations.

1467 (e) Certify to official acts.

1468 (f) Issue and serve subpoenas for attendance of witnesses
1469 or production of business records, books, papers,
1470 correspondence, memoranda, and other records.



1471 (g) Issue stop-work orders, penalty assessment orders, and
 1472 any other orders necessary for the administration of this
 1473 section.

1474 (h) Enforce the terms of a stop-work order.

1475 (i) Levy and pursue actions to recover penalties.

1476 (j) Seek injunctions and other appropriate relief. ~~In~~
 1477 ~~discharging its duties, the department may administer oaths and~~
 1478 ~~affirmations, certify to official acts, issue subpoenas to~~
 1479 ~~compel the attendance of witnesses and the production of books,~~
 1480 ~~papers, correspondence, memoranda, and other records deemed~~
 1481 ~~necessary by the department as evidence in order to ensure~~
 1482 ~~proper with the coverage provisions of this chapter.~~

1483 (4) The department shall designate representatives who may
 1484 serve subpoenas and other process of the department issued under
 1485 this section.

1486 (5) The department shall specify by rule the business
 1487 records that employers must maintain and produce to comply with
 1488 this section.

1489 (6)~~(4)~~ If a person has refused to obey a subpoena to
 1490 appear before the department or its authorized representative or
 1491 ~~and~~ produce evidence requested by the department or to give
 1492 testimony about the matter that is under investigation, a court
 1493 has jurisdiction to issue an order requiring compliance with the
 1494 subpoena if the court has jurisdiction in the geographical area
 1495 where the inquiry is being carried on or in the area where the
 1496 person who has refused the subpoena is found, resides, or
 1497 transacts business. Failure to obey such a court order may be
 1498 punished by the court as contempt, either civilly or criminally.



1499 Costs, including reasonable attorney's fees, incurred by the
 1500 department to obtain an order granting, in whole or in part, a
 1501 petition to enforce a subpoena or a subpoena duces tecum shall
 1502 be taxed against the subpoenaed party.

1503 (7)(a)~~(5)~~ Whenever the department determines that an
 1504 employer who is required to secure the payment to his or her
 1505 employees of the compensation provided for by this chapter has
 1506 failed to secure the payment of workers' compensation required
 1507 by this chapter or produce the required business records under
 1508 subsection (5) within 5 business days after receipt of the
 1509 written request of the department ~~do so~~, such failure shall be
 1510 deemed an immediate serious danger to public health, safety, or
 1511 welfare sufficient to justify service by the department of a
 1512 stop-work order on the employer, requiring the cessation of all
 1513 business operations ~~at the place of employment or job site~~. If
 1514 the department ~~division~~ makes such a determination, the
 1515 department ~~division~~ shall issue a stop-work order within 72
 1516 hours. The order shall take effect when served upon the ~~date of~~
 1517 ~~service upon the~~ employer or, for a particular employer
 1518 worksite, when served at that worksite. In addition to serving a
 1519 stop-work order, which shall be effective immediately, at a
 1520 particular worksite, the department shall immediately proceed
 1521 with service upon the employer which shall be effective upon all
 1522 employer worksites in the state. A stop-work order may be served
 1523 with regard to an employer's worksite by posting a copy of the
 1524 stop-work order in a conspicuous location at such site. The
 1525 order shall remain in effect until the department issues an
 1526 order releasing the stop-work order upon a finding that the



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1527 employer has come into compliance with the coverage requirements
1528 of this chapter and has paid any penalty assessed under this
1529 section. The department may require an employer who is found to
1530 have failed to comply with the coverage requirements of s.
1531 440.38 to file with the department, as a condition of release
1532 from a stop-work order, periodic reports that demonstrate the
1533 employer's continued compliance with this chapter for a
1534 probationary period that shall not exceed 2 years. The
1535 department shall by rule specify the reports required and the
1536 time for filing under this subsection ~~unless the employer~~
1537 ~~provides evidence satisfactory to the department of having~~
1538 ~~secured any necessary insurance or self-insurance and pays a~~
1539 ~~civil penalty to the department, to be deposited by the~~
1540 ~~department into the Workers' Compensation Administration Trust~~
1541 ~~Fund, in the amount of \$100 per day for each day the employer~~
1542 ~~was not in compliance with this chapter.~~

1543 (b) Stop-work orders and penalty assessment orders issued
1544 under this section against a corporation, partnership, or sole
1545 proprietorship shall be in effect against any successor
1546 corporation or business entity that has one or more of the same
1547 principals or officers as the corporation or partnership against
1548 which the stop-work order was issued and is engaged in the same
1549 or related enterprise.

1550 (c) The department shall assess a penalty of \$1,000 per
1551 day against an employer for each day that the employer conducts
1552 business operations that are in violation of a stop-work order.

1553 (d)1. In addition to any penalty, stop-work order, or
1554 injunction, the department shall assess against any employer who



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1555 has failed to secure the payment of compensation as required by
1556 this chapter a penalty equal to 1.5 times the amount the
1557 employer would have paid in premium when applying approved
1558 manual rates to the employer's payroll during periods for which
1559 it failed to secure the payment of workers' compensation
1560 required by this chapter within the preceding 3-year period or
1561 \$1,000, whichever is greater.

1562 2. Any subsequent violation within 5 years after the most
1563 recent violation shall, in addition to the penalties set forth
1564 in this subsection, be deemed a knowing act within the meaning
1565 of s. 440.105.

1566 (e) When an employer fails to provide business records
1567 sufficient to enable the department to determine the employer's
1568 payroll for the period requested for the calculation of the
1569 penalty provided in paragraph (d), for penalty calculation
1570 purposes, the imputed weekly payroll for each employee,
1571 corporate officer, sole proprietor, or partner shall be the
1572 statewide average weekly wage as defined in s. 440.12(2)
1573 multiplied by 1.5.

1574 (f) In addition to any other penalties provided for in
1575 this chapter, the department may assess against the employer a
1576 penalty of \$5,000 for each employee of that employer who the
1577 employer represents to the department or carrier as an
1578 independent contractor but who is determined by the department
1579 not to be an independent contractor as defined in s. 440.02.

1580 (8)(6) In addition to the issuance of a stop-work order
1581 under subsection (7), the department may file a complaint in the
1582 circuit court in and for Leon County to enjoin any employer, who



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1583 has failed to secure the payment of workers' compensation ~~as~~
1584 required by this chapter, ~~from employing individuals and from~~
1585 conducting business until the employer presents evidence
1586 satisfactory to the department of having secured the payment of
1587 workers' for compensation required by this chapter and pays a
1588 civil penalty assessed by ~~to~~ the department under this section,
1589 ~~to be deposited by the department into the Workers' Compensation~~
1590 ~~Administration Trust Fund, in the amount of \$100 per day for~~
1591 ~~each day the employer was not in compliance with this chapter.~~

1592 ~~(9)(7) In addition to any penalty, stop work order, or~~
1593 ~~injunction, the department shall assess against any employer,~~
1594 ~~who has failed to secure the payment of compensation as required~~
1595 ~~by this chapter, a penalty in the following amount:~~

1596 ~~(a) An amount equal to at least the amount that the~~
1597 ~~employer would have paid or up to twice the amount the employer~~
1598 ~~would have paid during periods it illegally failed to secure~~
1599 ~~payment of compensation in the preceding 3-year period based on~~
1600 ~~the employer's payroll during the preceding 3-year period; or~~

1601 ~~(b) One thousand dollars, whichever is greater. Any~~
1602 ~~penalty assessed under this subsection is due within 30 days~~
1603 ~~after the date on which the employer is notified, except that,~~
1604 ~~if the department has posted a stop work order or obtained~~
1605 ~~injunctive relief against the employer, payment is due, in~~
1606 ~~addition to those conditions set forth in this section, as a~~
1607 ~~condition to relief from a stop work order or an injunction.~~
1608 ~~Interest shall accrue on amounts not paid when due at the rate~~
1609 ~~of 1 percent per month. The department ~~division~~ shall adopt~~
1610 ~~rules to administer this section.~~



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1611 (10)~~(8)~~ The department may bring an action in circuit
1612 court to recover penalties assessed under this section,
1613 including any interest owed to the department pursuant to this
1614 section. In any action brought by the department pursuant to
1615 this section in which it prevails, the circuit court shall award
1616 costs, including the reasonable costs of investigation and a
1617 reasonable attorney's fee.

1618 (11)~~(9)~~ Any judgment obtained by the department and any
1619 penalty due pursuant to the service of a stop-work order or
1620 otherwise due under this section shall, until collected,
1621 constitute a lien upon the entire interest of the employer,
1622 legal or equitable, in any property, real or personal, tangible
1623 or intangible; however, such lien is subordinate to claims for
1624 unpaid wages and any prior recorded liens, and a lien created by
1625 this section is not valid against any person who, subsequent to
1626 such lien and in good faith and for value, purchases real or
1627 personal property from such employer or becomes the mortgagee on
1628 real or personal property of such employer, or against a
1629 subsequent attaching creditor, unless, with respect to real
1630 estate of the employer, a notice of the lien is recorded in the
1631 public records of the county where the real estate is located,
1632 and with respect to personal property of the employer, notice is
1633 recorded with the Secretary of State.

1634 (12)~~(10)~~ Any law enforcement agency in the state may, at
1635 the request of the department, render any assistance necessary
1636 to carry out the provisions of this section, including, but not
1637 limited to, preventing any employee or other person from



1638 remaining at a place of employment or job site after a stop-work
1639 order or injunction has taken effect.

1640 ~~(13)(11)~~ Agency action ~~Actions~~ by the department under
1641 this section, if contested, must be contested as provided in
1642 chapter 120. All ~~civil~~ penalties assessed by the department must
1643 be paid into the Workers' Compensation Administration Trust
1644 Fund. ~~The department shall return any sums previously paid, upon~~
1645 ~~conclusion of an action, if the department fails to prevail and~~
1646 ~~if so directed by an order of court or an administrative hearing~~
1647 ~~officer. The requirements of this subsection may be met by~~
1648 ~~posting a bond in an amount equal to twice the penalty and in a~~
1649 ~~form approved by the department.~~

1650 ~~(14)(12)~~ If the department ~~division~~ finds that an employer
1651 who is certified or registered under part I or part II of
1652 chapter 489 and who is required to secure the payment of
1653 workers' ~~the~~ compensation under ~~provided for by~~ this chapter to
1654 his or her employees has failed to do so, the department
1655 ~~division~~ shall immediately notify the Department of Business and
1656 Professional Regulation.

1657 Section 14. Subsections (1) and (3) of section 440.11,
1658 Florida Statutes, are amended to read:

1659 440.11 Exclusiveness of liability.--

1660 (1) The liability of an employer prescribed in s. 440.10
1661 shall be exclusive and in place of all other liability,
1662 including vicarious liability, of such employer to any third-
1663 party tortfeasor and to the employee, the legal representative
1664 thereof, husband or wife, parents, dependents, next of kin, and
1665 anyone otherwise entitled to recover damages from such employer



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1666 at law or in admiralty on account of such injury or death,
1667 except as follows: ~~that~~

1668 (a) If an employer fails to secure payment of compensation
1669 as required by this chapter, an injured employee, or the legal
1670 representative thereof in case death results from the injury,
1671 may elect to claim compensation under this chapter or to
1672 maintain an action at law or in admiralty for damages on account
1673 of such injury or death. In such action the defendant may not
1674 plead as a defense that the injury was caused by negligence of a
1675 fellow employee, that the employee assumed the risk of the
1676 employment, or that the injury was due to the comparative
1677 negligence of the employee.

1678 (b) When an employer commits an intentional tort that
1679 causes the injury or death of the employee. For purposes of this
1680 paragraph, an employer's actions shall be deemed to constitute
1681 an intentional tort and not an accident only when the employee
1682 proves, by clear and convincing evidence, that:

1683 1. The employer deliberately intended to injure the
1684 employee; or

1685 2. The employer engaged in conduct that the employer knew,
1686 based on prior similar accidents or on explicit warnings
1687 specifically identifying a known danger, was certain to result
1688 in injury or death to the employee, and the employee was not
1689 aware of the risk because the danger was not apparent and the
1690 employer deliberately concealed or misrepresented the danger so
1691 as to prevent the employee from exercising informed judgment
1692 about whether to perform the work.

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1694 The same immunities from liability enjoyed by an employer shall
1695 extend as well to each employee of the employer when such
1696 employee is acting in furtherance of the employer's business and
1697 the injured employee is entitled to receive benefits under this
1698 chapter. Such fellow-employee immunities shall not be applicable
1699 to an employee who acts, with respect to a fellow employee, with
1700 willful and wanton disregard or unprovoked physical aggression
1701 or with gross negligence when such acts result in injury or
1702 death or such acts proximately cause such injury or death, nor
1703 shall such immunities be applicable to employees of the same
1704 employer when each is operating in the furtherance of the
1705 employer's business but they are assigned primarily to unrelated
1706 works within private or public employment. The same immunity
1707 provisions enjoyed by an employer shall also apply to any sole
1708 proprietor, partner, corporate officer or director, supervisor,
1709 or other person who in the course and scope of his or her duties
1710 acts in a managerial or policymaking capacity and the conduct
1711 which caused the alleged injury arose within the course and
1712 scope of said managerial or policymaking duties and was not a
1713 violation of a law, whether or not a violation was charged, for
1714 which the maximum penalty which may be imposed does not exceed
1715 60 days' imprisonment as set forth in s. 775.082. The immunity
1716 from liability provided in this subsection extends to county
1717 governments with respect to employees of county constitutional
1718 officers whose offices are funded by the board of county
1719 commissioners.

1720 (3) An employer's workers' compensation carrier, service
1721 agent, or safety consultant shall not be liable as a third-party



1722 tortfeasor to employees of the employer or employees of its
 1723 subcontractors for assisting the employer and its
 1724 subcontractors, if any, in carrying out the employer's rights
 1725 and responsibilities under this chapter by furnishing any safety
 1726 inspection, safety consultative service, or other safety service
 1727 incidental to the workers' compensation or employers' liability
 1728 coverage or to the workers' compensation or employer's liability
 1729 servicing contract. Without limitation, a safety consultant may
 1730 include an owner, as defined in chapter 713, or an owner's
 1731 related, affiliated, or subsidiary companies and the employees
 1732 of each. The exclusion from liability under this subsection
 1733 shall not apply in any case in which injury or death is
 1734 proximately caused by the willful and unprovoked physical
 1735 aggression, or by the negligent operation of a motor vehicle, by
 1736 employees, officers, or directors of the employer's workers'
 1737 compensation carrier, service agent, or safety consultant.

1738 Section 15. Section 440.13, Florida Statutes, is amended
 1739 to read:

1740 440.13 Medical services and supplies; penalty for
 1741 violations; limitations.--

1742 (1) DEFINITIONS.-- As used in this section, the term:

1743 (a) "Alternate medical care" means a change in treatment
 1744 or health care provider.

1745 (b) "Attendant care" means care rendered by trained
 1746 professional attendants which is beyond the scope of household
 1747 duties. Family members may provide nonprofessional attendant
 1748 care, but may not be compensated under this chapter for care
 1749 that falls within the scope of household duties and other



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1750 services normally and gratuitously provided by family members.
 1751 "Family member" means a spouse, father, mother, brother, sister,
 1752 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1753 (c) "Carrier" means, for purposes of this section,
 1754 insurance carrier, self-insurance fund or individually self-
 1755 insured employer, assessable mutual insurer.

1756 (d) "Catastrophic injury" means an injury as defined in s.
 1757 440.02.

1758 (e) "Certified health care provider" means a health care
 1759 provider who has been certified by the agency or who has entered
 1760 an agreement with a licensed managed care organization to
 1761 provide treatment to injured workers under this section.
 1762 Certification of such health care provider must include
 1763 documentation that the health care provider has read and is
 1764 familiar with the portions of the statute, impairment guides,
 1765 practice parameters, protocols of treatment, and rules which
 1766 govern the provision of remedial treatment, care, and
 1767 attendance.

1768 (f) "Compensable" means a determination by a carrier or
 1769 judge of compensation claims that a condition suffered by an
 1770 employee results from an injury arising out of and in the course
 1771 of employment.

1772 (g) "Emergency services and care" means emergency services
 1773 and care as defined in s. 395.002.

1774 (h) "Health care facility" means any hospital licensed
 1775 under chapter 395 and any health care institution licensed under
 1776 chapter 400.



1777 (i) "Health care provider" means a physician or any
 1778 recognized practitioner who provides skilled services pursuant
 1779 to a prescription or under the supervision or direction of a
 1780 physician and who has been certified by the agency as a health
 1781 care provider. The term "health care provider" includes a health
 1782 care facility.

1783 (j) "Independent medical examiner" means a physician
 1784 selected by either an employee or a carrier to render one or
 1785 more independent medical examinations in connection with a
 1786 dispute arising under this chapter.

1787 (k) "Independent medical examination" means an objective
 1788 evaluation of the injured employee's medical condition,
 1789 including, but not limited to, impairment or work status,
 1790 performed by a physician or an expert medical advisor at the
 1791 request of a party, a judge of compensation claims, or the
 1792 agency to assist in the resolution of a dispute arising under
 1793 this chapter.

1794 (l) "Instance of overutilization" means a specific
 1795 inappropriate service or level of service provided to an injured
 1796 employee that includes the provision of treatment in excess of
 1797 established practice parameters and protocols of treatment
 1798 established in accordance with this chapter.

1799 (m) "Medically necessary" or "medical necessity" means any
 1800 medical service or medical supply which is used to identify or
 1801 treat an illness or injury, is appropriate to the patient's
 1802 diagnosis and status of recovery, and is consistent with the
 1803 location of service, the level of care provided, and applicable
 1804 practice parameters. The service should be widely accepted among



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1805 practicing health care providers, based on scientific criteria,
1806 and determined to be reasonably safe. The service must not be of
1807 an experimental, investigative, or research nature, ~~except in~~
1808 ~~those instances in which prior approval of the Agency for Health~~
1809 ~~Care Administration has been obtained. The Agency for Health~~
1810 ~~Care Administration shall adopt rules providing for such~~
1811 ~~approval on a case-by-case basis when the service or supply is~~
1812 ~~shown to have significant benefits to the recovery and well-~~
1813 ~~being of the patient.~~

1814 (n) "Medicine" means a drug prescribed by an authorized
1815 health care provider and includes only generic drugs or single-
1816 source patented drugs for which there is no generic equivalent,
1817 unless the authorized health care provider writes or states that
1818 the brand-name drug as defined in s. 465.025 is medically
1819 necessary, or is a drug appearing on the schedule of drugs
1820 created pursuant to s. 465.025(6), or is available at a cost
1821 lower than its generic equivalent.

1822 (o) "Palliative care" means noncurative medical services
1823 that mitigate the conditions, effects, or pain of an injury.

1824 (p) "Pattern or practice of overutilization" means
1825 repetition of instances of overutilization within a specific
1826 medical case or multiple cases by a single health care provider.

1827 (q) "Peer review" means an evaluation by two or more
1828 physicians licensed under the same authority and with the same
1829 or similar specialty as the physician under review, of the
1830 appropriateness, quality, and cost of health care and health
1831 services provided to a patient, based on medically accepted
1832 standards.



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1833 (r) "Physician" or "doctor" means a physician licensed
 1834 under chapter 458, an osteopathic physician licensed under
 1835 chapter 459, a chiropractic physician licensed under chapter
 1836 460, a podiatric physician licensed under chapter 461, an
 1837 optometrist licensed under chapter 463, or a dentist licensed
 1838 under chapter 466, each of whom must be certified by the agency
 1839 as a health care provider.

1840 (s) "Reimbursement dispute" means any disagreement between
 1841 a health care provider or health care facility and carrier
 1842 concerning payment for medical treatment.

1843 (t) "Utilization control" means a systematic process of
 1844 implementing measures that assure overall management and cost
 1845 containment of services delivered, including compliance with
 1846 practice parameters and protocols of treatment as provided for
 1847 in this chapter.

1848 (u) "Utilization review" means the evaluation of the
 1849 appropriateness of both the level and the quality of health care
 1850 and health services provided to a patient, including, but not
 1851 limited to, evaluation of the appropriateness of treatment,
 1852 hospitalization, or office visits based on medically accepted
 1853 standards. Such evaluation must be accomplished by means of a
 1854 system that identifies the utilization of medical services based
 1855 on practice parameters and protocols of treatment as provided
 1856 for in this chapter ~~medically accepted standards as established~~
 1857 ~~by medical consultants with qualifications similar to those~~
 1858 ~~providing the care under review, and that refers patterns and~~
 1859 ~~practices of overutilization to the agency.~~

1860 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--



1861 (a) Subject to the limitations specified elsewhere in this
 1862 chapter, the employer shall furnish to the employee such
 1863 medically necessary remedial treatment, care, and attendance for
 1864 such period as the nature of the injury or the process of
 1865 recovery may require, which is in accordance with established
 1866 practice parameters and protocols of treatment as provided for
 1867 in this chapter, including medicines, medical supplies, durable
 1868 medical equipment, orthoses, prostheses, and other medically
 1869 necessary apparatus. Remedial treatment, care, and attendance,
 1870 including work-hardening programs or pain-management programs
 1871 accredited by the Commission on Accreditation of Rehabilitation
 1872 Facilities or Joint Commission on the Accreditation of Health
 1873 Organizations or pain-management programs affiliated with
 1874 medical schools, shall be considered as covered treatment only
 1875 when such care is given based on a referral by a physician as
 1876 defined in this chapter. ~~Each facility shall maintain outcome~~
 1877 ~~data, including work status at discharges, total program~~
 1878 ~~charges, total number of visits, and length of stay. The~~
 1879 ~~department shall utilize such data and report to the President~~
 1880 ~~of the Senate and the Speaker of the House of Representatives~~
 1881 ~~regarding the efficacy and cost-effectiveness of such program,~~
 1882 ~~no later than October 1, 1994.~~ Medically necessary treatment,
 1883 care, and attendance does not include chiropractic services in
 1884 excess of 18 treatments or rendered 8 weeks beyond the date of
 1885 the initial chiropractic treatment, whichever comes first,
 1886 unless the carrier authorizes additional treatment or the
 1887 employee is catastrophically injured.



1888 (b) The employer shall provide appropriate professional or
 1889 nonprofessional attendant care performed only at the direction
 1890 and control of a physician when such care is medically
 1891 necessary. The physician shall prescribe such care in writing.
 1892 The employer or carrier shall not be responsible for such care
 1893 until the prescription for attendant care is received by the
 1894 employer and carrier, which shall specify the time periods for
 1895 such care, the level of care required, and the type of
 1896 assistance required. A prescription for attendant care shall not
 1897 prescribe such care retroactively. The value of nonprofessional
 1898 attendant care provided by a family member must be determined as
 1899 follows:

1900 1. If the family member is not employed or if the family
 1901 member is employed and is providing attendant care services
 1902 during hours that he or she is not engaged in employment, the
 1903 per-hour value equals the federal minimum hourly wage.

1904 2. If the family member is employed and elects to leave
 1905 that employment to provide attendant or custodial care, the per-
 1906 hour value of that care equals the per-hour value of the family
 1907 member's former employment, not to exceed the per-hour value of
 1908 such care available in the community at large. A family member
 1909 or a combination of family members providing nonprofessional
 1910 attendant care under this paragraph may not be compensated for
 1911 more than a total of 12 hours per day.

1912 3. If the family member remains employed while providing
 1913 attendant or custodial care, the per-hour value of that care
 1914 equals the per-hour value of the family member's employment, not



1915 | to exceed the per-hour value of such care available in the
 1916 | community at large.

1917 | (c) If the employer fails to provide initial treatment or
 1918 | care required by this section after request by the injured
 1919 | employee, the employee may obtain such initial treatment at the
 1920 | expense of the employer, if the initial treatment or care is
 1921 | compensable and medically necessary and is in accordance with
 1922 | established practice parameters and protocols of treatment as
 1923 | provided for in this chapter. There must be a specific request
 1924 | for the initial treatment or care, and the employer or carrier
 1925 | must be given a reasonable time period within which to provide
 1926 | the initial treatment or care. However, the employee is not
 1927 | entitled to recover any amount personally expended for the
 1928 | initial treatment or care ~~service~~ unless he or she has requested
 1929 | the employer to furnish that initial treatment or service and
 1930 | the employer has failed, refused, or neglected to do so within a
 1931 | reasonable time or unless the nature of the injury requires such
 1932 | initial treatment, nursing, and services and the employer or his
 1933 | or her superintendent or foreman, having knowledge of the
 1934 | injury, has neglected to provide the initial treatment or care
 1935 | ~~service~~.

1936 | (d) The carrier has the right to transfer the care of an
 1937 | injured employee from the attending health care provider if an
 1938 | independent medical examination determines that the employee is
 1939 | not making appropriate progress in recuperation.

1940 | (e) Except in emergency situations and for treatment
 1941 | rendered by a managed care arrangement, after any initial
 1942 | examination and diagnosis by a physician providing remedial



1943 treatment, care, and attendance, and before a proposed course of
 1944 medical treatment begins, each insurer shall review, in
 1945 accordance with the requirements of this chapter, the proposed
 1946 course of treatment, to determine whether such treatment would
 1947 be recognized as reasonably prudent. The review must be in
 1948 accordance with all applicable workers' compensation practice
 1949 parameters and protocols of treatment established in accordance
 1950 with this chapter. The insurer must accept any such proposed
 1951 course of treatment unless the insurer notifies the physician of
 1952 its specific objections to the proposed course of treatment by
 1953 the close of the tenth business day after notification by the
 1954 physician, or a supervised designee of the physician, of the
 1955 proposed course of treatment.

1956 (f) Upon the written request of the employee, the carrier
 1957 shall give the employee the opportunity for one change of
 1958 physician during the course of treatment for any one accident.
 1959 Upon the granting of a change of physician, the originally
 1960 authorized physician in the same specialty as the changed
 1961 physician shall become deauthorized upon written notification by
 1962 the employer or carrier. The carrier shall authorize an
 1963 alternative physician who shall not be professionally affiliated
 1964 with the previous physician within 5 days after receipt of the
 1965 request. If the carrier fails to provide a change of physician
 1966 as requested by the employee, the employee may select the
 1967 physician and such physician shall be considered authorized if
 1968 the treatment being provided is compensable and medically
 1969 necessary.

1970



1971 Failure of the carrier to timely comply with this subsection
 1972 shall be a violation of this chapter and the carrier shall be
 1973 subject to penalties as provided for in s. 440.525. The employee
 1974 ~~shall be entitled to select another physician from among not~~
 1975 ~~fewer than three carrier-authorized physicians who are not~~
 1976 ~~professionally affiliated.~~

1977 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

1978 (a) As a condition to eligibility for payment under this
 1979 chapter, a health care provider who renders services must be a
 1980 certified health care provider and must receive authorization
 1981 from the carrier before providing treatment. This paragraph does
 1982 not apply to emergency care. The agency shall adopt rules to
 1983 implement the certification of health care providers.

1984 (b) A health care provider who renders emergency care must
 1985 notify the carrier by the close of the third business day after
 1986 it has rendered such care. If the emergency care results in
 1987 admission of the employee to a health care facility, the health
 1988 care provider must notify the carrier by telephone within 24
 1989 hours after initial treatment. Emergency care is not compensable
 1990 under this chapter unless the injury requiring emergency care
 1991 arose as a result of a work-related accident. Pursuant to
 1992 chapter 395, all licensed physicians and health care providers
 1993 in this state shall be required to make their services available
 1994 for emergency treatment of any employee eligible for workers'
 1995 compensation benefits. To refuse to make such treatment
 1996 available is cause for revocation of a license.

1997 (c) A health care provider may not refer the employee to
 1998 another health care provider, diagnostic facility, therapy



1999 center, or other facility without prior authorization from the
 2000 carrier, except when emergency care is rendered. Any referral
 2001 must be to a health care provider that has been certified by the
 2002 agency, unless the referral is for emergency treatment, and the
 2003 referral must be made in accordance with practice parameters and
 2004 protocols of treatment as provided for in this chapter.

2005 (d) A carrier must respond, by telephone or in writing, to
 2006 a request for authorization from an authorized health care
 2007 provider by the close of the third business day after receipt of
 2008 the request. A carrier who fails to respond to a written request
 2009 for authorization for referral for medical treatment by the
 2010 close of the third business day after receipt of the request
 2011 consents to the medical necessity for such treatment. All such
 2012 requests must be made to the carrier. Notice to the carrier does
 2013 not include notice to the employer.

2014 (e) Carriers shall adopt procedures for receiving,
 2015 reviewing, documenting, and responding to requests for
 2016 authorization. Such procedures shall be for a health care
 2017 provider certified under this section.

2018 (f) By accepting payment under this chapter for treatment
 2019 rendered to an injured employee, a health care provider consents
 2020 to the jurisdiction of the agency as set forth in subsection
 2021 (11) and to the submission of all records and other information
 2022 concerning such treatment to the agency in connection with a
 2023 reimbursement dispute, audit, or review as provided by this
 2024 section. The health care provider must further agree to comply
 2025 with any decision of the agency rendered under this section.



2026 (g) The employee is not liable for payment for medical
 2027 treatment or services provided pursuant to this section except
 2028 as otherwise provided in this section.

2029 (h) The provisions of s. 456.053 are applicable to
 2030 referrals among health care providers, as defined in subsection
 2031 (1), treating injured workers.

2032 (i) Notwithstanding paragraph (d), a claim for specialist
 2033 consultations, surgical operations, physiotherapeutic or
 2034 occupational therapy procedures, X-ray examinations, or special
 2035 diagnostic laboratory tests that cost more than \$1,000 and other
 2036 specialty services that the agency identifies by rule is not
 2037 valid and reimbursable unless the services have been expressly
 2038 authorized by the carrier, or unless the carrier has failed to
 2039 respond within 10 days to a written request for authorization,
 2040 or unless emergency care is required. The insurer shall ~~not~~
 2041 ~~refuse to~~ authorize such consultation or procedure unless the
 2042 health care provider or facility is not authorized or certified,
 2043 unless such treatment is not in accordance with practice
 2044 parameters and protocols of treatment established in this
 2045 chapter, or unless a judge of compensation claims an expert
 2046 ~~medical adviser~~ has determined that the consultation or
 2047 procedure is not medically necessary, not in accordance with the
 2048 practice parameters and protocols of treatment established in
 2049 this chapter, or otherwise not compensable under this chapter.
 2050 Authorization of a treatment plan does not constitute express
 2051 authorization for purposes of this section, except to the extent
 2052 the carrier provides otherwise in its authorization procedures.



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2053 This paragraph does not limit the carrier's obligation to
2054 identify and disallow overutilization or billing errors.

2055 ~~(j) Notwithstanding anything in this chapter to the~~
2056 ~~contrary, a sick or injured employee shall be entitled, at all~~
2057 ~~times, to free, full, and absolute choice in the selection of~~
2058 ~~the pharmacy or pharmacist dispensing and filling prescriptions~~
2059 ~~for medicines required under this chapter. It is expressly~~
2060 ~~forbidden for the agency, an employer, or a carrier, or any~~
2061 ~~agent or representative of the agency, an employer, or a~~
2062 ~~carrier to select the pharmacy or pharmacist which the sick or~~
2063 ~~injured employee must use; condition coverage or payment on the~~
2064 ~~basis of the pharmacy or pharmacist utilized; or to otherwise~~
2065 ~~interfere in the selection by the sick or injured employee of a~~
2066 ~~pharmacy or pharmacist.~~

2067 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
2068 DEPARTMENT.--

2069 (a) Any health care provider providing necessary remedial
2070 treatment, care, or attendance to any injured worker shall
2071 submit treatment reports to the carrier in a format prescribed
2072 by the department ~~in consultation with the agency~~. A claim for
2073 medical or surgical treatment is not valid or enforceable
2074 against such employer or employee, unless, by the close of the
2075 third business day following the first treatment, the physician
2076 providing the treatment furnishes to the employer or carrier a
2077 preliminary notice of the injury and treatment in a format on
2078 ~~forms~~ prescribed by the department ~~in consultation with the~~
2079 ~~agency~~ and, within 15 days thereafter, furnishes to the employer
2080 or carrier a complete report, and subsequent thereto furnishes



2081 progress reports, if requested by the employer or insurance
 2082 carrier, at intervals of not less than 3 weeks apart or at less
 2083 frequent intervals if requested in a format ~~on forms~~ prescribed
 2084 by the department ~~in consultation with the agency~~.

2085 (b) Upon the request of the department ~~or agency~~, each
 2086 medical report or bill obtained or received by the employer, the
 2087 carrier, or the injured employee, or the attorney for the
 2088 employer, carrier, or injured employee, with respect to the
 2089 remedial treatment, care, and attendance of the injured
 2090 employee, including any report of an examination, diagnosis, or
 2091 disability evaluation, must be produced by the health care
 2092 provider to filed with the department ~~or agency~~ pursuant to
 2093 rules adopted by the department ~~in consultation with the agency~~.
 2094 The health care provider shall also furnish to the injured
 2095 employee or ~~to~~ his or her attorney and the employer or carrier
 2096 or its attorney, on demand, a copy of his or her office chart,
 2097 records, and reports, and may charge the injured employee no
 2098 more than 50 cents per page for copying the records and the
 2099 actual direct cost to the health care provider or health care
 2100 facility for X rays, microfilm, or other nonpaper records ~~an~~
 2101 ~~amount authorized by the department for the copies~~. Each such
 2102 health care provider shall provide to the ~~agency or~~ department
 2103 information about the remedial treatment, care, and attendance
 2104 which the ~~agency or~~ department reasonably requests.

2105 (c) It is the policy for the administration of the
 2106 workers' compensation system that there shall be reasonable
 2107 access to medical information by all parties to facilitate the
 2108 self-executing features of the law. An employee who reports an



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2109 | injury or illness alleged to be work-related waives any
2110 | physician-patient privilege with respect to any condition or
2111 | complaint reasonably related to the condition for which the
2112 | employee claims compensation. Notwithstanding the limitations in
2113 | s. 456.057 and subject to the limitations in s. 381.004, upon
2114 | the request of the employer, the carrier, an authorized
2115 | qualified rehabilitation provider, or the attorney for the
2116 | employer or carrier, the medical records, reports, and
2117 | information of an injured employee relevant to the particular
2118 | injury or illness for which compensation is sought must be
2119 | furnished to those persons and the medical condition of the
2120 | injured employee must be discussed with those persons, if the
2121 | records and the discussions are restricted to conditions
2122 | relating to the workplace injury. Release of medical information
2123 | by the health care provider or other physician does not require
2124 | the authorization of the injured employee. If medical records,
2125 | reports, and information of an injured employee are sought from
2126 | health care providers who are not subject to the jurisdiction of
2127 | the state, the injured employee shall sign an authorization
2128 | allowing for the employer or carrier to obtain the medical
2129 | records, reports, or information. Any such discussions or
2130 | release of information may be held before or after the filing of
2131 | a claim or petition for benefits without the knowledge, consent,
2132 | or presence of any other party or his or her agent or
2133 | representative. A health care provider who willfully refuses to
2134 | provide medical records or to discuss the medical condition of
2135 | the injured employee, after a reasonable request is made for
2136 | such information pursuant to this subsection, shall be subject



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2137 by the ~~department agency~~ to one or more of the penalties set
2138 forth in paragraph (8)(b). The department may adopt rules to
2139 carry out this subsection.

2140 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2141 (a) In any dispute concerning overutilization, medical
2142 benefits, compensability, or disability under this chapter, the
2143 carrier or the employee may select an independent medical
2144 examiner. If the parties agree, the examiner may be a health
2145 care provider treating or providing other care to the employee.
2146 An independent medical examiner may not render an opinion
2147 outside his or her area of expertise, as demonstrated by
2148 licensure and applicable practice parameters. The employer and
2149 employee shall be entitled to only one independent medical
2150 examination per accident and not one independent medical
2151 examination per medical specialty. The party requesting and
2152 selecting the independent medical examination shall be
2153 responsible for all expenses associated with said examination,
2154 including, but not limited to, medically necessary diagnostic
2155 testing performed and physician or medical care provider fees
2156 for the evaluation. The party selecting the independent medical
2157 examination shall identify the choice of the independent medical
2158 examiner to all other parties within 15 days after the date the
2159 independent medical examination is to take place. Failure to
2160 timely provide such notification shall preclude the requesting
2161 party from submitting the findings of such independent medical
2162 examiner in a proceeding before a judge of compensation claims.
2163 The independent medical examiner may not provide followup care
2164 if such recommendation for care is found to be medically



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2165 necessary. If the employee prevails in a medical dispute as
2166 determined in an order by a judge of compensation claims or if
2167 benefits are paid or treatment provided after the employee has
2168 obtained an independent medical examination based upon the
2169 examiner's findings, the costs of such examination shall be paid
2170 by the employer or carrier.

2171 (b) Each party is bound by his or her selection of an
2172 independent medical examiner, including the selection of the
2173 independent medical examiner in accordance with s. 440.134 and
2174 the opinions of such independent medical examiner. Each party
2175 ~~and~~ is entitled to an alternate examiner only if:

2176 1. The examiner is not qualified to render an opinion upon
2177 an aspect of the employee's illness or injury which is material
2178 to the claim or petition for benefits;

2179 2. The examiner ceases to practice in the specialty
2180 relevant to the employee's condition;

2181 3. The examiner is unavailable due to injury, death, or
2182 relocation outside a reasonably accessible geographic area; or

2183 4. The parties agree to an alternate examiner.

2184

2185 ~~Any party may request, or a judge of compensation claims may~~
2186 ~~require, designation of an agency medical advisor as an~~
2187 ~~independent medical examiner. The opinion of the advisors acting~~
2188 ~~as examiners shall not be afforded the presumption set forth in~~
2189 ~~paragraph (9)(c).~~

2190 (c) The carrier may, at its election, contact the claimant
2191 directly to schedule a reasonable time for an independent
2192 medical examination. The carrier must confirm the scheduling



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2193 agreement in writing with the claimant and the ~~within 5 days and~~
 2194 ~~notify~~ claimant's counsel, if any, at least 7 days before the
 2195 date upon which the independent medical examination is scheduled
 2196 to occur. An attorney representing a claimant is not authorized
 2197 to schedule the self-insured employer's or carrier's independent
 2198 medical evaluations under this subsection. Neither the self-
 2199 insured employer nor the carrier shall be responsible for
 2200 scheduling any independent medical examination other than an
 2201 employer or carrier independent medical examination.

2202 (d) If the employee fails to appear for the independent
 2203 medical examination scheduled by the employer or carrier without
 2204 good cause and fails to advise the physician at least 24 hours
 2205 before the scheduled date for the examination that he or she
 2206 cannot appear, the employee is barred from recovering
 2207 compensation for any period during which he or she has refused
 2208 to submit to such examination. Further, the employee shall
 2209 reimburse the employer or carrier 50 percent of the physician's
 2210 cancellation or no-show fee unless the employer or carrier that
 2211 schedules the examination fails to timely provide to the
 2212 employee a written confirmation of the date of the examination
 2213 pursuant to paragraph (c) which includes an explanation of why
 2214 he or she failed to appear. The employee may appeal to a judge
 2215 of compensation claims for reimbursement when the employer or
 2216 carrier withholds payment in excess of the authority granted by
 2217 this section.

2218 (e) No medical opinion other than the opinion of a medical
 2219 advisor appointed by the judge of compensation claims or the
 2220 department ~~agency~~, an independent medical examiner, or an



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2221 authorized treating provider is admissible in proceedings before
2222 the judges of compensation claims.

2223 (f) Attorney's fees incurred by an injured employee in
2224 connection with delay of or opposition to an independent medical
2225 examination, including, but not limited to, motions for
2226 protective orders, are not recoverable under this chapter.

2227 (g) When a medical dispute arises, the parties may
2228 mutually agree to refer the employee to a licensed physician
2229 specializing in the diagnosis and treatment of the medical
2230 condition at issue for an independent medical examination and
2231 report. Such medical examination shall be referred to as a
2232 "consensus independent medical examination." The findings and
2233 conclusions of such mutually agreed upon consensus independent
2234 medical examination shall be binding on the parties and shall
2235 constitute resolution of the medical dispute addressed in the
2236 independent consensus medical examination and in any proceeding.
2237 Agreement by the parties to a consensus independent medical
2238 examination shall not affect the employer's, carrier's, or
2239 employee's entitlement to one independent medical examination
2240 per accident as provided for in this subsection.

2241 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
2242 invoices, and other claims for payment submitted by health care
2243 providers in order to identify overutilization and billing
2244 errors, including compliance with practice parameters and
2245 protocols of treatment established in accordance with this
2246 chapter, and may hire peer review consultants or conduct
2247 independent medical evaluations. Such consultants, including
2248 peer review organizations, are immune from liability in the



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2249 execution of their functions under this subsection to the extent
2250 provided in s. 766.101. If a carrier finds that overutilization
2251 of medical services or a billing error has occurred, or there is
2252 a violation of the practice parameters and protocols of
2253 treatment established in accordance with this chapter, it must
2254 disallow or adjust payment for such services or error without
2255 order of a judge of compensation claims or the agency, if the
2256 carrier, in making its determination, has complied with this
2257 section and rules adopted by the agency.

2258 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

2259 (a) Any health care provider, carrier, or employer who
2260 elects to contest the disallowance or adjustment of payment by a
2261 carrier under subsection (6) must, within 30 days after receipt
2262 of notice of disallowance or adjustment of payment, petition the
2263 agency to resolve the dispute. The petitioner must serve a copy
2264 of the petition on the carrier and on all affected parties by
2265 certified mail. The petition must be accompanied by all
2266 documents and records that support the allegations contained in
2267 the petition. Failure of a petitioner to submit such
2268 documentation to the agency results in dismissal of the
2269 petition.

2270 (b) The carrier must submit to the agency within 10 days
2271 after receipt of the petition all documentation substantiating
2272 the carrier's disallowance or adjustment. Failure of the carrier
2273 to timely submit the requested documentation to the agency
2274 within 10 days constitutes a waiver of all objections to the
2275 petition.



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2276 (c) Within 60 days after receipt of all documentation, the
2277 agency must provide to the petitioner, the carrier, and the
2278 affected parties a written determination of whether the carrier
2279 properly adjusted or disallowed payment. The agency must be
2280 guided by standards and policies set forth in this chapter,
2281 including all applicable reimbursement schedules, practice
2282 parameters, and protocols of treatment, in rendering its
2283 determination.

2284 (d) If the agency finds an improper disallowance or
2285 improper adjustment of payment by an insurer, the insurer shall
2286 reimburse the health care provider, facility, insurer, or
2287 employer within 30 days, subject to the penalties provided in
2288 this subsection.

2289 (e) The agency shall adopt rules to carry out this
2290 subsection. The rules may include provisions for consolidating
2291 petitions filed by a petitioner and expanding the timetable for
2292 rendering a determination upon a consolidated petition.

2293 (f) Any carrier that engages in a pattern or practice of
2294 arbitrarily or unreasonably disallowing or reducing payments to
2295 health care providers may be subject to one or more of the
2296 following penalties imposed by the agency:

2297 1. Repayment of the appropriate amount to the health care
2298 provider.

2299 2. An administrative fine assessed by the agency in an
2300 amount not to exceed \$5,000 per instance of improperly
2301 disallowing or reducing payments.

2302 3. Award of the health care provider's costs, including a
2303 reasonable attorney's fee, for prosecuting the petition.



2304 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2305 (a) Carriers must report to the agency all instances of

2306 overutilization including, but not limited to, all instances in

2307 which the carrier disallows or adjusts payment or a

2308 determination has been made that the provided or recommended

2309 treatment is in excess of the practice parameters and protocols

2310 of treatment established in this chapter. The agency shall

2311 determine whether a pattern or practice of overutilization

2312 exists.

2313 (b) If the agency determines that a health care provider

2314 has engaged in a pattern or practice of overutilization or a

2315 violation of this chapter or rules adopted by the agency,

2316 including a pattern or practice of providing treatment in excess

2317 of the practice parameters or protocols of treatment, it may

2318 impose one or more of the following penalties:

2319 1. An order of the agency barring the provider from

2320 payment under this chapter;

2321 2. Deauthorization of care under review;

2322 3. Denial of payment for care rendered in the future;

2323 4. Decertification of a health care provider certified as

2324 an expert medical advisor under subsection (9) or of a

2325 rehabilitation provider certified under s. 440.49;

2326 5. An administrative fine assessed by the agency in an

2327 amount not to exceed \$5,000 per instance of overutilization or

2328 violation; and

2329 6. Notification of and review by the appropriate licensing

2330 authority pursuant to s. 440.106(3).

2331 (9) EXPERT MEDICAL ADVISORS.--



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2332 (a) The agency shall certify expert medical advisors in
2333 each specialty to assist the agency and the judges of
2334 compensation claims within the advisor's area of expertise as
2335 provided in this section. The agency shall, in a manner
2336 prescribed by rule, in certifying, recertifying, or decertifying
2337 an expert medical advisor, consider the qualifications,
2338 training, impartiality, and commitment of the health care
2339 provider to the provision of quality medical care at a
2340 reasonable cost. As a prerequisite for certification or
2341 recertification, the agency shall require, at a minimum, that
2342 an expert medical advisor have specialized workers' compensation
2343 training or experience under the workers' compensation system of
2344 this state and board certification or board eligibility.

2345 (b) The agency shall contract with one or more entities
2346 that employ, contract with, or otherwise secure ~~or employ~~ expert
2347 medical advisors to provide peer review or expert medical
2348 consultation, opinions, and testimony to the agency or to a
2349 judge of compensation claims in connection with resolving
2350 disputes relating to reimbursement, differing opinions of health
2351 care providers, and health care and physician services rendered
2352 under this chapter, including utilization issues. The agency
2353 shall by rule establish the qualifications of expert medical
2354 advisors, including training and experience in the workers'
2355 compensation system in the state and the expert medical
2356 advisor's knowledge of and commitment to the standards of care,
2357 practice parameters, and protocols established pursuant to this
2358 chapter. Expert medical advisors contracting with the agency
2359 shall, as a term of such contract, agree to provide consultation



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2360 or services in accordance with the timetables set forth in this
2361 chapter and to abide by rules adopted by the agency, including,
2362 but not limited to, rules pertaining to procedures for review of
2363 the services rendered by health care providers and preparation
2364 of reports and testimony or recommendations for submission to
2365 the agency or the judge of compensation claims.

2366 (c) If there is disagreement in the opinions of the health
2367 care providers, if two health care providers disagree on medical
2368 evidence supporting the employee's complaints or the need for
2369 additional medical treatment, or if two health care providers
2370 disagree that the employee is able to return to work, the agency
2371 may, and the judge of compensation claims shall, upon his or her
2372 own motion or within 15 days after receipt of a written request
2373 by either the injured employee, the employer, or the carrier,
2374 order the injured employee to be evaluated by an expert medical
2375 advisor. The opinion of the expert medical advisor is presumed
2376 to be correct unless there is clear and convincing evidence to
2377 the contrary as determined by the judge of compensation claims.
2378 The expert medical advisor appointed to conduct the evaluation
2379 shall have free and complete access to the medical records of
2380 the employee. An employee who fails to report to and cooperate
2381 with such evaluation forfeits entitlement to compensation during
2382 the period of failure to report or cooperate.

2383 (d) The expert medical advisor must complete his or her
2384 evaluation and issue his or her report to the agency or to the
2385 judge of compensation claims within 15 ~~45~~ days after receipt of
2386 all medical records. The expert medical advisor must furnish a
2387 copy of the report to the carrier and to the employee.



2388 (e) An expert medical advisor is not liable under any
 2389 theory of recovery for evaluations performed under this section
 2390 without a showing of fraud or malice. The protections of s.
 2391 766.101 apply to any officer, employee, or agent of the agency
 2392 and to any officer, employee, or agent of any entity with which
 2393 the agency has contracted under this subsection.

2394 (f) If the agency or a judge of compensation claims orders
 2395 ~~determines that~~ the services of a certified expert medical
 2396 advisor ~~are required~~ to resolve a dispute under this section,
 2397 the party requesting such examination ~~carrier~~ must compensate
 2398 the advisor for his or her time in accordance with a schedule
 2399 adopted by the agency. If the employee prevails in a dispute as
 2400 determined in an order by a judge of compensation claims based
 2401 upon the expert medical advisor's findings, the employer or
 2402 carrier shall pay for the costs of such expert medical advisor.
 2403 If a judge of compensation claims, upon his or her motion, finds
 2404 that an expert medical advisor is needed to resolve the dispute,
 2405 the carrier must compensate the advisor for his or her time in
 2406 accordance with a schedule adopted by the agency. The agency may
 2407 assess a penalty not to exceed \$500 against any carrier that
 2408 fails to timely compensate an advisor in accordance with this
 2409 section.

2410 (10) WITNESS FEES.-- Any health care provider who gives a
 2411 deposition shall be allowed a witness fee. The amount charged by
 2412 the witness may not exceed \$200 per hour. An expert witness who
 2413 has never provided direct professional services to a party but
 2414 has merely reviewed medical records and provided an expert
 2415 opinion or has provided only direct professional services that



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2416 were unrelated to the workers' compensation case may not be
2417 allowed a witness fee in excess of \$200 per day.

2418 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
2419 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2420 (a) The Agency for Health Care Administration may
2421 investigate health care providers to determine whether providers
2422 are complying with this chapter and with rules adopted by the
2423 agency, whether the providers are engaging in overutilization,
2424 ~~and~~ whether providers are engaging in improper billing
2425 practices, and whether providers are adhering to practice
2426 parameters and protocols established in accordance with this
2427 chapter. If the agency finds that a health care provider has
2428 improperly billed, overutilized, or failed to comply with agency
2429 rules or the requirements of this chapter, including, but not
2430 limited to, practice parameters and protocols established in
2431 accordance with this chapter, it must notify the provider of its
2432 findings and may determine that the health care provider may not
2433 receive payment from the carrier or may impose penalties as set
2434 forth in subsection (8) or other sections of this chapter. If
2435 the health care provider has received payment from a carrier for
2436 services that were improperly billed, that constitute
2437 overutilization, or that were outside practice parameters or
2438 protocols established in accordance with this chapter ~~or for~~
2439 ~~overutilization~~, it must return those payments to the carrier.
2440 The agency may assess a penalty not to exceed \$500 for each
2441 overpayment that is not refunded within 30 days after
2442 notification of overpayment by the agency or carrier.



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2443 (b) The department shall fine or otherwise discipline an
2444 employer or carrier, pursuant to this chapter, the insurance
2445 code, or rules adopted by the department, for each late payment
2446 of compensation that is below the minimum 95-percent ~~90-percent~~
2447 performance standard. Any carrier that is found to be not in
2448 compliance in subsequent consecutive quarters must implement a
2449 medical-bill review program approved by the division, and the
2450 carrier is subject to disciplinary action by the Department of
2451 Insurance.

2452 (c) The agency has exclusive jurisdiction to decide any
2453 matters concerning reimbursement, to resolve any overutilization
2454 dispute under subsection (7), and to decide any question
2455 concerning overutilization under subsection (8), which question
2456 or dispute arises after January 1, 1994.

2457 (d) The following agency actions do not constitute agency
2458 action subject to review under ss. 120.569 and 120.57 and do not
2459 constitute actions subject to s. 120.56: referral by the entity
2460 responsible for utilization review; a decision by the agency to
2461 refer a matter to a peer review committee; establishment by a
2462 health care provider or entity of procedures by which a peer
2463 review committee reviews the rendering of health care services;
2464 and the review proceedings, report, and recommendation of the
2465 peer review committee.

2466 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2467 REIMBURSEMENT ALLOWANCES.--

2468 (a) A three-member panel is created, consisting of the
2469 Insurance Commissioner, or the Insurance Commissioner's
2470 designee, and two members to be appointed by the Governor,



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2471 subject to confirmation by the Senate, one member who, on
2472 account of present or previous vocation, employment, or
2473 affiliation, shall be classified as a representative of
2474 employers, the other member who, on account of previous
2475 vocation, employment, or affiliation, shall be classified as a
2476 representative of employees. The panel shall determine statewide
2477 schedules of maximum reimbursement allowances for medically
2478 necessary treatment, care, and attendance provided by
2479 physicians, hospitals, ambulatory surgical centers, work-
2480 hardening programs, pain programs, and durable medical
2481 equipment. The maximum reimbursement allowances for inpatient
2482 hospital care shall be based on a schedule of per diem rates, to
2483 be approved by the three-member panel, to be used in conjunction
2484 with a precertification manual as determined by the agency. All
2485 compensable charges for hospital outpatient care shall be
2486 reimbursed at 75 percent of usual and customary charges, except
2487 as otherwise provided by this subsection. ~~Until the three-member~~
2488 ~~panel approves a schedule of per diem rates for inpatient~~
2489 ~~hospital care and it becomes effective, all compensable charges~~
2490 ~~for hospital inpatient care must be reimbursed at 75 percent of~~
2491 ~~their usual and customary charges.~~ Annually, the three-member
2492 panel shall adopt schedules of maximum reimbursement allowances
2493 for physicians, hospital inpatient care, hospital outpatient
2494 care, ambulatory surgical centers, work-hardening programs, and
2495 pain programs. However, the maximum percentage of increase in
2496 the individual reimbursement allowance may not exceed the
2497 percentage of increase in the Consumer Price Index for the
2498 previous year. An individual physician, hospital, ambulatory



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2499 surgical center, pain program, or work-hardening program shall
2500 be reimbursed either ~~the usual and customary charge for~~
2501 ~~treatment, care, and attendance,~~ the agreed-upon contract price,
2502 or the maximum reimbursement allowance in the appropriate
2503 schedule, ~~whichever is less.~~

2504 (b) It is the intent of the Legislature to increase the
2505 schedule of maximum reimbursement allowances for selected
2506 physicians effective January 1, 2004, and to offset these
2507 increases through reductions in payments to hospitals. These
2508 payment revisions must not result in any increase in aggregate
2509 medical payments and must not cause an overall increase in costs
2510 to employers or insurers over the total cost of the fee-for-
2511 service schedule and the hospital per diem fee schedule in
2512 effect on January 1, 2003. Revisions developed pursuant to this
2513 subsection are limited to the following:

2514 1. Maximum reimbursement allowances for neurosurgeons,
2515 orthopedists, and primary care physicians treating injured
2516 workers shall be increased up to 125 percent of the Medicare
2517 allowable fee schedule or the current fee schedule, whichever is
2518 higher.

2519 2. Payments for outpatient physical, occupational, and
2520 speech therapy provided by hospitals shall be reduced to the
2521 schedule of maximum reimbursement allowances for these services
2522 which applies to nonhospital providers.

2523 3. Payments for scheduled outpatient nonemergency
2524 radiological and clinical laboratory services provided by
2525 hospitals, which are not provided in conjunction with a surgical
2526 procedure, shall be reduced to the schedule of maximum



2527 reimbursement allowances for these services which applies to
 2528 nonhospital providers.

2529 (c)(b) As to reimbursement for a prescription medication,
 2530 the reimbursement amount for a prescription shall be the average
 2531 wholesale price plus \$2 ~~times 1.2 plus \$4.18~~ for the dispensing
 2532 fee, except where the carrier has contracted for a lower amount.
 2533 Fees for pharmaceuticals and pharmaceutical services shall be
 2534 reimbursable at the applicable fee schedule amount. Where the
 2535 employer or carrier has contracted for such services and the
 2536 employee elects to obtain them through a provider not a party to
 2537 the contract, the carrier shall reimburse at the schedule,
 2538 negotiated, or contract price, whichever is lower. No such
 2539 contract shall rely on a provider that is not reasonably
 2540 accessible to the employer.

2541 (d)(e) Reimbursement for all fees and other charges for
 2542 such treatment, care, and attendance, including treatment, care,
 2543 and attendance provided by any hospital or other health care
 2544 provider, ambulatory surgical center, work-hardening program, or
 2545 pain program, must not exceed the amounts provided by the
 2546 uniform schedule of maximum reimbursement allowances as
 2547 determined by the panel or as otherwise provided in this
 2548 section. This subsection also applies to independent medical
 2549 examinations performed by health care providers under this
 2550 chapter. In determining the uniform schedule, the panel shall
 2551 first approve the data which it finds representative of
 2552 prevailing charges in the state for similar treatment, care, and
 2553 attendance of injured persons. Each health care provider, health
 2554 care facility, ambulatory surgical center, work-hardening



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2555 program, or pain program receiving workers' compensation
2556 payments shall maintain records verifying their usual charges.
2557 In establishing the uniform schedule of maximum reimbursement
2558 allowances, the panel must consider:

2559 1. The levels of reimbursement for similar treatment,
2560 care, and attendance made by other health care programs or
2561 third-party providers;

2562 2. The impact upon cost to employers for providing a level
2563 of reimbursement for treatment, care, and attendance which will
2564 ensure the availability of treatment, care, and attendance
2565 required by injured workers;

2566 3. The financial impact of the reimbursement allowances
2567 upon health care providers and health care facilities, including
2568 trauma centers as defined in s. 395.4001, and its effect upon
2569 their ability to make available to injured workers such
2570 medically necessary remedial treatment, care, and attendance.
2571 The uniform schedule of maximum reimbursement allowances must be
2572 reasonable, must promote health care cost containment and
2573 efficiency with respect to the workers' compensation health care
2574 delivery system, and must be sufficient to ensure availability
2575 of such medically necessary remedial treatment, care, and
2576 attendance to injured workers; and

2577 4. The most recent average maximum allowable rate of
2578 increase for hospitals determined by the Health Care Board under
2579 chapter 408.

2580 (e)~~(d)~~ In addition to establishing the uniform schedule of
2581 maximum reimbursement allowances, the panel shall:



2582 1. Take testimony, receive records, and collect data to
 2583 evaluate the adequacy of the workers' compensation fee schedule,
 2584 nationally recognized fee schedules and alternative methods of
 2585 reimbursement to certified health care providers and health care
 2586 facilities for inpatient and outpatient treatment and care.

2587 2. Survey certified health care providers and health care
 2588 facilities to determine the availability and accessibility of
 2589 workers' compensation health care delivery systems for injured
 2590 workers.

2591 3. Survey carriers to determine the estimated impact on
 2592 carrier costs and workers' compensation premium rates by
 2593 implementing changes to the carrier reimbursement schedule or
 2594 implementing alternative reimbursement methods.

2595 4. Submit recommendations on or before January 1, 2003,
 2596 and biennially thereafter, to the President of the Senate and
 2597 the Speaker of the House of Representatives on methods to
 2598 improve the workers' compensation health care delivery system.

2599
 2600 The division shall provide data to the panel, including but not
 2601 limited to, utilization trends in the workers' compensation
 2602 health care delivery system. The division shall provide the
 2603 panel with an annual report regarding the resolution of medical
 2604 reimbursement disputes and any actions pursuant to s. 440.13(8).
 2605 The division shall provide administrative support and service to
 2606 the panel to the extent requested by the panel.

2607 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
 2608 TO RENDER MEDICAL CARE.-- The agency shall remove from the list
 2609 of physicians or facilities authorized to provide remedial



2610 treatment, care, and attendance under this chapter the name of
 2611 any physician or facility found after reasonable investigation
 2612 to have:

2613 (a) Engaged in professional or other misconduct or
 2614 incompetency in connection with medical services rendered under
 2615 this chapter;

2616 (b) Exceeded the limits of his or her or its professional
 2617 competence in rendering medical care under this chapter, or to
 2618 have made materially false statements regarding his or her or
 2619 its qualifications in his or her application;

2620 (c) Failed to transmit copies of medical reports to the
 2621 employer or carrier, or failed to submit full and truthful
 2622 medical reports of all his or her or its findings to the
 2623 employer or carrier as required under this chapter;

2624 (d) Solicited, or employed another to solicit for himself
 2625 or herself or itself or for another, professional treatment,
 2626 examination, or care of an injured employee in connection with
 2627 any claim under this chapter;

2628 (e) Refused to appear before, or to answer upon request
 2629 of, the agency or any duly authorized officer of the state, any
 2630 legal question, or to produce any relevant book or paper
 2631 concerning his or her conduct under any authorization granted to
 2632 him or her under this chapter;

2633 (f) Self-referred in violation of this chapter or other
 2634 laws of this state; or

2635 (g) Engaged in a pattern of practice of overutilization or
 2636 a violation of this chapter or rules adopted by the agency,



2637 including failure to adhere to practice parameters and protocols
 2638 established in accordance with this chapter.

2639 (14) PAYMENT OF MEDICAL FEES.--

2640 (a) Except for emergency care treatment, fees for medical
 2641 services are payable only to a health care provider certified
 2642 and authorized to render remedial treatment, care, or attendance
 2643 under this chapter. Carriers shall pay, disallow, or deny
 2644 payment to health care providers in the manner and at times set
 2645 forth in this chapter. A health care provider may not collect or
 2646 receive a fee from an injured employee within this state, except
 2647 as otherwise provided by this chapter. Such providers have
 2648 recourse against the employer or carrier for payment for
 2649 services rendered in accordance with this chapter. Payment to
 2650 health care providers or physicians shall be subject to the
 2651 medical fee schedule and applicable practice parameters and
 2652 protocols, regardless of whether the health care provider or
 2653 claimant is asserting that the payment should be made.

2654 (b) Fees charged for remedial treatment, care, and
 2655 attendance, except for independent medical examinations and
 2656 consensus independent medical examinations, may not exceed the
 2657 applicable fee schedules adopted under this chapter and
 2658 department rule. Notwithstanding any other provision in this
 2659 chapter, if a physician or health care provider specifically
 2660 agrees in writing to follow identified procedures aimed at
 2661 providing quality medical care to injured workers at reasonable
 2662 costs, deviations from established fee schedules shall be
 2663 permitted. Written agreements warranting deviations may include,
 2664 but are not limited to, the timely scheduling of appointments



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2665 for injured workers, participating in return-to-work programs
2666 with injured workers' employers, expediting the reporting of
2667 treatments provided to injured workers, and agreeing to
2668 continuing education, utilization review, quality assurance,
2669 precertification, and case management systems that are designed
2670 to provide needed treatment for injured workers.

2671 (c) Notwithstanding any other provision of this chapter,
2672 following overall maximum medical improvement from an injury
2673 compensable under this chapter, the employee is obligated to pay
2674 a copayment of \$10 per visit for medical services. The copayment
2675 shall not apply to emergency care provided to the employee.

2676 (15) PRACTICE PARAMETERS.—The practice parameters and
2677 protocols mandated under this chapter shall be the Workers'
2678 Compensation Utilization Management Standards adopted by the
2679 American Accreditation Health Care Commission in effect on
2680 January 1, 2003.

2681 ~~(a) The Agency for Health Care Administration, in~~
2682 ~~conjunction with the department and appropriate health~~
2683 ~~professional associations and health-related organizations shall~~
2684 ~~develop and may adopt by rule scientifically sound practice~~
2685 ~~parameters for medical procedures relevant to workers'~~
2686 ~~compensation claimants. Practice parameters developed under this~~
2687 ~~section must focus on identifying effective remedial treatments~~
2688 ~~and promoting the appropriate utilization of health care~~
2689 ~~resources. Priority must be given to those procedures that~~
2690 ~~involve the greatest utilization of resources either because~~
2691 ~~they are the most costly or because they are the most frequently~~
2692 ~~performed. Practice parameters for treatment of the 10 top~~



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2693 ~~procedures associated with workers' compensation injuries~~
2694 ~~including the remedial treatment of lower back injuries must be~~
2695 ~~developed by December 31, 1994.~~

2696 ~~(b) The guidelines may be initially based on guidelines~~
2697 ~~prepared by nationally recognized health care institutions and~~
2698 ~~professional organizations but should be tailored to meet the~~
2699 ~~workers' compensation goal of returning employees to full~~
2700 ~~employment as quickly as medically possible, taking into~~
2701 ~~consideration outcomes data collected from managed care~~
2702 ~~providers and any other inpatient and outpatient facilities~~
2703 ~~serving workers' compensation claimants.~~

2704 ~~(c) Procedures must be instituted which provide for the~~
2705 ~~periodic review and revision of practice parameters based on the~~
2706 ~~latest outcomes data, research findings, technological~~
2707 ~~advancements, and clinical experiences, at least once every 3~~
2708 ~~years.~~

2709 ~~(d) Practice parameters developed under this section must~~
2710 ~~be used by carriers and the agency in evaluating the~~
2711 ~~appropriateness and overutilization of medical services provided~~
2712 ~~to injured employees.~~

2713 (16) STANDARDS OF CARE.--The following standards of care
2714 shall be followed in providing medical care under this chapter:

2715 (a) Abnormal anatomical findings alone, in the absence of
2716 objective relevant medical findings, shall not be an indicator
2717 of injury or illness, a justification for the provision of
2718 remedial medical care or the assignment of restrictions, or a
2719 foundation for limitations.



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2720 (b) At all times during evaluation and treatment, the
2721 provider shall act on the premise that returning to work is an
2722 integral part of the treatment plan. The goal of removing all
2723 restrictions and limitations as early as appropriate shall be
2724 part of the treatment plan on a continuous basis. The assignment
2725 of restrictions and limitations shall be reviewed with each
2726 patient exam and upon receipt of new information, such as
2727 progress reports from physical therapists and other providers.
2728 Consideration shall be given to upgrading or removing the
2729 restrictions and limitations with each patient exam, based upon
2730 the presence or absence of objective relevant medical findings.

2731 (c) Reasonable necessary medical care of injured employees
2732 shall in all situations:

2733 1. Utilize a high intensity, short duration treatment
2734 approach that focuses on early activation and restoration of
2735 function whenever possible.

2736 2. Include reassessment of the treatment plans, regimes,
2737 therapies, prescriptions, and functional limitations or
2738 restrictions prescribed by the provider every 30 days.

2739 3. Be focused on treatment of the individual employee's
2740 specific clinical dysfunction or status and shall not be based
2741 upon nondescript diagnostic labels.

2742
2743 All treatment shall be inherently scientifically logical and the
2744 evaluation or treatment procedure must match the documented
2745 physiologic and clinical problem. Treatment shall match the
2746 type, intensity, and duration of service required by the problem
2747 identified.



2748 (17) Failure to comply with this section shall be
 2749 considered a violation of this chapter and is subject to
 2750 penalties as provided for in s. 440.525.

2751 Section 16. Paragraphs (d) and (i) of subsection (1) and
 2752 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
 2753 of section 440.134, Florida Statutes, are amended to read:

2754 440.134 Workers' compensation managed care arrangement.--

2755 (1) As used in this section, the term:

2756 (d) "Grievance" means a written complaint, other than a
 2757 petition for benefits, filed by the injured worker pursuant to
 2758 the requirements of the managed care arrangement, expressing
 2759 ~~dissatisfaction with the medical care provided by an insurer's~~
 2760 ~~workers' compensation managed care arrangement's refusal to~~
 2761 provide medical care or the medical care provided arrangement
 2762 ~~health care providers, expressed in writing by an injured~~
 2763 ~~worker.~~

2764 (i) "Medical care coordinator" means a primary care
 2765 provider within a provider network who is responsible for
 2766 managing the medical care of an injured worker including
 2767 determining other health care providers and health care
 2768 facilities to which the injured employee will be referred for
 2769 evaluation or treatment. A medical care coordinator shall be a
 2770 physician licensed under chapter 458, ~~or~~ an osteopathic
 2771 physician licensed under chapter 459, a chiropractic physician
 2772 licensed under chapter 460, or a podiatric physician licensed
 2773 under chapter 461.

2774 (2)(a) The self-insured employer or carrier may, subject
 2775 to the terms and limitations specified elsewhere in this section



2776 and chapter, furnish to the employee solely through managed care
 2777 arrangements such medically necessary remedial treatment, care,
 2778 and attendance for such period as the nature of the injury or
 2779 the process of recovery requires and which shall be in
 2780 accordance with practice parameters and protocols established
 2781 pursuant to this chapter. For any self-insured employer or
 2782 carrier who elects to deliver the medical benefits required by
 2783 this chapter through a method other than a workers' compensation
 2784 managed care arrangement, the discontinuance of the use of the
 2785 workers' compensation managed care arrangement shall be without
 2786 regard to the date of the accident, notwithstanding any other
 2787 provision of law or rule.

2788 (b) The agency shall authorize an insurer to offer or
 2789 utilize a workers' compensation managed care arrangement after
 2790 the insurer files a completed application along with the payment
 2791 of a \$1,000 application fee, and upon the agency's being
 2792 satisfied that the applicant has the ability to provide quality
 2793 of care consistent with the prevailing professional standards of
 2794 care and the insurer and its workers' compensation managed care
 2795 arrangement otherwise meets the requirements of this section. No
 2796 insurer may offer or utilize a managed care arrangement without
 2797 such authorization. The authorization, unless sooner suspended
 2798 or revoked, shall automatically expire 2 years after the date of
 2799 issuance unless renewed by the insurer. The authorization shall
 2800 be renewed upon application for renewal and payment of a renewal
 2801 fee of \$1,000, provided that the insurer is in compliance with
 2802 the requirements of this section and any rules adopted
 2803 hereunder. An application for renewal of the authorization shall



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2804 be made 90 days prior to expiration of the authorization, on
2805 forms provided by the agency. Renewal application shall not
2806 require the resubmission of any documents previously filed with
2807 the agency if such documents have remained valid and unchanged
2808 since their original filing.

2809 (6) The proposed managed care plan of operation must
2810 include:

2811 (a) A statement or map providing a clear description of
2812 the service area.

2813 (b) A description of the grievance procedure to be used.

2814 (c) A description of the quality assurance program which
2815 assures that the health care services provided to workers shall
2816 be rendered under reasonable standards of quality of care
2817 consistent with the prevailing standards of medical practice in
2818 the medical community. The program shall include, but not be
2819 limited to:

2820 1. A written statement of goals and objectives that
2821 stresses health and return-to-work outcomes as the principal
2822 criteria for the evaluation of the quality of care rendered to
2823 injured workers.

2824 2. A written statement describing how methodology has been
2825 incorporated into an ongoing system for monitoring of care that
2826 is individual case oriented and, when implemented, can provide
2827 interpretation and analysis of patterns of care rendered to
2828 individual patients by individual providers.

2829 3. Written procedures for taking appropriate remedial
2830 action whenever, as determined under the quality assurance
2831 program, inappropriate or substandard services have been



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2832 provided or services that should have been furnished have not
2833 been provided.

2834 4. A written plan, which includes ongoing review, for
2835 providing review of physicians and other licensed medical
2836 providers.

2837 5. Appropriate financial incentives to reduce service
2838 costs and utilization without sacrificing the quality of
2839 service.

2840 6. Adequate methods of peer review and utilization review.
2841 The utilization review process shall include a health care
2842 facility's ~~facilities~~ precertification mechanism, including, but
2843 not limited to, all elective admissions and nonemergency
2844 surgeries and adherence to practice parameters and protocols
2845 established in accordance with this chapter.

2846 7. Provisions for resolution of disputes arising between a
2847 health care provider and an insurer regarding reimbursements and
2848 utilization review.

2849 8. Availability of a process for aggressive medical care
2850 coordination, as well as a program involving cooperative efforts
2851 by the workers, the employer, and the workers' compensation
2852 managed care arrangement to promote early return to work for
2853 injured workers.

2854 9. A written plan allowing for the independent medical
2855 examination provided for in s. 440.13(5). Notwithstanding any
2856 provision to the contrary, the costs for the independent medical
2857 examination shall be paid by the carrier if such examination is
2858 performed by a physician in the provider network. Otherwise,
2859 such costs shall be paid in accordance with s. 440.13(5). An



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2860 independent medical examination requested by a claimant and paid
2861 for by the carrier shall constitute the claimant's one
2862 independent medical examination per accident under s. 440.13(5).

2863 ~~A process allowing employees to obtain one second medical~~
2864 ~~opinion in the same specialty and within the provider network~~
2865 ~~during the course of treatment for a work-related injury.~~

2866 10. A provision for the selection of a primary care
2867 provider by the employee from among primary providers in the
2868 provider network.

2869 11. The written information proposed to be used by the
2870 insurer to comply with subparagraph 8.

2871 (7) Written procedures to provide the insurer with timely
2872 medical records and information including, but not limited to,
2873 work status, work restrictions, date of maximum medical
2874 improvement, permanent impairment ratings, and other information
2875 as required, including information demonstrating compliance with
2876 the practice parameters and protocols of treatment established
2877 pursuant to this chapter.

2878 (8) Evidence that appropriate health care providers and
2879 administrative staff of the insurer's workers' compensation
2880 managed care arrangement have received training and education on
2881 the provisions of this chapter; ~~and~~ the administrative rules
2882 that govern the provision of remedial treatment, care, and
2883 attendance of injured workers; and the practice parameters and
2884 protocols of treatment established pursuant to this chapter.

2885 (9) Written procedures and methods to prevent
2886 inappropriate or excessive treatment that are in accordance with



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2887 the practice parameters and protocols of treatment established
2888 pursuant to this chapter.

2889 (10) Written procedures and methods for the management of
2890 an injured worker's medical care by a medical care coordinator
2891 including:

2892 (a) The mechanism for assuring that covered employees
2893 receive all initial covered services from a primary care
2894 provider participating in the provider network, except for
2895 emergency care.

2896 (b) The mechanism for assuring that all continuing covered
2897 services be received from the same primary care provider
2898 participating in the provider network that provided the initial
2899 covered services, except when services from another provider are
2900 authorized by the medical care coordinator pursuant to paragraph
2901 (d).

2902 (c) The policies and procedures for allowing an employee
2903 one change to another provider within the ~~same specialty and~~
2904 provider network as the authorized treating physician during the
2905 course of treatment for a work-related injury, in accordance
2906 with the procedures provided in s. 440.13(2)(f), ~~if a request is~~
2907 ~~made to the medical care coordinator by the employee; and~~
2908 ~~requiring that special provision be made for more than one such~~
2909 ~~referral through the arrangement's grievance procedures.~~

2910 (d) The process for assuring that all referrals authorized
2911 by a medical care coordinator, in accordance with the practice
2912 parameters and protocols of treatment established pursuant to
2913 this chapter, are made to the participating network providers,
2914 unless medically necessary treatment, care, and attendance are



2915 | not available and accessible to the injured worker in the
 2916 | provider network.

2917 | (e) Assignment of a medical care coordinator licensed
 2918 | under chapter 458 or chapter 459 to manage care by physicians
 2919 | licensed under chapter 458 or chapter 459, a medical care
 2920 | coordinator licensed under chapter 460 to manage care by
 2921 | physicians licensed under chapter 460, and a medical care
 2922 | coordinator licensed under chapter 461 to manage care by
 2923 | physicians licensed under chapter 461 upon request by an injured
 2924 | employee for care by a physician licensed under chapter 458,
 2925 | chapter 459, chapter 460, or chapter 461.

2926 | (11) A description of the use of workers' compensation
 2927 | practice parameters and protocols of treatment for health care
 2928 | services ~~when adopted by the agency.~~

2929 | (17) Notwithstanding any other provisions of this chapter,
 2930 | when a carrier provides medical care through a workers'
 2931 | compensation managed care arrangement, pursuant to this section,
 2932 | those workers who are subject to the arrangement must receive
 2933 | medical services for work-related injuries and diseases as
 2934 | prescribed in the contract, provided the employer and carrier
 2935 | have provided notice to the employees of the arrangement in a
 2936 | manner approved by the agency and the medical services are in
 2937 | accordance with the practice parameters and protocols
 2938 | established pursuant to this chapter. Treatment received outside
 2939 | the workers' compensation managed care arrangement is not
 2940 | compensable, regardless of the purpose of the treatment,
 2941 | including, but not limited to, evaluations, examinations, or
 2942 | diagnostic studies to determine causation between medical



2943 findings and a compensable accident, the existence or extent of
 2944 impairments or disabilities, and whether the injured employee
 2945 has reached maximum medical improvement, unless authorized by
 2946 the carrier prior to the treatment date.

2947 (25) The agency shall adopt rules that specify:

2948 (a) Procedures for authorization and examination of
 2949 workers' compensation managed care arrangements by the agency.

2950 (b) Requirements and procedures for authorization of
 2951 workers' compensation arrangement provider networks and
 2952 procedures for the agency to grant exceptions from accessibility
 2953 of services.

2954 (c) Requirements and procedures for case management,
 2955 utilization management, and peer review.

2956 (d) Requirements and procedures for quality assurance and
 2957 medical records.

2958 (e) Requirements and procedures for dispute resolution in
 2959 conformance with this chapter.

2960 (f) Requirements and procedures for employee and provider
 2961 education.

2962 (g) Requirements and procedures for reporting data
 2963 regarding grievances, return-to-work outcomes, and provider
 2964 networks.

2965 Section 17. Subsections (1) and (4)and paragraph (b) of
 2966 subsection (5) of section 440.14, Florida Statutes, are amended
 2967 to read:

2968 440.14 Determination of pay.--

2969 (1) Except as otherwise provided in this chapter, the
 2970 average weekly wages of the injured employee on the date of the



2971 | ~~accident at the time of the injury~~ shall be taken as the basis
 2972 | upon which to compute compensation and shall be determined,
 2973 | subject to the limitations of s. 440.12(2), as follows:

2974 | (a) If the injured employee has worked in the employment
 2975 | in which she or he was working on the date of the accident ~~at~~
 2976 | ~~the time of the injury~~, whether for the same or another
 2977 | employer, during substantially the whole of 13 weeks immediately
 2978 | preceding the accident injury, her or his average weekly wage
 2979 | shall be one-thirteenth of the total amount of wages earned in
 2980 | such employment during the 13 weeks. As used in this paragraph,
 2981 | the term "substantially the whole of 13 weeks" means the
 2982 | calendar ~~shall be deemed to mean and refer to a constructive~~
 2983 | period of 13 weeks as a whole, which shall be defined as the 13
 2984 | calendar weeks before the date of the accident, excluding the
 2985 | week during which the accident occurred. ~~a consecutive period of~~
 2986 | ~~91 days, and~~ The term "during substantially the whole of 13
 2987 | weeks" shall be deemed to mean during not less than 75 ~~90~~
 2988 | percent of the total customary ~~full-time~~ hours of employment
 2989 | within such period considered as a whole.

2990 | (b) If the injured employee has not worked in such
 2991 | employment during substantially the whole of 13 weeks
 2992 | immediately preceding the accident injury, the wages of a
 2993 | similar employee in the same employment who has worked
 2994 | substantially the whole of such 13 weeks shall be used in making
 2995 | the determination under the preceding paragraph.

2996 | (c) If an employee is a seasonal worker and the foregoing
 2997 | method cannot be fairly applied in determining the average
 2998 | weekly wage, then the employee may use, instead of the 13 weeks



2999 immediately preceding the accident ~~injury~~, the calendar year or
 3000 the 52 weeks immediately preceding the accident ~~injury~~. The
 3001 employee will have the burden of proving that this method will
 3002 be more reasonable and fairer than the method set forth in
 3003 paragraphs (a) and (b) and, further, must document prior
 3004 earnings with W-2 forms, written wage statements, or income tax
 3005 returns. The employer shall have 30 days following the receipt
 3006 of this written proof to adjust the compensation rate, including
 3007 the making of any additional payment due for prior weekly
 3008 payments, based on the lower rate compensation.

3009 (d) If any of the foregoing methods cannot reasonably and
 3010 fairly be applied, the full-time weekly wages of the injured
 3011 employee shall be used, except as otherwise provided in
 3012 paragraph (e) or paragraph (f).

3013 (e) If it is established that the injured employee was
 3014 under 22 years of age when the accident occurred ~~injured~~ and
 3015 that under normal conditions her or his wages should be expected
 3016 to increase during the period of disability, the fact may be
 3017 considered in arriving at her or his average weekly wages.

3018 (f) If it is established that the injured employee was a
 3019 part-time worker on the date of the accident ~~at the time of the~~
 3020 ~~injury~~, that she or he had adopted part-time employment as a
 3021 customary practice, and that under normal working conditions she
 3022 or he probably would have remained a part-time worker during the
 3023 period of disability, these factors shall be considered in
 3024 arriving at her or his average weekly wages. For the purpose of
 3025 this paragraph, the term "part-time worker" means an individual



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3026 | who customarily works less than the full-time hours or full-time
3027 | workweek of a similar employee in the same employment.

3028 | (g) If compensation is due for a fractional part of the
3029 | week, the compensation for such fractional part shall be
3030 | determined by dividing the weekly compensation rate by the
3031 | number of days employed per week to compute the amount due for
3032 | each day.

3033 | (4) Upon termination of the employee or upon termination
3034 | of the payment of fringe benefits of any employee who is
3035 | collecting indemnity benefits pursuant to s. 440.15(2) or
3036 | (3)~~(b)~~, the employer shall within 7 days of such termination
3037 | file a corrected 13-week wage statement reflecting the wages
3038 | paid and the fringe benefits that had been paid to the injured
3039 | employee, as provided in s. 440.02(27).

3040 | (5)

3041 | (b) The employee waives any entitlement to interest,
3042 | penalties, and attorney's fees during the period in which the
3043 | employee has not provided information concerning the loss of
3044 | earnings from concurrent employment. Carriers are not subject to
3045 | penalties by the division under s. 440.20(8)(b) ~~and (e)~~ for
3046 | unpaid compensation related to concurrent employment during the
3047 | period in which the employee has not provided information
3048 | concerning the loss of earnings from concurrent employment.

3049 | Section 18. Section 440.15, Florida Statutes, is amended
3050 | to read:

3051 | 440.15 Compensation for disability.-- Compensation for
3052 | disability shall be paid to the employee, subject to the limits
3053 | provided in s. 440.12(2), as follows:



3054 (1) PERMANENT TOTAL DISABILITY.--

3055 (a) In case of total disability adjudged to be permanent,

3056 66²/₃ percent of the average weekly wages shall be paid to the

3057 employee during the continuance of such total disability.

3058 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02(38)

3059 shall, in the absence of conclusive proof of a substantial

3060 earning capacity, constitute permanent total disability. In all

3061 other cases, no compensation shall be payable under paragraph

3062 (a) if the employee is engaged in, or is physically capable of

3063 engaging in, employment, including sheltered employment. In

3064 order to obtain permanent total disability benefits, the

3065 employee must establish that he or she is not able

3066 uninterruptedly to engage in any employment, including part-time

3067 sedentary employment or available sheltered employment within a

3068 50-mile radius of the employee's residence, due to his or her

3069 physical limitation. "Sheltered employment" means work

3070 unavailable in the open labor market that is offered to the

3071 employee or that is actually performed by the employee as

3072 offered by the employer in whose employment the injured worker

3073 was engaged at the time of the accident. Such benefits shall be

3074 payable until the employee reaches age 70, notwithstanding any

3075 age limits. If the accident occurred on or after the employee

3076 reaches age 65, benefits shall be payable during the continuance

3077 of permanent total disability, not to exceed 5 years following

3078 the determination of permanent total disability. Only claimants

3079 with catastrophic injuries or claimants who are incapable of

3080 engaging in employment, including sheltered employment as

3081 described in this paragraph, are eligible for permanent total



3082 | benefits. In no other case may permanent total disability be
3083 | awarded.

3084 | (c) In cases of permanent total disability resulting from
3085 | injuries that occurred prior to July 1, 1955, such payments
3086 | shall not be made in excess of 700 weeks.

3087 | (d) If an employee who is being paid compensation for
3088 | permanent total disability becomes rehabilitated to the extent
3089 | that she or he establishes an earning capacity, the employee
3090 | shall be paid, instead of the compensation provided in paragraph
3091 | (a), benefits pursuant to subsection (3). The department shall
3092 | adopt rules to enable a permanently and totally disabled
3093 | employee who may have reestablished an earning capacity to
3094 | undertake a trial period of reemployment without prejudicing her
3095 | or his return to permanent total status in the case that such
3096 | employee is unable to sustain an earning capacity.

3097 | (e)1. The employer's or carrier's right to conduct
3098 | vocational evaluations or testing by the employer's or carrier's
3099 | chosen rehabilitation advisor or provider pursuant to s. 440.491
3100 | continues even after the employee has been accepted or
3101 | adjudicated as entitled to compensation under this chapter and
3102 | costs for such evaluations and testing shall be borne by the
3103 | employer or carrier, respectively. This right includes, but is
3104 | not limited to, instances in which such evaluations or tests are
3105 | recommended by a treating physician or independent medical-
3106 | examination physician, instances warranted by a change in the
3107 | employee's medical condition, or instances in which the employee
3108 | appears to be making appropriate progress in recuperation. This
3109 | right may not be exercised more than once every calendar year.



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3110 2. The carrier must confirm the scheduling of the
3111 vocational evaluation or testing in writing, and must notify the
3112 employee and the employee's counsel, if any, at least 7 days
3113 before the date on which vocational evaluation or testing is
3114 scheduled to occur.

3115 3. ~~Pursuant to an order of the judge of compensation~~
3116 ~~claims~~, The employer or carrier may withhold payment of benefits
3117 for permanent total disability or supplements for any period
3118 during which the employee willfully fails or refuses to appear
3119 without good cause for the scheduled vocational evaluation or
3120 testing.

3121 (f)1. If permanent total disability results from injuries
3122 that occurred subsequent to June 30, 1955, and for which the
3123 liability of the employer for compensation has not been
3124 discharged under s. 440.20(11), the injured employee shall
3125 receive additional weekly compensation benefits equal to 5
3126 percent of her or his weekly compensation rate, as established
3127 pursuant to the law in effect on the date of her or his injury,
3128 multiplied by the number of calendar years since the date of
3129 injury. The weekly compensation payable and the additional
3130 benefits payable under this paragraph, when combined, may not
3131 exceed the maximum weekly compensation rate in effect at the
3132 time of payment as determined pursuant to s. 440.12(2).

3133 ~~Entitlement to~~ These supplemental payments shall not be paid or
3134 payable after the employee attains ~~cease at~~ age 62, regardless
3135 of whether ~~if~~ the employee has applied for or is eligible to
3136 apply ~~is eligible~~ for social security benefits under 42 U.S.C.
3137 ss. 402 and 423, ~~whether or not the employee has applied for~~



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3138 ~~such benefits~~. These supplemental benefits shall be paid by the
3139 department out of the Workers' Compensation Administration Trust
3140 Fund when the injury occurred subsequent to June 30, 1955, and
3141 before July 1, 1984. These supplemental benefits shall be paid
3142 by the employer when the injury occurred on or after July 1,
3143 1984. Supplemental benefits are not payable for any period prior
3144 to October 1, 1974.

3145 2.a. The department shall provide by rule for the periodic
3146 reporting to the department of all earnings of any nature and
3147 social security income by the injured employee entitled to or
3148 claiming additional compensation under subparagraph 1. Neither
3149 the department nor the employer or carrier shall make any
3150 payment of those additional benefits provided by subparagraph 1.
3151 for any period during which the employee willfully fails or
3152 refuses to report upon request by the department in the manner
3153 prescribed by such rules.

3154 b. The department shall provide by rule for the periodic
3155 reporting to the employer or carrier of all earnings of any
3156 nature and social security income by the injured employee
3157 entitled to or claiming benefits for permanent total disability.
3158 The employer or carrier is not required to make any payment of
3159 benefits for permanent total disability for any period during
3160 which the employee willfully fails or refuses to report upon
3161 request by the employer or carrier in the manner prescribed by
3162 such rules or if any employee who is receiving permanent total
3163 disability benefits refuses to apply for or cooperate with the
3164 employer or carrier in applying for social security benefits.



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3165 3. When an injured employee receives a full or partial
3166 lump-sum advance of the employee's permanent total disability
3167 compensation benefits, the employee's benefits under this
3168 paragraph shall be computed on the employee's weekly
3169 compensation rate as reduced by the lump-sum advance.

3170 (2) TEMPORARY TOTAL DISABILITY.--

3171 (a) Subject to subsection (7), in case of disability total
3172 in character but temporary in quality, 662/3 percent of the
3173 average weekly wages shall be paid to the employee during the
3174 continuance thereof, not to exceed 104 weeks except as provided
3175 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3176 employee reaches the maximum number of weeks allowed, or the
3177 employee reaches the date of maximum medical improvement,
3178 whichever occurs earlier, temporary disability benefits shall
3179 cease and the injured worker's permanent impairment shall be
3180 determined.

3181 (b) Notwithstanding the provisions of paragraph (a), an
3182 employee who has sustained the loss of an arm, leg, hand, or
3183 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3184 or quadriparetic, or has lost the sight of both eyes shall be
3185 paid temporary total disability of 80 percent of her or his
3186 average weekly wage. The increased temporary total disability
3187 compensation provided for in this paragraph must not extend
3188 beyond 6 months from the date of the accident; however, such
3189 benefits shall not be due or payable if the employee is eligible
3190 for, entitled to, or collecting permanent total disability
3191 benefits. The compensation provided by this paragraph is not
3192 subject to the limits provided in s. 440.12(2), but instead is



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3193 subject to a maximum weekly compensation rate of \$700. If, at
 3194 the conclusion of this period of increased temporary total
 3195 disability compensation, the employee is still temporarily
 3196 totally disabled, the employee shall continue to receive
 3197 temporary total disability compensation as set forth in
 3198 paragraphs (a) and (c). The period of time the employee has
 3199 received this increased compensation will be counted as part of,
 3200 and not in addition to, the maximum periods of time for which
 3201 the employee is entitled to compensation under paragraph (a) but
 3202 not paragraph (c).

3203 (c) Temporary total disability benefits paid pursuant to
 3204 this subsection shall include such period as may be reasonably
 3205 necessary for training in the use of artificial members and
 3206 appliances, and shall include such period as the employee may be
 3207 receiving training and education under a program pursuant to s.
 3208 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
 3209 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
 3210 ~~than the last day for which such temporary disability benefits~~
 3211 ~~are paid.~~

3212 (d) The department shall, by rule, provide for the
 3213 periodic reporting to the department, employer, or carrier of
 3214 all earned income, including income from social security, by the
 3215 injured employee who is entitled to or claiming benefits for
 3216 temporary total disability. The employer or carrier is not
 3217 required to make any payment of benefits for temporary total
 3218 disability for any period during which the employee willfully
 3219 fails or refuses to report upon request by the employer or
 3220 carrier in the manner prescribed by the rules. The rule must



3221 require the claimant to personally sign the claim form and
 3222 attest that she or he has reviewed, understands, and
 3223 acknowledges the foregoing.

3224 (3) PERMANENT IMPAIRMENT ~~AND WAGE LOSS~~ BENEFITS.--

3225 (a) ~~Impairment benefits.--~~

3226 ~~1.~~ Once the employee has reached the date of maximum
 3227 medical improvement, impairment benefits are due and payable
 3228 within 14 ~~20~~ days after the carrier has knowledge of the
 3229 impairment.

3230 (b)2. The three-member panel, in cooperation with the
 3231 department, shall establish and use a uniform permanent
 3232 impairment rating schedule. This schedule must be based on
 3233 medically or scientifically demonstrable findings as well as the
 3234 systems and criteria set forth in the American Medical
 3235 Association's Guides to the Evaluation of Permanent Impairment;
 3236 the Snellen Charts, published by American Medical Association
 3237 Committee for Eye Injuries; and the Minnesota Department of
 3238 Labor and Industry Disability Schedules. The schedule must
 3239 ~~should~~ be based upon objective findings. The schedule shall be
 3240 more comprehensive than the AMA Guides to the Evaluation of
 3241 Permanent Impairment and shall expand the areas already
 3242 addressed and address additional areas not currently contained
 3243 in the guides. On August 1, 1979, and pending the adoption, by
 3244 rule, of a permanent schedule, Guides to the Evaluation of
 3245 Permanent Impairment, copyright 1977, 1971, 1988, by the
 3246 American Medical Association, shall be the temporary schedule
 3247 and shall be used for the purposes hereof. For injuries after
 3248 July 1, 1990, pending the adoption by rule of a uniform



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3249 disability rating agency schedule, the Minnesota Department of
 3250 Labor and Industry Disability Schedule shall be used unless that
 3251 schedule does not address an injury. In such case, the Guides to
 3252 the Evaluation of Permanent Impairment by the American Medical
 3253 Association shall be used. Determination of permanent impairment
 3254 under this schedule must be made by a physician licensed under
 3255 chapter 458, a doctor of osteopathic medicine licensed under
 3256 chapters 458 and 459, a chiropractic physician licensed under
 3257 chapter 460, a podiatric physician licensed under chapter 461,
 3258 an optometrist licensed under chapter 463, or a dentist licensed
 3259 under chapter 466, as appropriate considering the nature of the
 3260 injury. No other persons are authorized to render opinions
 3261 regarding the existence of or the extent of permanent
 3262 impairment.

3263 (c)3- All impairment income benefits shall be based on an
 3264 impairment rating using the impairment schedule referred to in
 3265 paragraph (b) subparagraph 2. Impairment income benefits are
 3266 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
 3267 employee's average weekly temporary total disability benefit not
 3268 to exceed the maximum weekly benefit under s. 440.12; provided,
 3269 however, that such benefits shall be reduced by 50 percent for
 3270 each week in which the employee has earned income equal to or in
 3271 excess of the employee's average weekly wage. An employee's
 3272 entitlement to impairment income benefits begins the day after
 3273 the employee reaches maximum medical improvement or the
 3274 expiration of temporary benefits, whichever occurs earlier, and
 3275 continues until the earlier of:



3276 ~~1.a.~~ The expiration of a period computed at the rate of 3
3277 weeks for each percentage point of impairment; or
3278 ~~2.b.~~ The death of the employee.

3279
3280 Impairment income benefits as defined by this subsection are
3281 payable only for impairment ratings for physical impairments. If
3282 objective medical findings can substantiate a permanent
3283 psychiatric impairment resulting from the accident, permanent
3284 impairment benefits are limited for the permanent psychiatric
3285 impairment to 1-percent permanent impairment.

3286 ~~(d)4.~~ After the employee has been certified by a doctor as
3287 having reached maximum medical improvement or 6 weeks before the
3288 expiration of temporary benefits, whichever occurs earlier, the
3289 certifying doctor shall evaluate the condition of the employee
3290 and assign an impairment rating, using the impairment schedule
3291 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
3292 ~~payable for the mental, psychological, or emotional injury~~
3293 ~~arising out of depression from being out of work.~~ If the
3294 certification and evaluation are performed by a doctor other
3295 than the employee's treating doctor, the certification and
3296 evaluation must be submitted to the treating doctor, the
3297 employee, and the carrier within 10 days after the evaluation.
3298 ~~and~~ The treating doctor must indicate to the carrier agreement
3299 or disagreement with the other doctor's certification and
3300 evaluation.

3301 1. The certifying doctor shall issue a written report to
3302 the ~~department, the~~ employee, and the carrier certifying that
3303 maximum medical improvement has been reached, stating the



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3304 impairment rating to the body as a whole, and providing any
3305 other information required by the department by rule. The
3306 carrier shall establish an overall maximum medical improvement
3307 date and permanent impairment rating, based upon all such
3308 reports.

3309 2. Within 14 days after the carrier's knowledge of each
3310 maximum medical improvement date and impairment rating to the
3311 body as a whole upon which the carrier is paying benefits, the
3312 carrier shall report such maximum medical improvement date and,
3313 when determined, the overall maximum medical improvement date
3314 and associated impairment rating to the department in a format
3315 as set forth in department rule. If the employee has not been
3316 certified as having reached maximum medical improvement before
3317 the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~
3318 disability benefits begin to accrue, the carrier shall notify
3319 the treating doctor of the requirements of this section.

3320 (e)5. The carrier shall pay the employee impairment income
3321 benefits for a period based on the impairment rating.

3322 (f)6. The department may by rule specify forms and
3323 procedures governing the method of payment of ~~wage loss and~~
3324 ~~impairment benefits under this section for dates of accidents~~
3325 ~~before January 1, 1994, and for dates of accidents on or after~~
3326 ~~January 1, 1994.~~

3327 ~~(b) Supplemental benefits.--~~

3328 ~~1. All supplemental benefits must be paid in accordance~~
3329 ~~with this subsection. An employee is entitled to supplemental~~
3330 ~~benefits as provided in this paragraph as of the expiration of~~
3331 ~~the impairment period, if:~~



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3332 ~~a. The employee has an impairment rating from the~~
3333 ~~compensable injury of 20 percent or more as determined pursuant~~
3334 ~~to this chapter;~~

3335 ~~b. The employee has not returned to work or has returned~~
3336 ~~to work earning less than 80 percent of the employee's average~~
3337 ~~weekly wage as a direct result of the employee's impairment; and~~

3338 ~~e. The employee has in good faith attempted to obtain~~
3339 ~~employment commensurate with the employee's ability to work.~~

3340 ~~2. If an employee is not entitled to supplemental benefits~~
3341 ~~at the time of payment of the final weekly impairment income~~
3342 ~~benefit because the employee is earning at least 80 percent of~~
3343 ~~the employee's average weekly wage, the employee may become~~
3344 ~~entitled to supplemental benefits at any time within 1 year~~
3345 ~~after the impairment income benefit period ends if:~~

3346 ~~a. The employee earns wages that are less than 80 percent~~
3347 ~~of the employee's average weekly wage for a period of at least~~
3348 ~~90 days;~~

3349 ~~b. The employee meets the other requirements of~~
3350 ~~subparagraph 1.; and~~

3351 ~~e. The employee's decrease in earnings is a direct result~~
3352 ~~of the employee's impairment from the compensable injury.~~

3353 ~~3. If an employee earns wages that are at least 80 percent~~
3354 ~~of the employee's average weekly wage for a period of at least~~
3355 ~~90 days during which the employee is receiving supplemental~~
3356 ~~benefits, the employee ceases to be entitled to supplemental~~
3357 ~~benefits for the filing period. Supplemental benefits that have~~
3358 ~~been terminated shall be reinstated when the employee satisfies~~
3359 ~~the conditions enumerated in subparagraph 2. and files the~~



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3360 ~~statement required under subparagraph 4. Notwithstanding any~~
3361 ~~other provision, if an employee is not entitled to supplemental~~
3362 ~~benefits for 12 consecutive months, employee ceases to be~~
3363 ~~entitled to any additional income benefits for the compensable~~
3364 ~~injury. If the employee is discharged within 12 months after~~
3365 ~~losing entitlement under this subsection, benefits may be~~
3366 ~~reinstated if the employee was discharged at that time with the~~
3367 ~~intent to deprive the employee of supplemental benefits.~~

3368 ~~4. After the initial determination of supplemental~~
3369 ~~benefits, the employee must file a statement with the carrier~~
3370 ~~stating that the employee has earned less than 80 percent of the~~
3371 ~~employee's average weekly wage as a direct result of the~~
3372 ~~employee's impairment, stating the amount of wages the employee~~
3373 ~~earned in the filing period, and stating that the employee has~~
3374 ~~in good faith sought employment commensurate with the employee's~~
3375 ~~ability to work. The statement must be filed quarterly on a form~~
3376 ~~and in the manner prescribed by the department. The department~~
3377 ~~may modify the filing period as appropriate to an individual~~
3378 ~~case. Failure to file a statement relieves the carrier of~~
3379 ~~liability for supplemental benefits for the period during which~~
3380 ~~a statement is not filed.~~

3381 ~~5. The carrier shall begin payment of supplemental~~
3382 ~~benefits not later than the seventh day after the expiration~~
3383 ~~date of the impairment income benefit period and shall continue~~
3384 ~~to timely pay those benefits. The carrier may request a~~
3385 ~~mediation conference for the purpose of contesting the~~
3386 ~~employee's entitlement to or the amount of supplemental income~~
3387 ~~benefits.~~



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3388 ~~6. Supplemental benefits are calculated quarterly and paid~~
3389 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3390 ~~percent of the employee's average weekly wage and the average~~
3391 ~~wages the employee has earned per week are compared quarterly.~~
3392 ~~For purposes of this paragraph, if the employee is offered a~~
3393 ~~bona fide position of employment that the employee is capable of~~
3394 ~~performing, given the physical condition of the employee and the~~
3395 ~~geographic accessibility of the position, the employee's weekly~~
3396 ~~wages are considered equivalent to the weekly wages for the~~
3397 ~~position offered to the employee.~~

3398 ~~7. Supplemental benefits are payable at the rate of 80~~
3399 ~~percent of the difference between 80 percent of the employee's~~
3400 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3401 ~~weekly wages the employee has earned during the reporting~~
3402 ~~period, not to exceed the maximum weekly income benefit under s.~~
3403 ~~440.12.~~

3404 ~~8. The department may by rule define terms that are~~
3405 ~~necessary for the administration of this section and forms and~~
3406 ~~procedures governing the method of payment of supplemental~~
3407 ~~benefits for dates of accidents before January 1, 1994, and for~~
3408 ~~dates of accidents on or after January 1, 1994.~~

3409 ~~(c) Duration of temporary impairment and supplemental~~
3410 ~~income benefits.-- The employee's eligibility for temporary~~
3411 ~~benefits, impairment income benefits, and supplemental benefits~~
3412 ~~terminates on the expiration of 401 weeks after the date of~~
3413 ~~injury.~~

3414 (4) TEMPORARY PARTIAL DISABILITY.--



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3415 (a) Subject to subsection (7), in case of temporary
3416 partial disability, compensation shall be equal to 80 percent of
3417 the difference between 80 percent of the employee's average
3418 weekly wage and the salary, wages, and other remuneration the
3419 employee is able to earn post injury, as compared weekly;
3420 however, ~~the~~ weekly temporary partial disability benefits may
3421 not exceed an amount equal to 66 2/3 percent of the employee's
3422 average weekly wage at the time of accident injury. In order to
3423 simplify the comparison of the preinjury average weekly wage
3424 with the salary, wages, and other remuneration the employee is
3425 able to earn post injury, the department may by rule provide for
3426 payment of the initial installment of temporary partial
3427 disability benefits to be paid as a partial week so that payment
3428 for remaining weeks of temporary partial disability can the
3429 ~~modification of the weekly comparison so as to coincide as~~
3430 closely as possible with the post injury employer's work week
3431 ~~injured worker's pay periods.~~ The amount determined to be the
3432 salary, wages, and other remuneration the employee is able to
3433 earn shall in no case be less than the sum actually being earned
3434 by the employee, including earnings from sheltered employment.
3435 Benefits shall be payable under this subsection only if overall
3436 maximum medical improvement has not been reached and the medical
3437 conditions resulting from the accident create restrictions on
3438 the injured employee's ability to return to work.

3439 (b) Within 5 business days after the carrier's knowledge
3440 of the employee's release to restricted work, the carrier shall
3441 mail to the employee and employer an informational letter,
3442 adopted by department rule, explaining the employee's possible



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3443 eligibility and responsibilities for temporary partial
3444 disability benefits.

3445 (c) When an employee returns to work with the restrictions
3446 resulting from the accident and is earning wages less than 80
3447 percent of the preinjury average weekly wage, the first
3448 installment of temporary partial disability benefits is due 7
3449 days after the last date of the post injury employer's first
3450 biweekly work week. Thereafter, payment for temporary partial
3451 benefits shall be paid biweekly no later than the 7th day
3452 following the last day of each biweekly work week.

3453 (d) If the employee is unable to return to work with the
3454 restrictions resulting from the accident and is not earning
3455 wages, salary, or other remuneration, temporary partial
3456 disability benefits shall be paid no later than the last day of
3457 each biweekly period. The employee shall notify the carrier
3458 within 5 business days after returning to work. Failure to
3459 notify the carrier of the establishment of an earning capacity
3460 in the required time shall result in a suspension or nonpayment
3461 of temporary partial disability benefits until the proper
3462 notification is provided.

3463 (e)~~(b)~~ Such benefits shall be paid during the continuance
3464 of such disability, not to exceed a period of 104 weeks, as
3465 provided by this subsection and subsection (2). Once the injured
3466 employee reaches the maximum number of weeks, temporary
3467 disability benefits cease and the injured worker's permanent
3468 impairment must be determined. If the employee is terminated
3469 from post injury employment based on the employee's misconduct,
3470 temporary partial disability benefits are not payable as



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3471 provided for in this section. The department shall ~~may~~ by rule
 3472 specify forms and procedures governing the method and time for
 3473 ~~of~~ payment of temporary disability benefits for dates of
 3474 accidents before January 1, 1994, and for dates of accidents on
 3475 or after January 1, 1994.

3476 (5) SUBSEQUENT INJURY.--

3477 (a) The fact that an employee has suffered previous
 3478 disability, impairment, anomaly, or disease, or received
 3479 compensation therefor, shall not preclude her or him from
 3480 benefits, as specified in paragraph (b), for a subsequent
 3481 aggravation or acceleration of the preexisting condition or ~~not~~
 3482 preclude benefits for death resulting therefrom, except that no
 3483 benefits shall be payable if the employee, at the time of
 3484 entering into the employment of the employer by whom the
 3485 benefits would otherwise be payable, falsely represents herself
 3486 or himself in writing as not having previously been disabled or
 3487 compensated because of such previous disability, impairment,
 3488 anomaly, or disease and the employer detrimentally relies on the
 3489 misrepresentation. ~~Compensation for temporary disability,~~
 3490 ~~medical benefits, and wage-loss benefits shall not be subject to~~
 3491 ~~apportionment.~~

3492 (b) If a compensable injury, disability, or need for
 3493 medical care ~~permanent impairment~~, or any portion thereof, is a
 3494 result of aggravation or acceleration of a preexisting
 3495 condition, or is the result of merger with a preexisting
 3496 condition, only the disabilities and medical treatment
 3497 associated with such compensable injury shall be payable under
 3498 this chapter, excluding the degree of disability or medical



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3499 conditions existing at the time of the impairment rating or at
3500 the time of the accident, regardless of whether the preexisting
3501 condition was disabling at the time of the accident or at the
3502 time of the impairment rating and without considering whether
3503 the preexisting condition would be disabling without the
3504 compensable accident ~~impairment, an employee eligible to receive~~
3505 ~~impairment benefits under paragraph (3)(a) shall receive such~~
3506 ~~benefits for the total impairment found to result, excluding the~~
3507 ~~degree of impairment existing at the time of the subject~~
3508 ~~accident or injury or which would have existed by the time of~~
3509 ~~the impairment rating without the intervention of the~~
3510 ~~compensable accident or injury. The degree of permanent~~
3511 impairment or disability attributable to the accident or injury
3512 shall be compensated in accordance with this section,
3513 apportioning out the preexisting condition based on the
3514 anatomical impairment rating attributable to the preexisting
3515 condition. Medical benefits shall be paid apportioning out the
3516 percentage of the need for such care attributable to the
3517 preexisting condition ~~paragraph (3)(a).~~ As used in this
3518 paragraph, "merger" means the combining of a preexisting
3519 permanent impairment or disability with a subsequent compensable
3520 permanent impairment or disability which, when the effects of
3521 both are considered together, result in a permanent impairment
3522 or disability rating which is greater than the sum of the two
3523 permanent impairment or disability ratings when each impairment
3524 or disability is considered individually.

3525 ~~(6) OBLIGATION TO REHIRE. -- If the employer has not in~~
3526 ~~good faith made available to the employee, within a 100-mile~~



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3527 ~~radius of the employee's residence, work appropriate to the~~
3528 ~~employee's physical limitations within 30 days after the carrier~~
3529 ~~notifies the employer of maximum medical improvement and the~~
3530 ~~employee's physical limitations, the employer shall pay to the~~
3531 ~~department for deposit into the Workers' Compensation~~
3532 ~~Administration Trust Fund a fine of \$250 for every \$5,000 of the~~
3533 ~~employer's workers' compensation premium or payroll, not to~~
3534 ~~exceed \$2,000 per violation, as the department requires by rule.~~
3535 ~~The employer is not subject to this subsection if the employee~~
3536 ~~is receiving permanent total disability benefits or if the~~
3537 ~~employer has 50 or fewer employees.~~

3538 (6)~~(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3539 employee refuses employment suitable to the capacity thereof,
3540 offered to or procured therefor, such employee shall not be
3541 entitled to any compensation at any time during the continuance
3542 of such refusal unless at any time in the opinion of the judge
3543 of compensation claims such refusal is justifiable. Time periods
3544 for the payment of benefits in accordance with this section
3545 shall be counted in determining the limitation of benefits as
3546 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3547 (7)~~(8)~~ EMPLOYEE LEAVES EMPLOYMENT.-- If an injured
3548 employee, when receiving compensation for temporary partial
3549 disability, leaves the employment of the employer by whom she or
3550 he was employed at the time of the accident for which such
3551 compensation is being paid, the employee shall, upon securing
3552 employment elsewhere, give to such former employer an affidavit
3553 in writing containing the name of her or his new employer, the
3554 place of employment, and the amount of wages being received at



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3555 such new employment; and, until she or he gives such affidavit,
3556 the compensation for temporary partial disability will cease.
3557 The employer by whom such employee was employed at the time of
3558 the accident for which such compensation is being paid may also
3559 at any time demand of such employee an additional affidavit in
3560 writing containing the name of her or his employer, the place of
3561 her or his employment, and the amount of wages she or he is
3562 receiving; and if the employee, upon such demand, fails or
3563 refuses to make and furnish such affidavit, her or his right to
3564 compensation for temporary partial disability shall cease until
3565 such affidavit is made and furnished. If the employee leaves her
3566 or his employment while receiving temporary partial benefits
3567 without just cause as determined by the judge of compensation
3568 claims, temporary partial benefits shall be payable based on the
3569 deemed earnings of the employee as if she or he had remained
3570 employed.

3571 ~~(8)(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
3572 employee becomes an inmate of a public institution, then no
3573 compensation shall be payable unless she or he has dependent
3574 upon her or him for support a person or persons defined as
3575 dependents elsewhere in this chapter, whose dependency shall be
3576 determined as if the employee were deceased and to whom
3577 compensation would be paid in case of death; and such
3578 compensation as is due such employee shall be paid such
3579 dependents during the time she or he remains such inmate.

3580 ~~(9)(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3581 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--



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3582 (a) Weekly compensation benefits payable under this
3583 chapter for disability resulting from injuries to an employee
3584 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
3585 be reduced to an amount whereby the sum of such compensation
3586 benefits payable under this chapter and such total benefits
3587 otherwise payable for such period to the employee and her or his
3588 dependents, had such employee not been entitled to benefits
3589 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
3590 exceed 80 percent of the employee's average weekly wage.
3591 However, this provision shall not operate to reduce an injured
3592 worker's benefits under this chapter to a greater extent than
3593 such benefits would have otherwise been reduced under 42 U.S.C.
3594 s. 424(a). This reduction of compensation benefits is not
3595 applicable to any compensation benefits payable for any week
3596 subsequent to the week in which the injured worker reaches the
3597 age of 62 years.

3598 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3599 to provide for a reduction or increase of the percentage of
3600 average current earnings that the sum of compensation benefits
3601 payable under this chapter and the benefits payable under 42
3602 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
3603 benefits provided in this subsection shall be reduced or
3604 increased accordingly. The department may by rule specify forms
3605 and procedures governing the method for calculating and
3606 administering the offset of benefits payable under this chapter
3607 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3608 department shall have first priority in taking any available



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3609 social security offsets on dates of accidents occurring before
3610 July 1, 1984.

3611 (c) No disability compensation benefits payable for any
3612 week, including those benefits provided by paragraph (1)(f),
3613 shall be reduced pursuant to this subsection until the Social
3614 Security Administration determines the amount otherwise payable
3615 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3616 has begun receiving such social security benefit payments. The
3617 employee shall, upon demand by the department, the employer, or
3618 the carrier, authorize the Social Security Administration to
3619 release disability information relating to her or him and
3620 authorize the Division of Unemployment Compensation to release
3621 unemployment compensation information relating to her or him, in
3622 accordance with rules to be adopted by the department
3623 prescribing the procedure and manner for requesting the
3624 authorization and for compliance by the employee. Neither the
3625 department nor the employer or carrier shall make any payment of
3626 benefits for total disability or those additional benefits
3627 provided by paragraph (1)(f) for any period during which the
3628 employee willfully fails or refuses to authorize the release of
3629 information in the manner and within the time prescribed by such
3630 rules. The authority for release of disability information
3631 granted by an employee under this paragraph shall be effective
3632 for a period not to exceed 12 months, such authority to be
3633 renewable as the department may prescribe by rule.

3634 (d) If compensation benefits are reduced pursuant to this
3635 subsection, the minimum compensation provisions of s. 440.12(2)
3636 do not apply.



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3637 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3638 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3639 COMPENSATION.--

3640 (a) No compensation benefits shall be payable for
3641 temporary total disability or permanent total disability under
3642 this chapter for any week in which the injured employee has
3643 received, or is receiving, unemployment compensation benefits.

3644 (b) If an employee is entitled to temporary partial
3645 benefits pursuant to subsection (4) and unemployment
3646 compensation benefits, such unemployment compensation benefits
3647 shall be primary and the temporary partial benefits shall be
3648 supplemental only, the sum of the two benefits not to exceed the
3649 amount of temporary partial benefits which would otherwise be
3650 payable.

3651 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
3652 OFFICERS.--Any law enforcement officer as defined in s.
3653 943.10(1), (2), or (3) who, while acting within the course of
3654 employment as provided by s. 440.091, is maliciously or
3655 intentionally injured and who thereby sustains a job-connected
3656 disability compensable under this chapter shall be carried in
3657 full-pay status rather than being required to use sick, annual,
3658 or other leave. Full-pay status shall be granted only after
3659 submission to the employing agency's head of a medical report
3660 which gives a current diagnosis of the employee's recovery and
3661 ability to return to work. In no case shall the employee's
3662 salary and workers' compensation benefits exceed the amount of
3663 the employee's regular salary requirements.



3664 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as
 3665 an indemnity benefit under any classification or category of
 3666 benefit under this chapter to which she or he is not entitled,
 3667 the employee is liable to repay that sum to the employer or the
 3668 carrier or to have that sum deducted from future benefits,
 3669 regardless of the classification of benefits, payable to the
 3670 employee under this chapter; however, a partial payment of the
 3671 total repayment may not exceed 20 percent of the amount of the
 3672 biweekly payment.

3673 Section 19. Subsections (1), (2), and (3) of section
 3674 440.151, Florida Statutes, are amended to read:

3675 440.151 Occupational diseases.--

3676 (1)(a) Where the employer and employee are subject to the
 3677 provisions of the Workers' Compensation Law, the disablement or
 3678 death of an employee resulting from an occupational disease as
 3679 hereinafter defined shall be treated as the happening of an
 3680 injury by accident, notwithstanding any other provisions of this
 3681 chapter, and the employee or, in case of death, the employee's
 3682 dependents shall be entitled to compensation as provided by this
 3683 chapter, except as hereinafter otherwise provided; and the
 3684 practice and procedure prescribed by this chapter shall apply to
 3685 all proceedings under this section, except as hereinafter
 3686 otherwise provided. Provided, however, that in no case shall an
 3687 employer be liable for compensation under the provisions of this
 3688 section unless such disease has resulted from the nature of the
 3689 employment in which the employee was engaged under such
 3690 employer, and was actually contracted while so engaged, and the
 3691 nature of the employment was the major contributing cause of the



3692 disease. Major contributing cause must be shown by medical
 3693 evidence only, as demonstrated by physical examination findings
 3694 and diagnostic testing. ~~meaning by "Nature of the employment"~~
 3695 means that in ~~to~~ the occupation in which the employee was so
 3696 engaged there is attached a particular hazard of such disease
 3697 that distinguishes it from the usual run of occupations, or the
 3698 incidence of such disease is substantially higher in the
 3699 occupation in which the employee was so engaged than in the
 3700 usual run of occupations. In claims for death under s. 440.16,
 3701 death must occur ~~or, in case of death, unless death follows~~
 3702 ~~continuous disability from such disease, commencing within the~~
 3703 ~~period above limited, for which compensation has been paid or~~
 3704 ~~awarded, or timely claim made as provided in this section, and~~
 3705 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
 3706 causation and sufficient exposure to a specific harmful
 3707 substance shown to be present in the workplace to support
 3708 causation shall be proven by clear and convincing evidence.

3709 (b) No compensation shall be payable for an occupational
 3710 disease if the employee, at the time of entering into the
 3711 employment of the employer by whom the compensation would
 3712 otherwise be payable, falsely represents herself or himself in
 3713 writing as not having previously been disabled, laid off or
 3714 compensated in damages or otherwise, because of such disease.

3715 (c) Where an occupational disease is aggravated by any
 3716 other disease or infirmity, not itself compensable, or where
 3717 disability or death from any other cause, not itself
 3718 compensable, is aggravated, prolonged, accelerated or in anywise
 3719 contributed to by an occupational disease, the compensation



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3720 shall be payable only if the occupational disease is the major
3721 contributing cause of the injury. Any compensation shall be
3722 reduced and limited to such proportion only of the compensation
3723 that would be payable if the occupational disease were the sole
3724 cause of the disability or death as such occupational disease,
3725 as a causative factor, bears to all the causes of such
3726 disability or death, such reduction in compensation to be
3727 effected by reducing the number of weekly or monthly payments or
3728 the amounts of such payments, as under the circumstances of the
3729 particular case may be for the best interest of the claimant or
3730 claimants. Major contributing cause must be demonstrated by
3731 medical evidence based on physical examination findings and
3732 diagnostic testing.

3733 (d) No compensation for death from an occupational disease
3734 shall be payable to any person whose relationship to the
3735 deceased, which under the provisions of this Workers'
3736 Compensation Law would give right to compensation, arose
3737 subsequent to the beginning of the first compensable disability,
3738 save only to afterborn children of a marriage existing at the
3739 beginning of such disability.

3740 (e) No compensation shall be payable for disability or
3741 death resulting from tuberculosis arising out of and in the
3742 course of employment by the Department of Health at a state
3743 tuberculosis hospital, or aggravated by such employment, when
3744 the employee had suffered from said disease at any time prior to
3745 the commencement of such employment.

3746 (2) Whenever used in this section the term "occupational
3747 disease" shall be construed to mean only a disease which is due



3748 to causes and conditions which are characteristic of and
 3749 peculiar to a particular trade, occupation, process, or
 3750 employment, and to exclude all ordinary diseases of life to
 3751 which the general public is exposed, unless the incidence of the
 3752 disease is substantially higher in the particular trade,
 3753 occupation, process, or employment than for the general public.
 3754 "Occupational disease" means only a disease for which there are
 3755 epidemiological studies showing that exposure to the specific
 3756 substance involved, at the levels to which the employee was
 3757 exposed, may cause the precise disease sustained by the
 3758 employee.

3759 (3) Except as hereinafter otherwise provided in this
 3760 section, "disablement" means disability as described in s.
 3761 440.02(13) the event of an employee's becoming actually
 3762 incapacitated, partially or totally, because of an occupational
 3763 disease, from performing her or his work in the last occupation
 3764 in which injuriously exposed to the hazards of such disease; and
 3765 "disability" means the state of being so incapacitated.

3766 Section 20. Subsections (1) and (7) of section 440.16,
 3767 Florida Statutes, are amended to read:

3768 440.16 Compensation for death.--

3769 (1) If death results from the accident within 1 year
 3770 thereafter or follows continuous disability and results from the
 3771 accident within 5 years thereafter, the employer shall pay:

3772 (a) Within 14 days after receiving the bill, actual
 3773 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3774 (b) Compensation, in addition to the above, in the
 3775 following percentages of the average weekly wages to the



3776 following persons entitled thereto on account of dependency upon
 3777 the deceased, and in the following order of preference, subject
 3778 to the limitation provided in subparagraph 2., but such
 3779 compensation shall be subject to the limits provided in s.
 3780 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
 3781 than, but shall not exceed, for all dependents or persons
 3782 entitled to compensation, $66\frac{2}{3}$ percent of the average wage:

3783 1. To the spouse, if there is no child, 50 percent of the
 3784 average weekly wage, such compensation to cease upon the
 3785 spouse's death.

3786 2. To the spouse, if there is a child or children, the
 3787 compensation payable under subparagraph 1. and, in addition,
 3788 $16\frac{2}{3}$ percent on account of the child or children. However, when
 3789 the deceased is survived by a spouse and also a child or
 3790 children, whether such child or children are the product of the
 3791 union existing at the time of death or of a former marriage or
 3792 marriages, the judge of compensation claims may provide for the
 3793 payment of compensation in such manner as may appear to the
 3794 judge of compensation claims just and proper and for the best
 3795 interests of the respective parties and, in so doing, may
 3796 provide for the entire compensation to be paid exclusively to
 3797 the child or children; and, in the case of death of such spouse,
 3798 $33\frac{1}{3}$ percent for each child. However, upon the surviving
 3799 spouse's remarriage, the spouse shall be entitled to a lump-sum
 3800 payment equal to 26 weeks of compensation at the rate of 50
 3801 percent of the average weekly wage as provided in s. 440.12(2),
 3802 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
 3803 exceeded, in which case the surviving spouse shall receive a



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3804 lump-sum payment equal to the remaining available benefits in
3805 lieu of any further indemnity benefits. In no case shall a
3806 surviving spouse's acceptance of a lump-sum payment affect
3807 payment of death benefits to other dependents.

3808 3. To the child or children, if there is no spouse, $33\frac{1}{3}$
3809 percent for each child.

3810 4. To the parents, 25 percent to each, such compensation
3811 to be paid during the continuance of dependency.

3812 5. To the brothers, sisters, and grandchildren, 15 percent
3813 for each brother, sister, or grandchild.

3814 (c) To the surviving spouse, payment of postsecondary
3815 student fees for instruction at any area technical center
3816 established under s. 1001.44 for up to 1,800 classroom hours or
3817 payment of student fees at any community college established
3818 under part III of chapter 1004 for up to 80 semester hours. The
3819 spouse of a deceased state employee shall be entitled to a full
3820 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3821 lieu of the payment of such fees. The benefits provided for in
3822 this paragraph shall be in addition to other benefits provided
3823 for in this section and shall terminate 7 years after the death
3824 of the deceased employee, or when the total payment in eligible
3825 compensation under paragraph (b) has been received. To qualify
3826 for the educational benefit under this paragraph, the spouse
3827 shall be required to meet and maintain the regular admission
3828 requirements of, and be registered at, such area technical
3829 center or community college, and make satisfactory academic
3830 progress as defined by the educational institution in which the
3831 student is enrolled.



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3832 (7) Compensation under this chapter to aliens not
 3833 residents (or about to become nonresidents) of the United States
 3834 or Canada shall be the same in amount as provided for residents,
 3835 except that dependents in any foreign country shall be limited
 3836 to surviving spouse and child or children, or if there be no
 3837 surviving spouse or child or children, to surviving father or
 3838 mother whom the employee has supported, either wholly or in
 3839 part, for the period of 1 year prior to the date of the injury,
 3840 and except that the judge of compensation claims may, at the
 3841 option of the judge of compensation claims, or upon the
 3842 application of the insurance carrier, commute all future
 3843 installments of compensation to be paid to such aliens by paying
 3844 or causing to be paid to them one-half of the commuted amount of
 3845 such future installments of compensation as determined by the
 3846 judge of compensation claims, and provided further that
 3847 compensation to dependents referred to in this subsection shall
 3848 in no case exceed \$75,000 ~~\$50,000~~.

3849 Section 21. Subsection (9) of section 440.185, Florida
 3850 Statutes, is amended, and subsection (12) is added to said
 3851 section, to read:

3852 440.185 Notice of injury or death; reports; penalties for
 3853 violations.--

3854 (9) Any employer or carrier who fails or refuses to timely
 3855 send any form, report, or notice required by this section shall
 3856 be subject to an administrative fine by the department ~~a civil~~
 3857 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
 3858 refusal. If, within 1 calendar year, an employer fails to timely
 3859 submit to the carrier more than 10 percent of its notices of



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3860 injury or death, the employer shall be subject to an
3861 administrative fine by the department not to exceed \$2,000 for
3862 each such failure or refusal. However, any employer who fails to
3863 notify the carrier of the injury on the prescribed form or by
3864 letter within the 7 days required in subsection (2) shall be
3865 liable for the administrative fine ~~civil penalty~~, which shall be
3866 paid by the employer and not the carrier. Failure by the
3867 employer to meet its obligations under subsection (2) shall not
3868 relieve the carrier from liability for the administrative fine
3869 ~~civil penalty~~ if it fails to comply with subsections (4) and
3870 (5).

3871 (12) Upon receiving notice of an injury from an employee
3872 under subsection (1), the employer or carrier shall provide the
3873 employee with a written notice, in the form and manner
3874 determined by the department by rule, of the availability of
3875 services from the Employee Assistance and Ombudsman Office. The
3876 substance of the notice to the employee shall include:

3877 (a) A description of the scope of services provided by the
3878 office.

3879 (b) A listing of the toll-free telephone number of, the
3880 email address, and the postal address of the office.

3881 (c) A statement that the informational brochure referred
3882 to in subsection (4) will be mailed to the employee within 3
3883 days after the carrier receives notice of the injury.

3884 (d) Any other information regarding access to assistance
3885 that the department finds is immediately necessary for an
3886 injured employee.



3887 Section 22. Subsections (1) and (2) of section 440.192,
3888 Florida Statutes, are amended, and subsection (9) is added to
3889 said section, to read:

3890 440.192 Procedure for resolving benefit disputes.—

3891 (1) ~~Subject to s. 440.191, Any employee may, for any~~
3892 benefit that is ripe, due, and owing, who has not received a
3893 ~~benefit to which the employee believes she or he is entitled~~
3894 ~~under this chapter shall~~ file by certified mail, or by
3895 electronic means approved by the Deputy Chief Judge, with the
3896 Office of the Judges of Compensation Claims a petition for
3897 benefits which meets the requirements of this section and the
3898 definition of specificity in s. 440.02. The department shall
3899 inform employees of the location of the Office of the Judges of
3900 Compensation Claims for purposes of filing a petition for
3901 benefits. The employee shall also serve copies of the petition
3902 for benefits by certified mail, or by electronic means approved
3903 by the Deputy Chief Judge, upon the employer and the employer's
3904 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
3905 judges of compensation claims.

3906 (2) Upon receipt, the Office of the Judges of Compensation
3907 Claims shall review each petition and shall dismiss each
3908 petition or any portion of such a petition, ~~upon the judge's own~~
3909 ~~motion or upon the motion of any party,~~ that does not on its
3910 face specifically identify or itemize the following:

3911 (a) Name, address, telephone number, and social security
3912 number of the employee.

3913 (b) Name, address, and telephone number of the employer.



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3914 (c) A detailed description of the injury and cause of the
3915 injury, including the location of the occurrence and the date or
3916 dates of the accident.

3917 (d) A detailed description of the employee's job, work
3918 responsibilities, and work the employee was performing when the
3919 injury occurred.

3920 (e) The time period for which compensation and the
3921 specific classification of compensation were not timely
3922 provided.

3923 (f) Date of maximum medical improvement, character of
3924 disability, specific statement of all benefits or compensation
3925 that the employee is seeking.

3926 (g) All specific travel costs to which the employee
3927 believes she or he is entitled, including dates of travel and
3928 purpose of travel, means of transportation, and mileage and
3929 including the date the request for mileage was filed with the
3930 carrier and a copy of the request filed with the carrier.

3931 (h) Specific listing of all medical charges alleged
3932 unpaid, including the name and address of the medical provider,
3933 the amounts due, and the specific dates of treatment.

3934 (i) The type or nature of treatment care or attendance
3935 sought and the justification for such treatment. If the employee
3936 is under the care of a physician for an injury identified under
3937 paragraph (c), a copy of the physician's request, authorization,
3938 or recommendation for treatment, care, or attendance must
3939 accompany the petition.

3940 (j) Specific explanation of any other disputed issue that
3941 a judge of compensation claims will be called to rule upon.



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3942
3943 The dismissal of any petition or portion of such a petition
3944 under this section is without prejudice and does not require a
3945 hearing.

3946 (9) A petition for benefits must contain claims for all
3947 benefits that are ripe, due, and owing on the date the petition
3948 is filed. Unless stipulated in writing by the parties, only
3949 claims which have been properly raised in a petition for
3950 benefits and have undergone mediation may be considered for
3951 adjudication by a judge of compensation claims.

3952 Section 23. Section 440.1926, Florida Statutes, is created
3953 to read:

3954 440.1926 Alternate dispute resolution; claim
3955 arbitration.--Notwithstanding any other provision of this
3956 chapter, the employer, carrier, and employee may mutually agree
3957 to seek consent from a judge of compensation claims to enter
3958 into binding claim arbitration in lieu of any other remedy
3959 provided for in this chapter to resolve all issues in dispute
3960 regarding an injury. Arbitrations agreed to pursuant to this
3961 section shall be governed by chapter 682, the Florida
3962 Arbitration Code, except that, notwithstanding any provision in
3963 chapter 682, the term "court" shall mean a judge of compensation
3964 claims. An arbitration award in accordance with this section
3965 shall be enforceable in the same manner and with the same powers
3966 as any final compensation order.

3967 Section 24. Subsections (2), (3), (4), (6), and (8) and
3968 paragraph (d) of subsection (11) of section 440.20, Florida
3969 Statutes, are amended to read:



3970 440.20 Time for payment of compensation and medical bills;
 3971 penalties for late payment.--

3972 (2)(a) The carrier must pay the first installment of
 3973 compensation for total disability or death benefits or deny
 3974 compensability no later than the 14th calendar day after the
 3975 employer receives notification ~~notice~~ of the injury or death,
 3976 when disability is immediate and continuous for 8 calendar days
 3977 or more after the injury. If the first 7 days after disability
 3978 are nonconsecutive or delayed, the first installment of
 3979 compensation is due on the 6th day after the first 8 calendar
 3980 days of disability. The carrier shall thereafter pay
 3981 compensation in biweekly installments or as otherwise provided
 3982 in s. 440.15, unless the judge of compensation claims determines
 3983 or the parties agree that an alternate installment schedule is
 3984 in the best interests of the employee.

3985 (b) The carrier must pay, disallow, or deny all medical,
 3986 dental, pharmacy, and hospital bills submitted to the carrier in
 3987 accordance with department rule no later than 45 calendar days
 3988 after the carrier's receipt of the bill.

3989 (3) Upon making initial payment of indemnity benefits, or
 3990 upon suspension or cessation of payment for any reason, the
 3991 carrier shall immediately notify the injured employee, the
 3992 employer, and the department that it has commenced, suspended,
 3993 or ceased payment of compensation. The department may require
 3994 such notification to the injured employee, employer, and the
 3995 department in a ~~any~~ format and manner it deems necessary to
 3996 obtain accurate and timely notification ~~reporting~~.



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3997 (4) If the carrier is uncertain of its obligation to
3998 provide all benefits or compensation, ~~it may initiate payment~~
3999 ~~without prejudice and without admitting liability.~~ the carrier
4000 shall immediately and in good faith commence investigation of
4001 the employee's entitlement to benefits under this chapter and
4002 shall admit or deny compensability within 120 days after the
4003 initial provision of compensation or benefits as required under
4004 subsection (2) or s. 440.192(8). Additionally, the carrier shall
4005 initiate payment and continue the provision of all benefits and
4006 compensation as if the claim had been accepted as compensable,
4007 without prejudice and without admitting liability. Upon
4008 commencement of payment as required under subsection (2) or s.
4009 440.192 (8), the carrier shall provide written notice to the
4010 employee that it is has elected to pay ~~all or part of~~ the claim
4011 pending further investigation, and that it will advise the
4012 employee of claim acceptance or denial within 120 days. A
4013 carrier that fails to deny compensability within 120 days after
4014 the initial provision of benefits or payment of compensation as
4015 required under subsection (2) or s. 440.192(8) waives the right
4016 to deny compensability, unless the carrier can establish
4017 material facts relevant to the issue of compensability that it
4018 could not have discovered through reasonable investigation
4019 within the 120-day period. The initial provision of compensation
4020 or benefits, for purposes of this subsection, means the first
4021 installment of compensation or benefits to be paid by the
4022 carrier under subsection (2) or pursuant to a petition for
4023 benefits under s. 440.192(8).



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4024 (6)(a) If any installment of compensation for death or
4025 dependency benefits, or compensation for disability benefits,
4026 ~~permanent impairment, or wage loss~~ payable without an award is
4027 not paid within 7 days after it becomes due, as provided in
4028 subsection (2), subsection (3), or subsection (4), there shall
4029 be added to such unpaid installment a ~~punitive~~ penalty of an
4030 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
4031 which shall be paid at the same time as, but in addition to,
4032 such installment of compensation. This penalty shall not apply
4033 for late payments resulting ~~, unless notice is filed under~~
4034 ~~subsection (4) or unless such nonpayment results~~ from conditions
4035 over which the employer or carrier had no control. When any
4036 installment of compensation payable without an award has not
4037 been paid within 7 days after it became due and the claimant
4038 concludes the prosecution of the claim before a judge of
4039 compensation claims without having specifically claimed
4040 additional compensation in the nature of a penalty under this
4041 section, the claimant will be deemed to have acknowledged that,
4042 owing to conditions over which the employer or carrier had no
4043 control, such installment could not be paid within the period
4044 prescribed for payment and to have waived the right to claim
4045 such penalty. However, during the course of a hearing, the judge
4046 of compensation claims shall on her or his own motion raise the
4047 question of whether such penalty should be awarded or excused.
4048 The department may assess without a hearing the ~~punitive~~ penalty
4049 against either the employer or the ~~insurance~~ carrier, depending
4050 upon who was at fault in causing the delay. The insurance policy
4051 cannot provide that this sum will be paid by the carrier if the



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4052 department or the judge of compensation claims determines that
4053 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4054 than the carrier. Any additional installment of compensation
4055 paid by the carrier pursuant to this section shall be paid
4056 directly to the employee by check or, if authorized by the
4057 employee, by direct deposit into the employee's account at a
4058 financial institution. ~~As used in this subsection, the term~~
4059 ~~"financial institution" means a financial institution as defined~~
4060 ~~in s. 655.005(1)(h).~~

4061 (b) For medical services provided on or after January 1,
4062 2004, the department shall require that all medical, hospital,
4063 pharmacy, or dental bills properly submitted by the provider,
4064 except for bills that are disallowed or denied by the carrier or
4065 its authorized vendor in accordance with department rule, are
4066 timely paid within 45 calendar days after the carrier's receipt
4067 of the bill. The department shall impose penalties for late
4068 payments or disallowances or denials of medical, hospital,
4069 pharmacy, or dental bills that are below a minimum 95 percent
4070 timely performance standard. The carrier shall pay to the
4071 Workers' Compensation Administration Trust Fund a penalty of:

4072 1. Twenty-five dollars for each bill below the 95 percent
4073 timely performance standard, but meeting a 90 percent timely
4074 standard.

4075 2. Fifty dollars for each bill below a 90 percent timely
4076 performance standard.

4077 (8)(a) In addition to any other penalties provided by this
4078 chapter for late payment, if any installment of compensation is
4079 not paid when it becomes due, the employer, carrier, or



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4080 servicing agent shall pay interest thereon at the rate of 12
4081 percent per year from the date the installment becomes due until
4082 it is paid, whether such installment is payable without an order
4083 or terms of an order. The interest payment shall be the greater
4084 of the amount due or \$5.

4085 ~~(a) Within 30 days after final payment of compensation has~~
4086 ~~been made, the employer, carrier, or servicing agent shall send~~
4087 ~~to the department a notice, in accordance with a format and~~
4088 ~~manner prescribed by the department, stating that such final~~
4089 ~~payment has been made and stating the total amount of~~
4090 ~~compensation paid, the name of the employee and of any other~~
4091 ~~person to whom compensation has been paid, the date of the~~
4092 ~~injury or death, and the date to which compensation has been~~
4093 ~~paid.~~

4094 ~~(b) If the employer, carrier, or servicing agent fails to~~
4095 ~~so notify the department within such time, the department shall~~
4096 ~~assess against such employer, carrier, or servicing agent a~~
4097 ~~civil penalty in an amount not over \$100.~~

4098 (b)(e) In order to ensure carrier compliance under this
4099 chapter and provisions of the Insurance Code, the department
4100 shall monitor, audit, and investigate the performance of
4101 carriers by conducting market conduct examinations, as provided
4102 in s. 624.3161, and conducting investigations, as provided in s.
4103 624.317. The department shall require establish by rule a
4104 minimum performance standards for carriers to ensure that a
4105 minimum of 90 percent of all compensation benefits are timely
4106 paid in accordance with this section. The department shall
4107 impose penalties fine a carrier as provided in s. 440.13(11)(b)



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4108 ~~up to \$50 for each late payments payment~~ of compensation that
 4109 ~~are is~~ below ~~a the~~ minimum 95 ~~90~~ percent timely payment
 4110 performance standard. The carrier shall pay to the Workers'
 4111 Compensation Administration Trust Fund a penalty of:

4112 1. Fifty dollars per number of installments of
 4113 compensation below the 95 percent timely payment performance
 4114 standard and equal to or greater than a 90 percent timely
 4115 payment performance standard.

4116 2. One hundred dollars per number of installments of
 4117 compensation below a 90 percent timely payment performance
 4118 standard.

4119

4120 This section does not affect the imposition of any penalties or
 4121 interest due to the claimant. If a carrier contracts with a
 4122 servicing agent to fulfill its administrative responsibilities
 4123 under this chapter, the payment practices of the servicing agent
 4124 are deemed the payment practices of the carrier for the purpose
 4125 of assessing penalties against the carrier.

4126 (11)

4127 (d)1. With respect to any lump-sum settlement under this
 4128 subsection, a judge of compensation claims must consider at the
 4129 time of the settlement, whether the settlement allocation
 4130 provides for the appropriate recovery of child support
 4131 arrearages. An employer or carrier does not have a duty to
 4132 investigate or collect information regarding child support
 4133 arrearrages.

4134 2. When reviewing any settlement of lump-sum payment
 4135 pursuant to this subsection, judges of compensation claims shall



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4136 consider the interests of the worker and the worker's family
4137 when approving the settlement, which must consider and provide
4138 for appropriate recovery of past due support.

4139 Section 25. Section 440.25, Florida Statutes, is amended
4140 to read:

4141 440.25 Procedures for mediation and hearings.--

4142 (1) Forty days ~~Within 90 days~~ after a petition for
4143 benefits is filed under s. 440.192, ~~a mediation conference~~
4144 ~~concerning such petition shall be held. Within 40 days after~~
4145 ~~such petition is filed,~~ the judge of compensation claims shall
4146 notify the interested parties by order that a mediation
4147 conference concerning such petition has been scheduled ~~will be~~
4148 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4149 ~~Judges~~ of compensation claims that a private mediation has been
4150 held or is scheduled to be held. A mediation, whether private
4151 or public, shall be held within 130 days after the filing of the
4152 petition. Such order must give the date ~~by which~~ the mediation
4153 conference is to ~~must~~ be held. Such order may be served
4154 personally upon the interested parties or may be sent to the
4155 interested parties by mail. If multiple petitions are pending,
4156 or if additional petitions are filed after the scheduling of a
4157 mediation, the judge of compensation claims shall consolidate
4158 all petitions into one mediation. The claimant or the adjuster
4159 of the employer or carrier may, at the mediator's discretion,
4160 attend the mediation conference by telephone or, if agreed to by
4161 the parties, other electronic means. A continuance may be
4162 granted upon the agreement of the parties or if the requesting
4163 party demonstrates to the judge of compensation claims that the



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4164 | reason for requesting the continuance arises from circumstances
4165 | beyond the party's control. Any order granting a continuance
4166 | must set forth the date of the rescheduled mediation conference.
4167 | A mediation conference may not be used solely for the purpose of
4168 | mediating attorney's fees.

4169 | (2) Any party who participates in a mediation conference
4170 | shall not be precluded from requesting a hearing following the
4171 | mediation conference should both parties not agree to be bound
4172 | by the results of the mediation conference. A mediation
4173 | conference is required to be held unless this requirement is
4174 | waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~
4175 | ~~the mediation conference, all parties must submit any applicable~~
4176 | ~~motions, including, but not limited to, a motion to waive the~~
4177 | ~~mediation conference, to the judge of compensation claims.~~

4178 | (3)(a) Such mediation conference shall be conducted
4179 | informally and does not require the use of formal rules of
4180 | evidence or procedure. Any information from the files, reports,
4181 | case summaries, mediator's notes, or other communications or
4182 | materials, oral or written, relating to a mediation conference
4183 | under this section obtained by any person performing mediation
4184 | duties is privileged and confidential and may not be disclosed
4185 | without the written consent of all parties to the conference.
4186 | Any research or evaluation effort directed at assessing the
4187 | mediation program activities or performance must protect the
4188 | confidentiality of such information. Each party to a mediation
4189 | conference has a privilege during and after the conference to
4190 | refuse to disclose and to prevent another from disclosing
4191 | communications made during the conference whether or not the



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4192 | contested issues are successfully resolved. This subsection and
4193 | paragraphs (4)(a) and (b) shall not be construed to prevent or
4194 | inhibit the discovery or admissibility of any information that
4195 | is otherwise subject to discovery or that is admissible under
4196 | applicable law or rule of procedure, except that any conduct or
4197 | statements made during a mediation conference or in negotiations
4198 | concerning the conference are inadmissible in any proceeding
4199 | under this chapter.

4200 | (a)1- Unless the parties conduct a private mediation under
4201 | paragraph (b) subparagraph 2-, mediation shall be conducted by a
4202 | mediator selected by the Director of the Division of
4203 | Administrative Hearings from among mediators employed on a full-
4204 | time basis by the Office of the Judges of Compensation Claims. A
4205 | mediator must be a member of The Florida Bar for at least 5
4206 | years and must complete a mediation training program approved by
4207 | the Deputy Chief Judge ~~Director of the Division of~~
4208 | ~~Administrative Hearings~~. Adjunct mediators may be employed by
4209 | the Office of the Judges of Compensation Claims on an as-needed
4210 | basis and shall be selected from a list prepared by the Director
4211 | of the Division of Administrative Hearings. An adjunct mediator
4212 | must be independent of all parties participating in the
4213 | mediation conference. An adjunct mediator must be a member of
4214 | The Florida Bar for at least 5 years and must complete a
4215 | mediation training program approved by the Office of the Judges
4216 | of Compensation Claims ~~Director of the Division of~~
4217 | ~~Administrative Hearings~~. An adjunct mediator shall have access
4218 | to the office, equipment, and supplies of the judge of
4219 | compensation claims in each district.



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4220 (b)2. With respect to any private mediation ~~occurring on~~
4221 ~~or after January 1, 2003~~, if the parties agree or if mediators
4222 are not available under paragraph (a), pursuant to notice from
4223 the judge of compensation claims subparagraph 1., to conduct the
4224 required mediation within the period specified in this section,
4225 the parties shall hold a mediation conference at the carrier's
4226 expense within the 130-day ~~90-day~~ period set for mediation. The
4227 mediation conference shall be conducted by a mediator certified
4228 under s. 44.106. If the parties do not agree upon a mediator
4229 within 10 days after the date of the order, the claimant shall
4230 notify the judge in writing and the judge shall appoint a
4231 mediator under this subparagraph within 7 days. In the event
4232 both parties agree, the results of the mediation conference
4233 shall be binding and neither party shall have a right to appeal
4234 the results. In the event either party refuses to agree to the
4235 results of the mediation conference, the results of the
4236 mediation conference as well as the testimony, witnesses, and
4237 evidence presented at the conference shall not be admissible at
4238 any subsequent proceeding on the claim. The mediator shall not
4239 be called in to testify or give deposition to resolve any claim
4240 for any hearing before the judge of compensation claims. The
4241 employer may be represented by an attorney at the mediation
4242 conference if the employee is also represented by an attorney at
4243 the mediation conference.

4244 ~~(b) The parties shall complete the pretrial stipulations~~
4245 ~~before the conclusion of the mediation conference if the claims,~~
4246 ~~except for attorney's fees and costs, have not been settled and~~
4247 ~~if any claims in any filed petition remain unresolved. The judge~~



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4248 ~~of compensation claims may impose sanctions against a party or~~
4249 ~~both parties for failing to complete the pretrial stipulations~~
4250 ~~before the conclusion of the mediation conference.~~

4251 (4)(a) If the parties fail to agree to upon written
4252 submission of pretrial stipulations ~~at the mediation conference,~~
4253 the judge of compensation claims shall conduct a live order ~~a~~
4254 pretrial hearing ~~to occur within 14 days after the date of~~
4255 ~~mediation ordered by the judge of compensation claims.~~ The judge
4256 of compensation claims shall give the interested parties at
4257 least 14 ~~7~~ days' advance notice of the pretrial hearing by mail.
4258 ~~At the pretrial hearing, the judge of compensation claims shall,~~
4259 ~~subject to paragraph (b), set a date for the final hearing that~~
4260 ~~allows the parties at least 60 days to conduct discovery unless~~
4261 ~~the parties consent to an earlier hearing date.~~

4262 (b) The final hearing must be held and concluded within 90
4263 days after the mediation conference is held, allowing the
4264 parties sufficient time to complete discovery. Except as set
4265 forth in this section, continuances may be granted only if the
4266 requesting party demonstrates to the judge of compensation
4267 claims that the reason for requesting the continuance arises
4268 from circumstances beyond the party's control. The written
4269 consent of the claimant must be obtained before any request from
4270 a claimant's attorney is granted for an additional continuance
4271 after the initial continuance has been granted. Any order
4272 granting a continuance must set forth the date and time of the
4273 rescheduled hearing. A continuance may be granted only if the
4274 requesting party demonstrates to the judge of compensation
4275 claims that the reason for requesting the continuance arises



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4276 from circumstances beyond the control of the parties. The judge
4277 of compensation claims shall report any grant of two or more
4278 continuances to the Deputy Chief Judge.

4279 (c) The judge of compensation claims shall give the
4280 interested parties at least 14 7 days' advance notice of the
4281 final hearing, served upon the interested parties by mail.

4282 (d) The final hearing shall be held within 210 days after
4283 receipt of the petition for benefits in the county where the
4284 injury occurred, if the injury occurred in this state, unless
4285 otherwise agreed to between the parties and authorized by the
4286 judge of compensation claims in the county where the injury
4287 occurred; However, the claimant may waive the timeframes within
4288 this section for good cause shown. If the injury occurred
4289 outside the state and is one for which compensation is payable
4290 under this chapter, then the final hearing may be held in the
4291 county of the employer's residence or place of business, or in
4292 any other county of the state that will, in the discretion of
4293 the Deputy Chief Judge, be the most convenient for a hearing.
4294 The final hearing shall be conducted by a judge of compensation
4295 claims, who shall, within 30 days after final hearing or closure
4296 of the hearing record, unless otherwise agreed by the parties,
4297 enter a final order on the merits of the disputed issues. The
4298 judge of compensation claims may enter an abbreviated final
4299 order in cases in which compensability is not disputed. Either
4300 party may request separate findings of fact and conclusions of
4301 law. At the final hearing, the claimant and employer may each
4302 present evidence with respect to the claims presented by the
4303 petition for benefits and may be represented by any attorney



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4304 authorized in writing for such purpose. When there is a conflict
4305 in the medical evidence submitted at the hearing, the provisions
4306 of s. 440.13 shall apply. The report or testimony of the expert
4307 medical advisor shall be admitted into evidence in a ~~made a part~~
4308 ~~of the record of the proceeding and shall be given the same~~
4309 ~~consideration by the judge of compensation claims as is accorded~~
4310 ~~other medical evidence submitted in the proceeding;~~ and all
4311 costs incurred in connection with such examination and testimony
4312 may be assessed as costs in the proceeding, subject to the
4313 provisions of s. 440.13. No judge of compensation claims may
4314 make a finding of a degree of permanent impairment that is
4315 greater than the greatest permanent impairment rating given the
4316 claimant by any examining or treating physician, except upon
4317 stipulation of the parties. Any benefit due but not raised at
4318 the final hearing which was ripe, due, or owing at the time of
4319 the final hearing is waived.

4320 (e) The order making an award or rejecting the claim,
4321 referred to in this chapter as a "compensation order," shall set
4322 forth the findings of ultimate facts and the mandate; and the
4323 order need not include any other reason or justification for
4324 such mandate. The compensation order shall be filed in the
4325 Office of the Judges of Compensation Claims at Tallahassee. A
4326 copy of such compensation order shall be sent by mail to the
4327 parties and attorneys of record at the last known address of
4328 each, with the date of mailing noted thereon.

4329 ~~(f) Each judge of compensation claims is required to~~
4330 ~~submit a special report to the Deputy Chief Judge in each~~
4331 ~~contested workers' compensation case in which the case is not~~



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4332 ~~determined within 30 days of final hearing or closure of the~~
4333 ~~hearing record. Said form shall be provided by the director of~~
4334 ~~the Division of Administrative Hearings and shall contain the~~
4335 ~~names of the judge of compensation claims and of the attorneys~~
4336 ~~involved and a brief explanation by the judge of compensation~~
4337 ~~claims as to the reason for such a delay in issuing a final~~
4338 ~~order.~~

4339 (f)~~(g)~~ Notwithstanding any other provision of this
4340 section, the judge of compensation claims may require the
4341 appearance of the parties and counsel before her or him without
4342 written notice for an emergency conference where there is a bona
4343 fide emergency involving the health, safety, or welfare of an
4344 employee. An emergency conference under this section may result
4345 in the entry of an order or the rendering of an adjudication by
4346 the judge of compensation claims.

4347 (g)~~(h)~~ To expedite dispute resolution and to enhance the
4348 self-executing features of the Workers' Compensation Law, the
4349 Deputy Chief Judge shall make provision by rule or order for the
4350 resolution of appropriate motions by judges of compensation
4351 claims without oral hearing upon submission of brief written
4352 statements in support and opposition, and for expedited
4353 discovery and docketing. Unless the judge of compensation
4354 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,
4355 each claim in a petition relating to the determination of the
4356 average weekly wage ~~pay~~ under s. 440.14 shall be resolved under
4357 this paragraph without oral hearing.

4358 (h)~~(i)~~ To further expedite dispute resolution and to
4359 enhance the self-executing features of the system, those



4360 petitions filed in accordance with s. 440.192 that involve a
 4361 claim for benefits of \$5,000 or less shall, in the absence of
 4362 compelling evidence to the contrary, be presumed to be
 4363 appropriate for expedited resolution under this paragraph; and
 4364 any other claim filed in accordance with s. 440.192, upon the
 4365 written agreement of both parties and application by either
 4366 party, may similarly be resolved under this paragraph. A claim
 4367 in a petition or \$5,000 or less for medical benefits only or a
 4368 petition for reimbursement for mileage for medical purposes
 4369 shall, in the absence of compelling evidence to the contrary, be
 4370 resolved through the expedited dispute resolution process
 4371 provided in this paragraph. For purposes of expedited resolution
 4372 pursuant to this paragraph, the Deputy Chief Judge shall make
 4373 provision by rule or order for expedited and limited discovery
 4374 and expedited docketing in such cases. At least 15 days prior to
 4375 hearing, the parties shall exchange and file with the judge of
 4376 compensation claims a pretrial outline of all issues, defenses,
 4377 and witnesses on a form adopted by the Deputy Chief Judge;
 4378 provided, in no event shall such hearing be held without 15
 4379 days' written notice to all parties. No pretrial hearing shall
 4380 be held and no mediation scheduled unless requested by a party.
 4381 The judge of compensation claims shall limit all argument and
 4382 presentation of evidence at the hearing to a maximum of 30
 4383 minutes, and such hearings shall not exceed 30 minutes in
 4384 length. Neither party shall be required to be represented by
 4385 counsel. The employer or carrier may be represented by an
 4386 adjuster or other qualified representative. The employer or
 4387 carrier and any witness may appear at such hearing by telephone.



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4388 The rules of evidence shall be liberally construed in favor of
4389 allowing introduction of evidence.

4390 (i)~~(j)~~ A judge of compensation claims may, upon the motion
4391 of a party or the judge's own motion, dismiss a petition for
4392 lack of prosecution if a petition, response, motion, order,
4393 request for hearing, or notice of deposition has not been filed
4394 during the previous 12 months unless good cause is shown. A
4395 dismissal for lack of prosecution is without prejudice and does
4396 not require a hearing.

4397 (j)~~(k)~~ A judge of compensation claims may not award
4398 interest on unpaid medical bills and the amount of such bills
4399 may not be used to calculate the amount of interest awarded.
4400 Regardless of the date benefits were initially requested,
4401 attorney's fees do not attach under this subsection until 30
4402 days after the date the carrier or self-insured employer
4403 receives the petition.

4404 (5)(a) Procedures with respect to appeals from orders of
4405 judges of compensation claims shall be governed by rules adopted
4406 by the Supreme Court. Such an order shall become final 30 days
4407 after mailing of copies of such order to the parties, unless
4408 appealed pursuant to such rules.

4409 (b) An appellant may be relieved of any necessary filing
4410 fee by filing a verified petition of indigency for approval as
4411 provided in s. 57.081(1) and may be relieved in whole or in part
4412 from the costs for preparation of the record on appeal if,
4413 within 15 days after the date notice of the estimated costs for
4414 the preparation is served, the appellant files with the judge of
4415 compensation claims a copy of the designation of the record on



4416 appeal, and a verified petition to be relieved of costs. A
 4417 verified petition filed prior to the date of service of the
 4418 notice of the estimated costs shall be deemed not timely filed.
 4419 The verified petition relating to record costs shall contain a
 4420 sworn statement that the appellant is insolvent and a complete,
 4421 detailed, and sworn financial affidavit showing all the
 4422 appellant's assets, liabilities, and income. Failure to state in
 4423 the affidavit all assets and income, including marital assets
 4424 and income, shall be grounds for denying the petition with
 4425 prejudice. The Office of the Judges of Compensation Claims shall
 4426 adopt rules as may be required pursuant to this subsection,
 4427 including forms for use in all petitions brought under this
 4428 subsection. The appellant's attorney, or the appellant if she or
 4429 he is not represented by an attorney, shall include as a part of
 4430 the verified petition relating to record costs an affidavit or
 4431 affirmation that, in her or his opinion, the notice of appeal
 4432 was filed in good faith and that there is a probable basis for
 4433 the District Court of Appeal, First District, to find reversible
 4434 error, and shall state with particularity the specific legal and
 4435 factual grounds for the opinion. Failure to so affirm shall be
 4436 grounds for denying the petition. A copy of the verified
 4437 petition relating to record costs shall be served upon all
 4438 interested parties. The judge of compensation claims shall
 4439 promptly conduct a hearing on the verified petition relating to
 4440 record costs, giving at least 15 days' notice to the appellant,
 4441 the department, and all other interested parties, all of whom
 4442 shall be parties to the proceedings. The judge of compensation
 4443 claims may enter an order without such hearing if no objection



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4444 is filed by an interested party within 20 days from the service
4445 date of the verified petition relating to record costs. Such
4446 proceedings shall be conducted in accordance with the provisions
4447 of this section and with the workers' compensation rules of
4448 procedure, to the extent applicable. In the event an insolvency
4449 petition is granted, the judge of compensation claims shall
4450 direct the department to pay record costs and filing fees from
4451 the Workers' Compensation Administration Trust Fund pending
4452 final disposition of the costs of appeal. The department may
4453 transcribe or arrange for the transcription of the record in any
4454 proceeding for which it is ordered to pay the cost of the
4455 record.

4456 (c) As a condition of filing a notice of appeal to the
4457 District Court of Appeal, First District, an employer who has
4458 not secured the payment of compensation under this chapter in
4459 compliance with s. 440.38 shall file with the notice of appeal a
4460 good and sufficient bond, as provided in s. 59.13, conditioned
4461 to pay the amount of the demand and any interest and costs
4462 payable under the terms of the order if the appeal is dismissed,
4463 or if the District Court of Appeal, First District, affirms the
4464 award in any amount. Upon the failure of such employer to file
4465 such bond with ~~the judge of compensation claims or~~ the District
4466 Court of Appeal, First District, along with the notice of
4467 appeal, the District Court of Appeal, First District, shall
4468 dismiss the notice of appeal.

4469 (6) An award of compensation for disability may be made
4470 after the death of an injured employee.



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4471 (7) ~~An injured employee claiming or entitled to~~
4472 ~~compensation shall submit to such physical examination by a~~
4473 ~~certified expert medical advisor approved by the agency or the~~
4474 ~~judge of compensation claims as the agency or the judge of~~
4475 ~~compensation claims may require. The place or places shall be~~
4476 ~~reasonably convenient for the employee. Such physician or~~
4477 ~~physicians as the employee, employer, or carrier may select and~~
4478 ~~pay for may participate in an examination if the employee,~~
4479 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4480 ~~and no compensation shall be payable for any period during which~~
4481 ~~the employee may refuse to submit to examination. Any interested~~
4482 ~~party shall have the right in any case of death to require an~~
4483 ~~autopsy, the cost thereof to be borne by the party requesting~~
4484 ~~it; and the judge of compensation claims shall have authority to~~
4485 ~~order and require an autopsy and may, in her or his discretion,~~
4486 ~~withhold her or his findings and award until an autopsy is held.~~

4487 Section 26. Subsections (1), (2), and (3) of section
4488 440.34, Florida Statutes, are amended to read:

4489 440.34 Attorney's fees; costs.--

4490 (1) A fee, gratuity, or other consideration may not be
4491 ~~paid for services rendered for~~ a claimant in connection with any
4492 proceedings arising under this chapter, unless approved as
4493 reasonable by the judge of compensation claims or court having
4494 jurisdiction over such proceedings. ~~Except as provided by this~~
4495 ~~subsection,~~ Any attorney's fee approved by a judge of
4496 compensation claims for benefits secured on behalf of services
4497 ~~rendered to~~ a claimant may not exceed 18 ~~must equal to 20~~
4498 percent of the first \$5,000 of the amount of the benefits



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4499 secured, 13 ~~15~~ percent of the next \$5,000 of the amount of the
4500 benefits secured, 8 ~~10~~ percent of the remaining amount of the
4501 benefits secured to be provided during the first 10 years after
4502 the date the claim is filed, and 5 percent of the benefits
4503 secured after 10 years. The judge of compensation claims shall
4504 not approve a compensation order, a joint stipulation for lump-
4505 sum settlement, a stipulation or agreement between a claimant
4506 and his or her attorney, or any other agreement related to
4507 benefits under this chapter that provides for an attorney's fee
4508 in excess of the amount permitted by this section. The judge of
4509 compensation claims is not required to approve any retainer
4510 agreement between the claimant and his or her attorney. The
4511 retainer agreement as to fees and costs may not be for
4512 compensation in excess of the amount allowed under this section.
4513 ~~However, The judge of compensation claims shall consider the~~
4514 ~~following factors in each case and may increase or decrease the~~
4515 ~~attorney's fee if, in her or his judgment, the circumstances of~~
4516 ~~the particular case warrant such action:~~

4517 ~~(a) The time and labor required, the novelty and~~
4518 ~~difficulty of the questions involved, and the skill requisite to~~
4519 ~~perform the legal service properly.~~

4520 ~~(b) The fee customarily charged in the locality for~~
4521 ~~similar legal services.~~

4522 ~~(c) The amount involved in the controversy and the~~
4523 ~~benefits resulting to the claimant.~~

4524 ~~(d) The time limitation imposed by the claimant or the~~
4525 ~~circumstances.~~



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4526 ~~(e) The experience, reputation, and ability of the lawyer~~
4527 ~~or lawyers performing services.~~

4528 ~~(f) The contingency or certainty of a fee.~~

4529 (2) In awarding a reasonable claimant's attorney's fee,
4530 the judge of compensation claims shall consider only those
4531 benefits secured by ~~to the claimant that~~ the attorney ~~is~~
4532 ~~responsible for securing~~. The amount, statutory basis, and type
4533 of benefits obtained through legal representation shall be
4534 listed on all attorney's fees awarded by the judge of
4535 compensation claims. For purposes of this section, the term
4536 "benefits secured" ~~means benefits obtained as a result of the~~
4537 ~~claimant's attorney's legal services rendered in connection with~~
4538 ~~the claim for benefits~~. However, such term does not include
4539 future medical benefits to be provided on any date more than 5
4540 years after the date the claim is filed. In the event an offer
4541 to settle an issue pending before a judge of compensation claims
4542 is communicated in writing to the claimant or the claimant's
4543 attorney at least 30 days prior to the trial date on such issue,
4544 benefits secured shall be only that amount awarded above that
4545 specified in the offer to settle. If multiple issues are pending
4546 before the judge of compensation claims, said offer of
4547 settlement shall address each issue pending and shall state
4548 explicitly whether or not the offer on each issue is severable.
4549 The written offer shall also unequivocally state whether or not
4550 it includes medical witness fees and expenses, and all other
4551 costs associated with the claim.

4552 (3) If any party ~~the claimant~~ should prevail in any
4553 proceedings before a judge of compensation claims or court,



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4554 there shall be taxed against the nonprevailing party ~~employer~~
4555 the reasonable costs of such proceedings, not to include ~~the~~
4556 attorney's fees ~~of the claimant~~. A claimant shall be responsible
4557 for the payment of her or his own attorney's fees, except that a
4558 claimant shall be entitled to recover a reasonable attorney's
4559 fee from a carrier or employer:

4560 (a) Against whom she or he successfully asserts a petition
4561 for medical benefits only, if the claimant has not filed or is
4562 not entitled to file at such time a claim for disability,
4563 permanent impairment, wage-loss, or death benefits, arising out
4564 of the same accident;

4565 (b) In any case in which the employer or carrier files a
4566 response to petition denying benefits with the Office of the
4567 Judges of Compensation Claims and the injured person has
4568 employed an attorney in the successful prosecution of the
4569 petition;

4570 (c) In a proceeding in which a carrier or employer denies
4571 that an accident occurred for which compensation benefits are
4572 payable, and the claimant prevails on the issue of
4573 compensability; or

4574 (d) In cases where the claimant successfully prevails in
4575 proceedings filed under s. 440.24 or s. 440.28.

4576
4577 Regardless of the date benefits were initially requested,
4578 attorney's fees shall not attach under this subsection until 30
4579 days after the date the carrier or employer, if self-insured,
4580 receives the petition. ~~In applying the factors set forth in~~
4581 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~



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4582 ~~and (d), the judge of compensation claims must only consider~~
4583 ~~only such benefits and the time reasonably spent in obtaining~~
4584 ~~them as were secured for the claimant within the scope of~~
4585 ~~paragraphs (a), (b), (c), and (d).~~

4586 Section 27. Subsection (7) is added to section 440.38,
4587 Florida Statutes, to read:

4588 440.38 Security for compensation; insurance carriers and
4589 self-insurers.--

4590 (7) Any employer who meets the requirements of subsection
4591 (1) through a policy of insurance issued outside of this state
4592 must at all times, with respect to all employees working in this
4593 state, maintain the required coverage under a Florida
4594 endorsement using Florida rates and rules pursuant to payroll
4595 reporting that accurately reflects the work performed in this
4596 state by such employees.

4597 Section 28. Subsections (2) and (6) of section 440.381,
4598 Florida Statutes, are amended to read:

4599 440.381 Application for coverage; reporting payroll;
4600 payroll audit procedures; penalties.--

4601 (2) Submission of an application that contains false,
4602 misleading, or incomplete information provided with the purpose
4603 of avoiding or reducing the amount of premiums for workers'
4604 compensation coverage is a felony of the second degree,
4605 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4606 The application must contain a statement that the filing of an
4607 application containing false, misleading, or incomplete
4608 information provided with the purpose of avoiding or reducing
4609 the amount of premiums for workers' compensation coverage is a



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4610 felony of the third degree, punishable as provided in s.
4611 775.082, s. 775.083, or s. 775.084. The application must contain
4612 a sworn statement by the employer attesting to the accuracy of
4613 the information submitted and acknowledging the provisions of
4614 former s. 440.37(4). The application must contain a sworn
4615 statement by the agent attesting that the agent explained to the
4616 employer or officer the classification codes that are used for
4617 premium calculations.

4618 (6)(a) If an employer understates or conceals payroll, or
4619 misrepresents or conceals employee duties so as to avoid proper
4620 classification for premium calculations, or misrepresents or
4621 conceals information pertinent to the computation and
4622 application of an experience rating modification factor, the
4623 employer, or the employer's agent or attorney, shall pay to the
4624 insurance carrier a penalty of 10 times the amount of the
4625 difference in premium paid and the amount the employer should
4626 have paid and reasonable attorney's fees. The penalty may be
4627 enforced in the circuit courts of this state.

4628 (b) If the department determines that an employer has
4629 materially understated or concealed payroll, has materially
4630 misrepresented or concealed employee duties so as to avoid
4631 proper classification for premium calculations, or has
4632 materially misrepresented or concealed information pertinent to
4633 the computation and application of an experience rating
4634 modification factor, the department shall immediately notify the
4635 employer's carrier of such determination. The carrier shall
4636 commence a physical onsite audit of the employer within 30 days
4637 after receiving notification from the department. If the carrier



4638 fails to commence the audit as required by this section, the
 4639 department shall contract with auditing professionals to conduct
 4640 the audit at the carrier's expense. A copy of the carrier's
 4641 audit of the employer shall be provided to the department upon
 4642 completion. The carrier is not required to conduct the physical
 4643 onsite audit of the employer as set forth in this paragraph if
 4644 the carrier gives written notice of cancellation to the employer
 4645 within 30 days after receiving notification from the department
 4646 of the material misrepresentation, understatement, or
 4647 concealment and an audit is conducted in conjunction with the
 4648 cancellation.

4649 Section 29. Subsection (3) of section 440.42, Florida
 4650 Statutes, is amended to read:

4651 440.42 Insurance policies; liability.--

4652 (3) No contract or policy of insurance issued by a carrier
 4653 under this chapter shall expire or be canceled until at least 30
 4654 days have elapsed after a notice of cancellation has been sent
 4655 to the department and to the employer in accordance with the
 4656 provisions of s. 440.185(7). For cancellation due to nonpayment
 4657 of premium, the insurer shall mail notification to the employer
 4658 at least 10 days prior to the effective date of the
 4659 cancellation. However, when duplicate or dual coverage exists by
 4660 reason of two different carriers having issued policies of
 4661 insurance to the same employer securing the same liability, it
 4662 shall be presumed that only that policy with the later effective
 4663 date shall be in force and that the earlier policy terminated
 4664 upon the effective date of the latter. In the event that both
 4665 policies carry the same effective date, one of the policies may



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4666 be canceled instanter upon filing a notice of cancellation with
4667 the department and serving a copy thereof upon the employer in
4668 such manner as the department prescribes by rule. The department
4669 may by rule prescribe the content of the notice of retroactive
4670 cancellation and specify the time, place, and manner in which
4671 the notice of cancellation is to be served.

4672 Section 30. Paragraph (a) of subsection (4) of section
4673 440.49, Florida Statutes, is amended to read:

4674 440.49 Limitation of liability for subsequent injury
4675 through Special Disability Trust Fund.--

4676 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4677 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4678 OTHER PHYSICAL IMPAIRMENT.--

4679 (a) *Permanent impairment*.--If an employee who has a
4680 preexisting permanent physical impairment incurs a subsequent
4681 permanent impairment from injury or occupational disease arising
4682 out of, and in the course of, her or his employment which merges
4683 with the preexisting permanent physical impairment to cause a
4684 permanent impairment, the employer shall, in the first instance,
4685 pay all benefits provided by this chapter; but, subject to the
4686 limitations specified in subsection (6), such employer shall be
4687 reimbursed from the Special Disability Trust Fund created by
4688 subsection (9) for 50 percent of all impairment benefits which
4689 the employer has been required to provide pursuant to s.
4690 440.15(3)~~(a)~~ as a result of the subsequent accident or
4691 occupational disease.

4692 Section 31. Paragraph (b) of subsection (6) of section
4693 440.491, Florida Statutes, is amended to read:



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4694 440.491 Reemployment of injured workers; rehabilitation.--

4695 (6) TRAINING AND EDUCATION.--

4696 (b) When it appears that an employee who has attained
 4697 maximum medical improvement requires training and education to
 4698 obtain suitable gainful employment, the employer shall pay the
 4699 employee additional temporary total compensation while the
 4700 employee receives such training and education for a period not
 4701 to exceed 26 weeks, which period may be extended for an
 4702 additional 26 weeks or less, if such extended period is
 4703 determined to be necessary and proper by a judge of compensation
 4704 claims. However, a carrier or employer is not precluded from
 4705 voluntarily paying additional temporary total disability
 4706 compensation beyond that period. If an employee requires
 4707 temporary residence at or near a facility or an institution
 4708 providing training and education which is located more than 50
 4709 miles away from the employee's customary residence, the
 4710 reasonable cost of board, lodging, or travel must be borne by
 4711 the department from the Workers' Compensation Administration
 4712 Trust Fund established by s. 440.50. An employee who refuses to
 4713 accept training and education that is recommended by the
 4714 vocational evaluator and considered necessary by the department
 4715 is subject to a 50-percent reduction in weekly compensation
 4716 benefits, including wage-loss benefits, as determined under s.
 4717 440.15(3)~~(b)~~.

4718 Section 32. Section 440.525, Florida Statutes, is amended
 4719 to read:

4720 440.525 Audit, examination, and examination of carriers
 4721 and claims-handling entities.--



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4722 (1) The department may audit, examine, or investigate any
4723 ~~each~~ carrier, third-party administrator, servicing agent, or
4724 other claims-handling entity as often as is warranted to ensure
4725 that it is ~~carriers are~~ fulfilling its ~~their~~ obligations under
4726 this chapter ~~the law. The examination may cover any period of~~
4727 ~~the carrier's operations since the last previous examination.~~

4728 (2) An audit or examination may cover any period of the
4729 carrier's, third-party administrator's, servicing agent's, or
4730 other claims-handling entity's operations since the last
4731 previous audit or examination. An investigation based upon a
4732 reasonable belief by the department that a material violation of
4733 this chapter has occurred may cover any time period, but may not
4734 predate the last audit by more than 5 years. The department may
4735 by rule establish procedures, standards, and protocols for
4736 audits, examinations, and investigations. If the department
4737 finds any violation of this chapter, it may impose
4738 administrative penalties pursuant to this chapter. If the
4739 department finds any self-insurer in violation of this chapter,
4740 it may take action pursuant s. 440.38(3). Audits, examinations,
4741 or investigations by the department may address, but are not
4742 limited to addressing: unfair or unreasonable claims-handling
4743 techniques; patterns or practices of unreasonable denial of
4744 claims or unreasonable delay in claims handling; timeliness and
4745 accuracy of payments and reports under ss. 440.13, 440.16, and
4746 440.185; proper application of practice parameters and protocols
4747 in paying medical benefits; or patterns or practices of
4748 harassment, coercion, or intimidation of claimants. The



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4749 department may also specify by rule the documentation to be
4750 maintained for each claim file.

4751 (3) As to any audit, examination, or investigation
4752 conducted under this chapter, the department shall have the
4753 power to conduct onsite inspections of claims records and
4754 documentation of a carrier, third-party administrator, servicing
4755 agent, or other claims-handling entity, and conduct interviews,
4756 both sworn and unsworn, of claims-handling personnel. Carriers,
4757 third-party administrators, servicing agents, and other claims-
4758 handling entities shall make all claims records, documentation,
4759 communication, and correspondence available to department
4760 personnel during regular business hours. If any person fails to
4761 comply with a department request for production of records or
4762 documents or fails to produce an employee for interview, the
4763 department may compel production or attendance by subpoena. The
4764 results of an audit, examination, or investigation shall be
4765 provided to the carrier, third-party administrator, servicing
4766 agent, or other claims-handling entity in a written report
4767 setting forth the basis for any violations that are asserted.
4768 Such report is agency action for purposes of chapter 120, and
4769 the aggrieved party may request a proceeding under s. 120.57
4770 with regard to the findings and conclusion of the report.

4771 (4) If the department finds that violations of this
4772 chapter have occurred, the department may impose an
4773 administrative penalty upon the offending entity or entities.
4774 For each offending entity, such penalties shall not exceed
4775 \$2,500 for each pattern or practice constituting nonwillful
4776 violation and shall not exceed an aggregate amount of \$10,000



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4777 for all nonwillful violations arising out of the same action. If
4778 the department finds a pattern of practice that constitutes a
4779 willful violation, the department may impose an administrative
4780 penalty upon each offending entity not to exceed \$20,000 for
4781 each willful pattern or practice. Such fines shall not exceed
4782 \$100,000 for all willful violations arising out of the same
4783 action. No penalty assessed under this section may be recouped
4784 by any carrier in the rate base, the premium, or any rate
4785 filing. Any administrative penalty imposed under this section
4786 for a nonwillful violation shall not duplicate an administrative
4787 penalty imposed under another provision of this chapter. The
4788 department may adopt rules to implement this section. The
4789 department shall adopt penalty guidelines by rule to set
4790 penalties under this chapter.

4791 Section 33. Subsection (2) of section 627.162, Florida
4792 Statutes, is amended to read:

4793 627.162 Requirements for premium installments;
4794 delinquency, collection, and check return charges; attorney's
4795 fees.--

4796 (2) Insurers providing workers' compensation coverage
4797 under chapter 440 may charge the insured a delinquency and
4798 collection fee on each installment in default for a period of
4799 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4800 percent of the delinquent installment, whichever is greater.
4801 Only one such delinquency and collection fee may be collected on
4802 any such installment regardless of the period during which it
4803 remains in default.



4804 Section 34. Paragraphs (c) and (d) of subsection (4) of
4805 section 627.311, Florida Statutes, are amended to read

4806 627.311 Joint underwriters and joint reinsurers.--
4807 (4)

4808 (c) The operation of the plan shall be governed by a plan
4809 of operation that is prepared at the direction of the board of
4810 governors. The plan of operation may be changed at any time by
4811 the board of governors or upon request of the department. The
4812 plan of operation and all changes thereto are subject to the
4813 approval of the department. The plan of operation shall:

4814 1. Authorize the board to engage in the activities
4815 necessary to implement this subsection, including, but not
4816 limited to, borrowing money.

4817 2. Develop criteria for eligibility for coverage by the
4818 plan, including, but not limited to, documented rejection by at
4819 least two insurers which reasonably assures that insureds
4820 covered under the plan are unable to acquire coverage in the
4821 voluntary market. Any insured may voluntarily elect to accept
4822 coverage from an insurer for a premium equal to or greater than
4823 the plan premium if the insurer writing the coverage adheres to
4824 the provisions of s. 627.171.

4825 3. Require notice from the agent to the insured at the
4826 time of the application for coverage that the application is for
4827 coverage with the plan and that coverage may be available
4828 through an insurer, group self-insurers' fund, commercial self-
4829 insurance fund, or assessable mutual insurer through another
4830 agent at a lower cost.



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4831 4. Establish programs to encourage insurers to provide
4832 coverage to applicants of the plan in the voluntary market and
4833 to insureds of the plan, including, but not limited to:

4834 a. Establishing procedures for an insurer to use in
4835 notifying the plan of the insurer's desire to provide coverage
4836 to applicants to the plan or existing insureds of the plan and
4837 in describing the types of risks in which the insurer is
4838 interested. The description of the desired risks must be on a
4839 form developed by the plan.

4840 b. Developing forms and procedures that provide an insurer
4841 with the information necessary to determine whether the insurer
4842 wants to write particular applicants to the plan or insureds of
4843 the plan.

4844 c. Developing procedures for notice to the plan and the
4845 applicant to the plan or insured of the plan that an insurer
4846 will insure the applicant or the insured of the plan, and notice
4847 of the cost of the coverage offered; and developing procedures
4848 for the selection of an insuring entity by the applicant or
4849 insured of the plan.

4850 d. Provide for a market-assistance plan to assist in the
4851 placement of employers. All applications for coverage in the
4852 plan received 45 days before the effective date for coverage
4853 shall be processed through the market-assistance plan. A market-
4854 assistance plan specifically designed to serve the needs of
4855 small good policyholders as defined by the board must be
4856 finalized by January 1, 1994.



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4857 5. Provide for policy and claims services to the insureds
4858 of the plan of the nature and quality provided for insureds in
4859 the voluntary market.

4860 6. Provide for the review of applications for coverage
4861 with the plan for reasonableness and accuracy, using any
4862 available historic information regarding the insured.

4863 7. Provide for procedures for auditing insureds of the
4864 plan which are based on reasonable business judgment and are
4865 designed to maximize the likelihood that the plan will collect
4866 the appropriate premiums.

4867 8. Authorize the plan to terminate the coverage of and
4868 refuse future coverage for any insured that submits a fraudulent
4869 application to the plan or provides fraudulent or grossly
4870 erroneous records to the plan or to any service provider of the
4871 plan in conjunction with the activities of the plan.

4872 9. Establish service standards for agents who submit
4873 business to the plan.

4874 10. Establish criteria and procedures to prohibit any
4875 agent who does not adhere to the established service standards
4876 from placing business with the plan or receiving, directly or
4877 indirectly, any commissions for business placed with the plan.

4878 11. Provide for the establishment of reasonable safety
4879 programs for all insureds in the plan. All insureds of the plan
4880 must participate in the safety program.

4881 12. Authorize the plan to terminate the coverage of and
4882 refuse future coverage to any insured who fails to pay premiums
4883 or surcharges when due; who, at the time of application, is
4884 delinquent in payments of workers' compensation or employer's



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4885 liability insurance premiums or surcharges owed to an insurer,
4886 group self-insurers' fund, commercial self-insurance fund, or
4887 assessable mutual insurer licensed to write such coverage in
4888 this state; or who refuses to substantially comply with any
4889 safety programs recommended by the plan.

4890 13. Authorize the board of governors to provide the
4891 services required by the plan through staff employed by the
4892 plan, through reasonably compensated service providers who
4893 contract with the plan to provide services as specified by the
4894 board of governors, or through a combination of employees and
4895 service providers.

4896 14. Provide for service standards for service providers,
4897 methods of determining adherence to those service standards,
4898 incentives and disincentives for service, and procedures for
4899 terminating contracts for service providers that fail to adhere
4900 to service standards.

4901 15. Provide procedures for selecting service providers and
4902 standards for qualification as a service provider that
4903 reasonably assure that any service provider selected will
4904 continue to operate as an ongoing concern and is capable of
4905 providing the specified services in the manner required.

4906 16. Provide for reasonable accounting and data-reporting
4907 practices.

4908 17. Provide for annual review of costs associated with the
4909 administration and servicing of the policies issued by the plan
4910 to determine alternatives by which costs can be reduced.

4911 18. Authorize the acquisition of such excess insurance or
4912 reinsurance as is consistent with the purposes of the plan.



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4913 19. Provide for an annual report to the department on a
4914 date specified by the department and containing such information
4915 as the department reasonably requires.

4916 20. Establish multiple rating plans for various
4917 classifications of risk which reflect risk of loss, hazard
4918 grade, actual losses, size of premium, and compliance with loss
4919 control. At least one of such plans must be a preferred-rating
4920 plan to accommodate small-premium policyholders with good
4921 experience as defined in sub-subparagraph 22.a.

4922 21. Establish agent commission schedules.

4923 22. Establish four ~~three~~ subplans as follows:

4924 a. Subplan "A" must include those insureds whose annual
4925 premium does not exceed \$2,500 and who have neither incurred any
4926 lost-time claims nor incurred medical-only claims exceeding 50
4927 percent of their premium for the immediate 2 years.

4928 b. Subplan "B" must include insureds that are employers
4929 identified by the board of governors as high-risk employers due
4930 solely to the nature of the operations being performed by those
4931 insureds and for whom no market exists in the voluntary market,
4932 and whose experience modifications are less than 1.00.

4933 c. Subplan "C" must include all ~~other~~ insureds within the
4934 plan that are not eligible for subplan "A," subplan "B," or
4935 subplan "D."

4936 d. Subplan "D" must include any employer with 50 or fewer
4937 employees, except that an employer who is eligible for subplan
4938 "D" and another subplan may elect the subplan in which it will
4939 participate. The rate plan for subplan "D" shall be the same
4940 rate plan as the plan approved under ss. 627.091-627.151 and



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4941 each participant in subplan "D" shall pay the premium determined
4942 under such rate plan, plus a surcharge determined by the board
4943 to be sufficient to ensure that the plan does not compete with
4944 the voluntary market rate for any participant, but not to exceed
4945 25 percent.

4946 23. Provide for a depopulation program to reduce the
4947 number of insureds in subplan "D." If an employer insured
4948 through subplan "D" is offered coverage from a voluntary market
4949 carrier:

4950 a. During the first 30 days of coverage under the subplan;

4951 b. Before a policy is issued under the subplan;

4952 c. By issuance of a policy upon expiration or cancellation
4953 of the policy under the subplan; or

4954 d. By assumption of the subplan's obligation with respect
4955 to an in-force policy,

4956
4957 that employer is no longer eligible for coverage through the
4958 plan. The premium for risks assumed by the voluntary market
4959 carrier must be the same premium plus, for the first 2 years,
4960 the surcharge as determined in sub-subparagraph 22.d. A premium
4961 under this subparagraph, including surcharge, is deemed approved
4962 and is not an excess premium for purposes of s. 627.171.

4963 24. Require that policies issued under subplan "D" and
4964 applications for such policies must include a notice that the
4965 policy issued under subplan "D" could be replaced by a policy
4966 issued from a voluntary market carrier and that if an offer of
4967 coverage is obtained from a voluntary market carrier, the
4968 policyholder is no longer eligible for coverage through subplan



4969 "D." The notice must also specify that acceptance of coverage
 4970 under subplan "D" creates a conclusive presumption that the
 4971 applicant or policyholder is aware of this potential. With
 4972 respect to any employer organized as a not-for-profit
 4973 corporation and tax-exempt under s. 501(c)(3) of the Internal
 4974 Revenue Code, the surcharge shall be sufficient to ensure that
 4975 the subplan does not compete with the voluntary market but does
 4976 not exceed 10 percent.

4977 (d)1. The plan must be funded through actuarially sound
 4978 premiums charged to insureds of the plan.

4979 2. The plan may issue assessable policies only to those
 4980 insureds in subplan "C-" and subplan "D." Assessments levied
 4981 against subplan "C" participants shall cover only the excess
 4982 losses attributable to subplan "C," and assessments levied
 4983 against subplan "D" participants shall cover only the excess
 4984 losses attributable to subplan "D." In no event may the plan
 4985 levy assessments against any person or entity except as
 4986 authorized by this paragraph. Those assessable policies must be
 4987 clearly identified as assessable by containing, in contrasting
 4988 color and in not less than 10-point type, the following
 4989 statements: "This is an assessable policy. If the plan is unable
 4990 to pay its obligations, policyholders will be required to
 4991 contribute on a pro rata earned premium basis the money
 4992 necessary to meet any assessment levied."

4993 3. The plan may issue assessable policies with differing
 4994 terms and conditions to different groups within subplan "C" and
 4995 subplan "D" ~~the plan~~ when a reasonable basis exists for the
 4996 differentiation.



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			etc., a blank, forged, or unlawfully obtained title or registration.
5011	327.35(2)(b)	3rd	Felony BUI.
5012	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
5013	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
5014	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
5015	<u>440.105(3)(a)</u>	<u>3rd</u>	<u>Failure to update workers' compensation insurance coverage application or to post notice of coverage.</u>
5016	<u>440.105(3)(b)</u>	<u>3rd</u>	<u>Receipt of fee or consideration without approval by judge of compensation claims.</u>
5017	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers' compensation fraud or retaliation for making such a report.</u>
5018	501.001(2)(b)	2nd	Tampers with a consumer product or the



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			container using materially false/misleading information.
5019	697.08	3rd	Equity skimming.
5020	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
5021	796.05(1)	3rd	Live on earnings of a prostitute.
5022	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
5023	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5024	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5025	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5026	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5027	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
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5029	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
5030	817.233	3rd	Burning to defraud insurer.
5031	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5032	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5033	817.505(4)	3rd	Patient brokering.
5034	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5035	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
5036	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
5037	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
	843.19	3rd	Injure, disable, or kill police dog or horse.



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5038	870.01(2)	3rd	Riot; inciting or encouraging.
5039	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
5040	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of university or public park.
5041	893.13(1)(f)2.	3rd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of public housing facility.
5042	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
5043	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled



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5044	893.13(7)(a)9.	3rd	substance. Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
5045	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
5046	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
5047	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
5048	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
5049	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
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	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
5051	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
5052	944.47(1)(a)1.- 2.	3rd	Introduce contraband to correctional facility.
5053	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
5054	985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
5055			(e) LEVEL 5
5056	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
5057	316.1935(4)	2nd	Aggravated fleeing or eluding.
5058	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5059	327.30(5)	3rd	Vessel accidents involving personal



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5060			injury; leaving scene.
5061	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5062	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5063	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5064	<u>440.381(2)</u>	<u>2nd</u>	<u>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.</u>
5065	790.01(2)	3rd	Carrying a concealed firearm.
5066	790.162	2nd	Threat to throw or discharge destructive device.
5067	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5068	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5069	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.



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5070	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
5071	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5072	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5073	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5074	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
5075	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5076	812.131(2)(b)	3rd	Robbery by sudden snatching.
5077	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5078	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5079	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000



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or more but less than \$100,000.

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817.568(2)(b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.

5081

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

5082

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

5083

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

5084

839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

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843.01 3rd Resist officer with violence to person; resist arrest with violence.

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874.05(2) 2nd Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.



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5087	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
5088	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility or school.
5089	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of university or public park.
5090	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
5091	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine



(or other s. 893.03(1)(a), (1)(b),
(1)(d), or (2)(a), (2)(b), or (2)(c)4.
drugs) within 200 feet of public
housing facility.

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893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) drugs).

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Section 36. Report to the Legislature regarding
outstanding enforcement issues.--The Department of Financial
Services shall, no later than January 1, 2004, provide a report
to the President of the Senate, the Speaker of the House of
Representatives, the minority leaders of the Senate and the
House of Representatives, and the chairs of the standing
committees of the Senate and the House of Representatives having
jurisdiction over insurance issues, containing the following
information:

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5105

(1) Any provision of chapter 440, Florida Statutes,
relating to workers' compensation carrier compliance and
enforcement, that the department finds it is unable to enforce.

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(2) Any administrative rule relating to workers'
compensation carrier compliance and enforcement that the
department finds it is unable to enforce.

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(3) Any other impediment to enforcement of chapter 440,
Florida Statutes, resulting from the transfer of activities from
the former Department of Labor and Employment Security to the



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5112 department or the reorganization of the former Department of
5113 Insurance into the department.

5114 Section 37. Subsection (2) of section 946.523, Florida
5115 Statutes, is amended to read:

5116 946.523 Prison industry enhancement (PIE) programs.--

5117 (2) Notwithstanding any other law to the contrary,
5118 including s. 440.15(8)~~(9)~~, private sector employers shall
5119 provide workers' compensation coverage to inmates who
5120 participate in prison industry enhancement (PIE) programs under
5121 subsection (1). However, inmates are not entitled to
5122 unemployment compensation.

5123 Section 38. Paragraph (c) of subsection (5) of section
5124 985.315, Florida Statutes, is amended to read:

5125 985.315 Educational/technical and vocational work-related
5126 programs.--

5127 (5)

5128 (c) Notwithstanding any other law to the contrary,
5129 including s. 440.15(8)~~(9)~~, private sector employers shall
5130 provide juveniles participating in juvenile work programs under
5131 paragraph (b) with workers' compensation coverage, and juveniles
5132 shall be entitled to the benefits of such coverage. Nothing in
5133 this subsection shall be construed to allow juveniles to
5134 participate in unemployment compensation benefits.

5135 Section 39. Section 440.1925, Florida Statutes, is
5136 repealed.

5137 Section 40. Except as otherwise provided herein, this act
5138 shall take effect October 1, 2003.