



1                                   A bill to be entitled  
2           An act relating to workers' compensation; amending s.  
3           440.02, F.S.; providing, revising, and deleting  
4           definitions; amending s. 440.05, F.S.; revising  
5           authorization to claim exemptions and requirements  
6           relating to submitting notice of election of exemption;  
7           specifying effect of exemption; amending s. 440.06, F.S.;  
8           revising provisions relating to failure to secure  
9           compensation; amending s. 440.077, F.S.; providing that a  
10          corporate officer electing to be exempt may not receive  
11          benefits; amending s. 440.09, F.S.; revising provisions  
12          relating to compensation for subsequent injuries;  
13          providing definitions; revising provisions relating to  
14          drug testing; specifying effect of criminal acts; creating  
15          s. 440.093, F.S.; providing for compensability of mental  
16          and nervous injuries; amending s. 440.10, F.S.; revising  
17          provisions relating to contractors and subcontractors with  
18          regard to liability for compensation; requiring  
19          subcontractors to provide evidence of workers'  
20          compensation coverage or proof of exemption to a  
21          contractor; deleting provisions relating to independent  
22          contractors; amending s. 440.1025, F.S.; revising  
23          requirements relating to workplace safety programs;  
24          amending s. 440.103, F.S.; providing conditions for  
25          applying for building permits; amending s. 440.105, F.S.;  
26          increasing criminal penalties for certain violations;  
27          providing sanctions for violation of stop-work orders and  
28          presentation of certain false or misleading statements as



29 evidence; amending s. 440.1051, F.S.; increasing criminal  
30 penalty for false reports; amending s. 440.107, F.S.;  
31 providing additional powers to the Department of Financial  
32 Services relating to compliance and enforcement; providing  
33 a definition; providing penalties; amending s. 440.11,  
34 F.S.; providing exclusiveness of liability; revising  
35 provisions relating to employer and safety consultant  
36 immunity from liability; amending s. 440.13, F.S.;  
37 providing for practice parameters and treatment protocols;  
38 revising provisions relating to provider reimbursement;  
39 requiring revision of specified reimbursement schedules;  
40 providing for release of information; providing additional  
41 criteria for independent medical examinations; providing a  
42 definition; providing standards for medical care under ch.  
43 440, F.S.; providing penalties; amending s. 440.134, F.S.;  
44 revising provisions relating to managed care arrangements;  
45 revising definitions; providing for assignment of a  
46 medical care coordinator; amending s. 440.14, F.S.;  
47 revising provisions relating to calculation of average  
48 weekly wage for injured employees; conforming cross  
49 references; amending s. 440.15, F.S.; providing additional  
50 limitations on compensation for permanent total  
51 disability; providing a definition; specifying impairment  
52 benefits and providing for partial reduction under certain  
53 circumstances; deleting provisions relating to  
54 supplemental benefits; amending s. 440.151, F.S.;  
55 specifying compensability of occupational disease;  
56 providing a definition; amending s. 440.16, F.S.;



57 increasing the limits on the amount of certain benefits  
58 paid as compensation for death; amending s. 440.185, F.S.;  
59 specifying duty of employer upon receipt of notice of  
60 injury or death; increasing penalties for noncompliance;  
61 amending s. 440.192, F.S.; revising procedure for  
62 resolving benefit disputes; requiring a petition for  
63 benefits to include all claims which are ripe, due, and  
64 owing; providing that the Chief Judge, rather than the  
65 Deputy Chief Judge, shall refer petitions for benefits;  
66 creating s. 440.1926, F.S.; providing for alternative  
67 dispute resolution and arbitration of claims; amending s.  
68 440.20, F.S.; revising provisions relating to timely  
69 payment of compensation and medical bills and penalties  
70 for late payment; amending s. 440.25, F.S.; revising  
71 procedures for mediation and hearings; amending s. 440.34,  
72 F.S.; revising provisions relating to the award of  
73 attorney's fees; amending s. 440.38, F.S.; providing  
74 requirement for employers with coverage provided by  
75 insurers from outside the state; amending s. 440.381,  
76 F.S.; providing criminal penalty for unlawful  
77 applications; requiring on-site audits of employers under  
78 certain circumstances; amending s. 440.42, F.S.; revising  
79 provision relating to notice of cancellation of coverage;  
80 amending ss. 440.49 and 440.491, F.S., to conform cross  
81 references; amending s. 440.525, F.S.; providing for  
82 audits, examinations, and investigations of claims-handling  
83 entities; providing penalties; providing for rules;  
84 amending s. 627.162, F.S.; revising delinquency and



85 collection fee for late payment of premium installments;  
86 amending s. 627.311, F.S.; requiring participation in  
87 safety programs; providing for an additional subplan  
88 within the joint underwriting plan for workers'  
89 compensation insurance; providing for rates, surcharges,  
90 and assessments; limiting assessment powers; amending s.  
91 921.0022, F.S.; revising the offense severity ranking  
92 chart to reflect changes in penalties under the act;  
93 requiring a report to the Legislature from the Department  
94 of Financial Services regarding provisions of law relating  
95 to enforcement; amending ss. 946.523 and 985.315, F.S.,  
96 to conform cross references; repealing s. 440.1925, F.S.,  
97 relating to procedure for resolving maximum medical  
98 improvement or permanent impairment disputes; providing  
99 effective dates.

100  
101 Be It Enacted by the Legislature of the State of Florida:

102  
103 Section 1. Effective upon this act becoming a law,  
104 Subsections (1), (15), (29), (38), (40), (41), and (42) of  
105 section 440.02, Florida Statutes, are amended to read:

106 440.02 Definitions.-- When used in this chapter, unless  
107 the context clearly requires otherwise, the following terms  
108 shall have the following meanings:

109 (1) "Accident" means only an unexpected or unusual event  
110 or result that happens suddenly. ~~A mental or nervous injury due~~  
111 ~~to stress, fright, or excitement only, or~~ Disability or death  
112 due to the accidental acceleration or aggravation of a venereal



113 disease or of a disease due to the habitual use of alcohol or  
114 controlled substances or narcotic drugs, or a disease that  
115 manifests itself in the fear of or dislike for an individual  
116 because of the individual's race, color, religion, sex, national  
117 origin, age, or handicap is not an injury by accident arising  
118 out of the employment. Subject to s. 440.15(5), if a preexisting  
119 disease or anomaly is accelerated or aggravated by an accident  
120 arising out of and in the course of employment, only  
121 acceleration of death or acceleration or aggravation of the  
122 preexisting condition reasonably attributable to the accident is  
123 compensable, with respect to any compensation otherwise payable  
124 under this chapter death or permanent impairment. An injury or  
125 disease caused by exposure to a toxic substance, including, but  
126 not limited to, fungus or mold, is not an injury by accident  
127 arising out of the employment unless there is clear and  
128 convincing evidence establishing that exposure to the specific  
129 substance involved, at the levels to which the employee was  
130 exposed, can cause the injury or disease sustained by the  
131 employee.

132 (15)(a) "Employee" means any person engaged in any  
133 employment under any appointment or contract of hire or  
134 apprenticeship, express or implied, oral or written, whether  
135 lawfully or unlawfully employed, and includes, but is not  
136 limited to, aliens and minors.

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



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

144 2. As to officers of a corporation who are actively  
145 engaged in the construction industry, no more than three  
146 officers may elect to be exempt from this chapter by filing  
147 written notice of the election with the department as provided  
148 in s. 440.05. ~~However, any exemption obtained by a corporate~~  
149 ~~officer of a corporation actively engaged in the construction~~  
150 ~~industry is not applicable with respect to any commercial~~  
151 ~~building project estimated to be valued at \$250,000 or greater.~~

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

155

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

159 (c)~~1~~. "Employee" includes a sole proprietor or a partner  
160 who devotes full time to the proprietorship or partnership and,  
161 except as provided in this paragraph, elects to be included in  
162 the definition of employee by filing notice thereof as provided  
163 in s. 440.05. Partners or sole proprietors actively engaged in  
164 the construction industry are considered employees unless they  
165 elect to be excluded from the definition of employee by filing  
166 written notice of the election with the department as provided  
167 in s. 440.05. However, no more than three partners in a  
168 partnership that is actively engaged in the construction



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

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

182 (d) "Employee" does not include:

183 1. An independent contractor, if:

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

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

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



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

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

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

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

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

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

212  
213 However, the determination as to whether an individual included  
214 in the Standard Industrial Classification Manual of 1987,  
215 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,  
216 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,  
217 or a newspaper delivery person, is an independent contractor is  
218 governed not by the criteria in this paragraph but by common-law  
219 principles, giving due consideration to the business activity of  
220 the individual. ~~Notwithstanding the provisions of this paragraph  
221 or any other provision of this chapter, with respect to any  
222 commercial building project estimated to be valued at \$250,000~~





223 ~~or greater, a person who is actively engaged in the construction~~  
224 ~~industry is not an independent contractor and is either an~~  
225 ~~employer or an employee who may not be exempt from the coverage~~  
226 ~~requirements of this chapter.~~

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

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

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

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

248 6. A volunteer, except a volunteer worker for the state or  
249 a county, municipality, or other governmental entity. A person  
250 who does not receive monetary remuneration for services is



251 presumed to be a volunteer unless there is substantial evidence  
252 that a valuable consideration was intended by both employer and  
253 employee. For purposes of this chapter, the term "volunteer"  
254 includes, but is not limited to:

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

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

266 7. Any officer of a corporation who elects to be exempt  
267 from this chapter.

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

275 9. An exercise rider who does not work for a single horse  
276 farm or breeder, and who is compensated for riding on a case-by-  
277 case basis, provided a written contract is entered into prior to



278 the commencement of such activity which evidences that an  
279 employee/employer relationship does not exist.

280 10. A taxicab, limousine, or other passenger vehicle-for-  
281 hire driver who operates said vehicles pursuant to a written  
282 agreement with a company which provides any dispatch, marketing,  
283 insurance, communications, or other services under which the  
284 driver and any fees or charges paid by the driver to the company  
285 for such services are not conditioned upon, or expressed as a  
286 proportion of, fare revenues.

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

300 (29) "Weekly compensation rate" means and refers to the  
301 amount of compensation payable for a period of 7 consecutive  
302 calendar days, including any Saturdays, Sundays, holidays, and  
303 other nonworking days which fall within such period of 7  
304 consecutive calendar days. When Saturdays, Sundays, holidays, or  
305 other nonworking days follow the first 7 calendar days of



306 disability or occur at the end of a period of disability as the  
307 last day or days of such period, such nonworking days constitute  
308 a part of the period of disability with respect to which  
309 compensation is payable.

310 (38) "Catastrophic injury" means a permanent impairment  
311 constituted by the loss of both hands, both arms, both feet,  
312 both legs, or both eyes, or any two thereof, or paraplegia or  
313 quadriplegia.÷

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

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

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

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

320 ~~2. Severe communication disturbances;~~

321 ~~3. Severe complex integrated disturbances of cerebral~~  
322 ~~function;~~

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

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

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

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

331 ~~(f) Any other injury that would otherwise qualify under~~  
332 ~~this chapter of a nature and severity that would qualify an~~  
333 ~~employee to receive disability income benefits under Title II or~~



334 ~~supplemental security income benefits under Title XVI of the~~  
335 ~~federal Social Security Act as the Social Security Act existed~~  
336 ~~on July 1, 1992, without regard to any time limitations provided~~  
337 ~~under that act.~~

338 (40) "Statement," for the purposes of ss. 440.105 and  
339 440.106, shall include the exact fraud statement language in s.  
340 440.105(7). This requirement includes, but is not limited to,  
341 any notice, representation, statement, proof of injury, bill for  
342 services, diagnosis, prescription, hospital or doctor record, X  
343 ray, test result, or other evidence of loss, injury, or expense.

344 (41) "Specificity" means information on the petition for  
345 benefits sufficient to put the employer or carrier on notice of  
346 the exact statutory classification and outstanding time period  
347 of benefits being requested and includes a detailed explanation  
348 of any benefits received that should be increased, decreased,  
349 changed, or otherwise modified. If the petition is for medical  
350 benefits, the information shall include specific details as to  
351 why such benefits are being requested, why such benefits are  
352 medically necessary, and why current treatment, if any, is not  
353 sufficient. Any petition requesting alternate or other medical  
354 care, including, but not limited to, petitions requesting  
355 psychiatric or psychological treatment, must specifically  
356 identify the physician, as defined in s. 440.13(1), that is  
357 recommending such treatment. A copy of a report from such  
358 physician making the recommendation for alternate or other  
359 medical care shall also be attached to the petition. A judge of  
360 compensation claims shall not order such treatment if a  
361 physician is not recommending such treatment. ~~"Commercial~~



362 ~~building" means any building or structure intended for~~  
363 ~~commercial or industrial use, or any building or structure~~  
364 ~~intended for multifamily use of more than four dwelling units,~~  
365 ~~as well as any accessory use structures constructed in~~  
366 ~~conjunction with the principal structure. The term, "commercial~~  
367 ~~building," does not include the conversion of any existing~~  
368 ~~residential building to a commercial building.~~

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

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

376 440.02 Definitions.--When used in this chapter, unless the  
377 context clearly requires otherwise, the following terms shall  
378 have the following meanings:

379 (8) "Construction industry" means for-profit activities  
380 involving ~~the carrying out of~~ any building, clearing, filling,  
381 excavation, or substantial improvement in the size or use of any  
382 structure or the appearance of any land. ~~When appropriate to the~~  
383 ~~context, "construction" refers to the act of construction or the~~  
384 ~~result of construction.~~ However, "construction" does ~~shall~~ not  
385 mean a homeowner's ~~landowner's~~ act of construction or the result  
386 of a construction upon his or her own premises, provided such  
387 premises are not intended to be sold, ~~or~~ resold, or leased by  
388 the owner within 1 year after the commencement of construction.  
389 The division may, by rule, establish standard industrial



390 classification codes and definitions thereof which meet the  
391 criteria of the term "construction industry" as set forth in  
392 this section.

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

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

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

406 2. As to officers of a corporation who are ~~actively~~  
407 engaged in the construction industry, no more than three  
408 officers of a corporation or of any group of affiliated  
409 corporations may elect to be exempt from this chapter by filing  
410 written notice of the election with the department as provided  
411 in s. 440.05. Officers must be shareholders, each owning at  
412 least 10 percent of the stock of such corporation and listed as  
413 an officer of such corporation with the Division of Corporations  
414 of the Department of State, in order to elect exemptions under  
415 this chapter. For purposes of this subparagraph, the term  
416 "affiliated" means and includes one or more corporations or  
417 entities, any one of which is a corporation engaged in the



418 construction industry, under the same or substantially the same  
419 control of a group of business entities which are connected or  
420 associated so that one entity controls or has the power to  
421 control each of the other business entities. The term  
422 "affiliated" includes, but is not limited to, the officers,  
423 directors, executives, shareholders active in management,  
424 employees, and agents of the affiliated corporation. The  
425 ownership by one business entity of a controlling interest in  
426 another business entity or a pooling of equipment or income  
427 among business entities shall be prima facie evidence that one  
428 business is affiliated with the other.

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

432

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

436         (c) "Employee" includes:

437         1. A sole proprietor or a partner who is not engaged in  
438 the construction industry, devotes full time to the  
439 proprietorship or partnership, ~~and, except as provided in this~~  
440 ~~paragraph,~~ elects to be included in the definition of employee  
441 by filing notice thereof as provided in s. 440.05. ~~Partners or~~  
442 ~~sole proprietors actively engaged in the construction industry~~  
443 ~~are considered employees unless they elect to be excluded from~~  
444 ~~the definition of employee by filing written notice of the~~  
445 ~~election with the department as provided in s. 440.05. However,~~





446 ~~no more than three partners in a partnership that is actively~~  
447 ~~engaged in the construction industry may elect to be excluded. A~~  
448 ~~sole proprietor or partner who is actively engaged in the~~  
449 ~~construction industry and who elects to be exempt from this~~  
450 ~~chapter by filing a written notice of the election with the~~  
451 ~~department as provided in s. 440.05 is not an employee. For~~  
452 ~~purposes of this chapter, an independent contractor is an~~  
453 ~~employee unless he or she meets all of the conditions set forth~~  
454 ~~in subparagraph (d)1.~~

455 2. All persons who are being paid by a construction  
456 contractor as a subcontractor, unless the subcontractor has  
457 validly elected an exemption as permitted by this chapter, or  
458 has otherwise secured the payment of compensation coverage as a  
459 subcontractor, consistent with s. 440.10, for work performed by  
460 or as a subcontractor.

461 3. An independent contractor working or performing  
462 services in the construction industry.

463 4. A sole proprietor who engages in the construction  
464 industry and a partner or partnership that is engaged in the  
465 construction industry.

466 (d) "Employee" does not include:

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

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

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



474       (II) The independent contractor holds or has applied for a  
475 federal employer identification number, unless the independent  
476 contractor is a sole proprietor who is not required to obtain a  
477 federal employer identification number under state or federal  
478 regulations;

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

482       (IV) The independent contractor holds one or more bank  
483 accounts in the name of the business entity for purposes of  
484 paying business expenses or other expenses related to services  
485 rendered or work performed for compensation;

486       (V) The independent contractor performs work or is able to  
487 perform work for any entity in addition to or besides the  
488 employer at his or her own election without the necessity of  
489 completing an employment application or process; or

490       (VI) The independent contractor receives compensation for  
491 work or services rendered on a competitive-bid basis or  
492 completion of a task or a set of tasks as defined by a  
493 contractual agreement, unless such contractual agreement  
494 expressly states that an employment relationship exists. The  
495 independent contractor maintains a separate business with his or  
496 her own work facility, truck, equipment, materials, or similar  
497 accommodations;

498       b. If four of the criteria listed in sub-subparagraph a.  
499 do not exist, an individual may still be presumed to be an  
500 independent contractor and not an employee based on full



501 consideration of the nature of the individual situation with  
502 regard to satisfying any of the following conditions:

503 (I) The independent contractor performs or agrees to  
504 perform specific services or work for a specific amount of money  
505 and controls the means of performing the services or work.

506 (II) The independent contractor incurs the principal  
507 expenses related to the service or work that he or she performs  
508 or agrees to perform.

509 (III) The independent contractor is responsible for the  
510 satisfactory completion of the work or services that he or she  
511 performs or agrees to perform.

512 (IV) The independent contractor receives compensation for  
513 work or services performed for a commission or on a per-job  
514 basis and not on any other basis.

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

517 (VI) The independent contractor has continuing or  
518 recurring business liabilities or obligations.

519 (VII) The success or failure of the independent  
520 contractor's business depends on the relationship of business  
521 receipts to expenditures. ~~The independent contractor holds or~~  
522 ~~has applied for a federal employer identification number, unless~~  
523 ~~the independent contractor is a sole proprietor who is not~~  
524 ~~required to obtain a federal employer identification number~~  
525 ~~under state or federal requirements;~~

526 c. Notwithstanding anything to the contrary in this  
527 subparagraph, an individual claiming to be an independent  
528 contractor has the burden of proving that he or she is an



529 independent contractor for purposes of this chapter. The  
530 ~~independent contractor performs or agrees to perform specific~~  
531 ~~services or work for specific amounts of money and controls the~~  
532 ~~means of performing the services or work;~~  
533 ~~d.— The independent contractor incurs the principal~~  
534 ~~expenses related to the service or work that he or she performs~~  
535 ~~or agrees to perform;~~  
536 ~~e.— The independent contractor is responsible for the~~  
537 ~~satisfactory completion of work or services that he or she~~  
538 ~~performs or agrees to perform and is or could be held liable for~~  
539 ~~a failure to complete the work or services;~~  
540 ~~f.— The independent contractor receives compensation for~~  
541 ~~work or services performed for a commission or on a per-job or~~  
542 ~~competitive-bid basis and not on any other basis;~~  
543 ~~g.— The independent contractor may realize a profit or~~  
544 ~~suffer a loss in connection with performing work or services;~~  
545 ~~h.— The independent contractor has continuing or recurring~~  
546 ~~business liabilities or obligations; and~~  
547 ~~i.— The success or failure of the independent contractor's~~  
548 ~~business depends on the relationship of business receipts to~~  
549 ~~expenditures.~~  
550  
551 ~~However, the determination as to whether an individual included~~  
552 ~~in the Standard Industrial Classification Manual of 1987,~~  
553 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~  
554 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~  
555 ~~or a newspaper delivery person, is an independent contractor is~~  
556 ~~governed not by the criteria in this paragraph but by common law~~



557 ~~principles, giving due consideration to the business activity of~~  
558 ~~the individual.~~

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

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

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

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

580 6. A volunteer, except a volunteer worker for the state or  
581 a county, municipality, or other governmental entity. A person  
582 who does not receive monetary remuneration for services is  
583 presumed to be a volunteer unless there is substantial evidence  
584 that a valuable consideration was intended by both employer and



585 employee. For purposes of this chapter, the term "volunteer"  
586 includes, but is not limited to:

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

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

598 7. Unless otherwise prohibited by this chapter, any  
599 officer of a corporation who elects to be exempt from this  
600 chapter. Such officer is not an employee for any reason under  
601 this chapter until the notice of revocation of election filed  
602 pursuant to s. 440.05 is effective.

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

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



613 case basis, provided a written contract is entered into prior to  
614 the commencement of such activity which evidences that an  
615 employee/employer relationship does not exist.

616 10. A taxicab, limousine, or other passenger vehicle-for-  
617 hire driver who operates said vehicles pursuant to a written  
618 agreement with a company which provides any dispatch, marketing,  
619 insurance, communications, or other services under which the  
620 driver and any fees or charges paid by the driver to the company  
621 for such services are not conditioned upon, or expressed as a  
622 proportion of, fare revenues.

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

636 12. Medicaid-enrolled clients under chapter 393 who are  
637 excluded from the definition of employment under s.  
638 443.036(21)(d)5. and served by Adult Day Training Services under  
639 the Home and Community-Based Medicaid Waiver program in a  
640 sheltered workshop setting licensed by the United States



641 Department of Labor for the purpose of training and earning less  
642 than the federal hourly minimum wage.

643 (16)(a) "Employer" means the state and all political  
644 subdivisions thereof, all public and quasi-public corporations  
645 therein, every person carrying on any employment, and the legal  
646 representative of a deceased person or the receiver or trustees  
647 of any person. "Employer" also includes employment agencies,  
648 employee leasing companies, and similar agents who provide  
649 employees to other persons. If the employer is a corporation,  
650 parties in actual control of the corporation, including, but not  
651 limited to, the president, officers who exercise broad corporate  
652 powers, directors, and all shareholders who directly or  
653 indirectly own a controlling interest in the corporation, are  
654 considered the employer for the purposes of ss. 440.105, ~~and~~  
655 440.106, and 440.107.

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

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

666 Section 3. Effective January 1, 2004, subsections (3),  
667 (4), (6), (10), (11), and (12) of section 440.05, Florida  
668 Statutes, are amended, present subsection (13) is renumbered as





669 subsection (11) and amended, and new subsections (12), (13), and  
670 (14) are added to said section, to read:

671 440.05 Election of exemption; revocation of election;  
672 notice; certification.--

673 (3) Each ~~sole proprietor, partner, or~~ officer of a  
674 corporation who is ~~actively~~ engaged in the construction industry  
675 and who elects an exemption from this chapter or who, after  
676 electing such exemption, revokes that exemption, must mail a  
677 written notice to such effect to the department on a form  
678 prescribed by the department. The notice of election to be  
679 exempt from the provisions of this chapter must be notarized and  
680 under oath. The notice of election to be exempt which is  
681 submitted to the department by the ~~sole proprietor, partner, or~~  
682 officer of a corporation who is allowed to claim an exemption as  
683 provided by this chapter must list the name, federal tax  
684 identification number, social security number, all certified or  
685 registered licenses issued pursuant to chapter 489 held by the  
686 person seeking the exemption, a copy of relevant documentation  
687 as to employment status filed with the Internal Revenue Service  
688 as specified by the department, a copy of the relevant  
689 occupational license in the primary jurisdiction of the  
690 business, and, ~~for corporate officers and partners,~~ the  
691 registration number of the corporation ~~or partnership~~ filed with  
692 the Division of Corporations of the Department of State along  
693 with a copy of the stock certificate evidencing the required  
694 ownership under this chapter. The notice of election to be  
695 exempt must identify each ~~sole proprietorship, partnership, or~~  
696 corporation that employs the person electing the exemption and



697 must list the social security number or federal tax  
698 identification number of each such employer and the additional  
699 documentation required by this section. In addition, the notice  
700 of election to be exempt must provide that the ~~sole proprietor,~~  
701 ~~partner,~~ or officer electing an exemption is not entitled to  
702 benefits under this chapter, must provide that the election does  
703 not exceed exemption limits for officers ~~and partnerships~~  
704 provided in s. 440.02, and must certify that any employees of  
705 the corporation whose ~~sole proprietor, partner, or officer~~  
706 elects ~~electing~~ an exemption are covered by workers'  
707 compensation insurance. Upon receipt of the notice of the  
708 election to be exempt, receipt of all application fees, and a  
709 determination by the department that the notice meets the  
710 requirements of this subsection, the department shall issue a  
711 certification of the election to the ~~sole proprietor, partner,~~  
712 ~~or~~ officer, unless the department determines that the  
713 information contained in the notice is invalid. The department  
714 shall revoke a certificate of election to be exempt from  
715 coverage upon a determination by the department that the person  
716 does not meet the requirements for exemption or that the  
717 information contained in the notice of election to be exempt is  
718 invalid. The certificate of election must list the name ~~names~~ of  
719 the ~~sole proprietorship, partnership, or~~ corporation listed in  
720 the request for exemption. A new certificate of election must be  
721 obtained each time the person is employed by a new ~~sole~~  
722 ~~proprietorship, partnership,~~ or different corporation that is  
723 not listed on the certificate of election. A copy of the  
724 certificate of election must be sent to each workers'



725 compensation carrier identified in the request for exemption.  
726 Upon filing a notice of revocation of election, an a sole  
727 ~~proprietor, partner, or~~ officer who is a subcontractor or an  
728 officer of a corporate subcontractor must notify her or his  
729 contractor. Upon revocation of a certificate of election of  
730 exemption by the department, the department shall notify the  
731 workers' compensation carriers identified in the request for  
732 exemption.

733 (4) The notice of election to be exempt from the  
734 provisions of this chapter must contain a notice that clearly  
735 states in substance the following: "Any person who, knowingly  
736 and with intent to injure, defraud, or deceive the department or  
737 any employer or employee, insurance company, or any other person  
738 ~~purposes program~~, files a notice of election to be exempt  
739 containing any false or misleading information is guilty of a  
740 felony of the third degree." Each person filing a notice of  
741 election to be exempt shall personally sign the notice and  
742 attest that he or she has reviewed, understands, and  
743 acknowledges the foregoing notice.

744 (6) A construction industry certificate of election to be  
745 exempt which is issued in accordance with this section shall be  
746 valid for 2 years after the effective date stated thereon. Both  
747 the effective date and the expiration date must be listed on the  
748 face of the certificate by the department. The construction  
749 industry certificate must expire at midnight, 2 years from its  
750 issue date, as noted on the face of the exemption certificate.  
751 Any person who has received from the division a construction  
752 industry certificate of election to be exempt which is in effect



753 on December 31, 1998, shall file a new notice of election to be  
754 exempt by the last day in his or her birth month following  
755 December 1, 1998. A construction industry certificate of  
756 election to be exempt may be revoked before its expiration by  
757 the ~~sole proprietor, partner, or~~ officer for whom it was issued  
758 or by the department for the reasons stated in this section. At  
759 least 60 days prior to the expiration date of a construction  
760 industry certificate of exemption issued after December 1, 1998,  
761 the department shall send notice of the expiration date and an  
762 application for renewal to the certificateholder at the address  
763 on the certificate.

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

773 ~~(11) Any sole proprietor or partner actively engaged in~~  
774 ~~the construction industry claiming an exemption under this~~  
775 ~~section shall maintain a copy of his or her federal income tax~~  
776 ~~records for each of the immediately previous 3 years in which he~~  
777 ~~or she claims an exemption. Such federal income tax records must~~  
778 ~~include a complete copy of the following for each year in which~~  
779 ~~an exemption is claimed:~~



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

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

785

786 ~~A sole proprietor or partner shall produce, upon request by the~~  
787 ~~division, a copy of those documents together with a statement by~~  
788 ~~the sole proprietor or partner that the tax records provided are~~  
789 ~~true and accurate copies of what the sole proprietor or partner~~  
790 ~~has filed with the federal Internal Revenue Service. The~~  
791 ~~statement must be signed under oath by the sole proprietor or~~  
792 ~~partner and must be notarized. The division shall issue a stop-~~  
793 ~~work order under s. 440.107(5) to any sole proprietor or partner~~  
794 ~~who fails or refuses to produce a copy of the tax records and~~  
795 ~~affidavit required under this paragraph to the division within 3~~  
796 ~~business days after the request is made.~~

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



808        ~~(11)(13)~~ Any corporate officer permitted by this chapter  
809 to claim ~~claiming~~ an exemption ~~under this section~~ must be listed  
810 on the records of this state's Secretary of State, Division of  
811 Corporations, as a corporate officer. ~~If the person who claims~~  
812 ~~an exemption as a corporate officer is not so listed on the~~  
813 ~~records of the Secretary of State, the individual must provide~~  
814 ~~to the division, upon request by the division, a notarized~~  
815 ~~affidavit stating that the individual is a bona fide officer of~~  
816 ~~the corporation and stating the date his or her appointment or~~  
817 ~~election as a corporate officer became or will become effective.~~  
818 ~~The statement must be signed under oath by both the officer and~~  
819 ~~the president or chief operating officer of the corporation and~~  
820 ~~must be notarized.~~ The division shall issue a stop-work order  
821 under s. 440.107(1) to any corporation who employs a person who  
822 claims to be exempt as a corporate officer but who fails or  
823 refuses to produce the documents required under this subsection  
824 to the division within 3 business days after the request is  
825 made.

826        (12) Certificates of election to be exempt issued under  
827 subsection (3) shall apply only to the corporate officer named  
828 on the notice of election to be exempt and apply only within the  
829 scope of the business or trade listed on the notice of election  
830 to be exempt.

831        (13) Notices of election to be exempt and certificates of  
832 election to be exempt shall be subject to revocation if, at any  
833 time after the filing of the notice or the issuance of the  
834 certificate, the person named on the notice or certificate no  
835 longer meets the requirements of this section for issuance of a



836 certificate. The department shall revoke a certificate at any  
 837 time for failure of the person named on the certificate to meet  
 838 the requirements of this section.

839 (14) An officer of a corporation who elects exemption from  
 840 this chapter by filing a certificate of election under this  
 841 section may not recover benefits or compensation under this  
 842 chapter. For purposes of determining the appropriate premium for  
 843 workers' compensation coverage, carriers may not consider any  
 844 officer of a corporation who validly meets the requirements of  
 845 this section to be an employee.

846 Section 4. Section 440.06, Florida Statutes, is amended to  
 847 read:

848 440.06 Failure to secure compensation; effect.--Every  
 849 employer who fails to secure the payment of compensation, as  
 850 provided in s. 440.10, by failing to meet the requirements of  
 851 ~~under this chapter as provided in s. 440.38~~ may not, in any suit  
 852 brought against him or her by an employee subject to this  
 853 chapter to recover damages for injury or death, defend such a  
 854 suit on the grounds that the injury was caused by the negligence  
 855 of a fellow servant, that the employee assumed the risk of his  
 856 or her employment, or that the injury was due to the comparative  
 857 negligence of the employee.

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

860 440.077 When a corporate sole proprietor, partner, or  
 861 ~~officer~~ rejects chapter, effect.--~~An A sole proprietor, partner,~~  
 862 ~~or~~ officer of a corporation who is permitted to elect an  
 863 exemption under this chapter actively engaged in the



864 ~~construction industry~~ and who elects to be exempt from the  
865 provisions of this chapter may not recover benefits under this  
866 chapter.

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

870 440.09 Coverage.--

871 (1) The employer must ~~shall~~ pay compensation or furnish  
872 benefits required by this chapter if the employee suffers an  
873 accidental compensable injury or death arising out of work  
874 performed in the course and the scope of employment. The injury,  
875 its occupational cause, and any resulting manifestations or  
876 disability must ~~shall~~ be established to a reasonable degree of  
877 medical certainty, based on and by objective relevant medical  
878 findings, and the accidental compensable injury must be the  
879 major contributing cause of any resulting injuries. For purposes  
880 of this section, "major contributing cause" means the cause  
881 which is more than 50 percent responsible for the injury as  
882 compared to all other causes combined for which treatment or  
883 benefits are sought. In cases involving occupational disease or  
884 repetitive exposure, both causation and sufficient exposure to  
885 support causation must be proven by clear and convincing  
886 evidence. Pain or other subjective complaints alone, in the  
887 absence of objective relevant medical findings, are not  
888 compensable. For purposes of this section, "objective relevant  
889 medical findings" are those objective findings that correlate to  
890 the subjective complaints of the injured employee and are  
891 confirmed by physical examination findings or diagnostic





892 testing. Establishment of the causal relationship between a  
893 compensable accident and injuries for conditions that are not  
894 readily observable must be by medical evidence only, as  
895 demonstrated by physical examination findings or diagnostic  
896 testing. Major contributing cause must be demonstrated by  
897 medical evidence only. ~~Mental or nervous injuries occurring as a~~  
898 ~~manifestation of an injury compensable under this section shall~~  
899 ~~be demonstrated by clear and convincing evidence.~~

900 (a) This chapter does not require any compensation or  
901 benefits for any subsequent injury the employee suffers as a  
902 result of an original injury arising out of and in the course of  
903 employment unless the original injury is the major contributing  
904 cause of the subsequent injury. Major contributing cause must be  
905 demonstrated by medical evidence only.

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

916 (c) Death resulting from an operation by a surgeon  
917 furnished by the employer for the cure of hernia as required in  
918 s. 440.15(6)[F.S. 1981] shall for the purpose of this chapter be



919 considered to be a death resulting from the accident causing the  
920 hernia.

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

930 (4)(a) An employee shall not be entitled to compensation or  
931 benefits under this chapter if any judge of compensation claims,  
932 administrative law judge, court, or jury convened in this state  
933 determines that the employee has knowingly or intentionally  
934 engaged in any of the acts described in s. 440.105 or any  
935 criminal act for the purpose of securing workers' compensation  
936 benefits. For purposes of this section, the term "intentional"  
937 shall include, but is not limited to, pleas of guilty or nolo  
938 contendere in criminal matters. This section shall apply to  
939 accidents, regardless of the date of the accident. For injuries  
940 occurring prior to January 1, 1994, this section shall pertain  
941 to the acts of the employee described in s. 440.105 or criminal  
942 activities occurring subsequent to January 1, 1994.

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



947        (c) Upon the denial of benefits in accordance with this  
948 section, a judge of compensation claims shall have the  
949 jurisdiction to order any benefits payable to the employee to be  
950 paid into the court registry or an escrow account during the  
951 pendency of an appeal or until such time as the time in which to  
952 file an appeal has expired.

953        (7)

954        (e) As a part of rebutting any presumptions under  
955 paragraph (b), the injured worker must prove the actual  
956 quantitative amounts of the drug or its metabolites as measured  
957 on the initial and confirmation post-accident drug tests of the  
958 injured worker's urine sample and provide additional evidence  
959 regarding the absence of drug influence other than the worker's  
960 denial of being under the influence of a drug. No drug test  
961 conducted on a urine sample shall be rejected as to its results  
962 or the presumption imposed under paragraph (b) on the basis of  
963 the urine being bodily fluid tested.

964        Section 7. Section 440.093, Florida Statutes, is created  
965 to read:

966        440.093 Mental and nervous injuries.--

967        (1) A mental or nervous injury due to stress, fright, or  
968 excitement only is not an injury by accident arising out of the  
969 employment. Nothing in this section shall be construed to allow  
970 for the payment of benefits under this chapter for mental or  
971 nervous injuries without an accompanying physical injury  
972 requiring medical treatment. A physical injury resulting from  
973 mental or nervous injuries unaccompanied by physical trauma



974 requiring medical treatment shall not be compensable under this  
975 chapter.

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

994 (3) Subject to the payment of permanent benefits under s.  
995 440.15, in no event shall benefits for a compensable mental or  
996 nervous injury be paid for more than 3 months after the date of  
997 maximum medical improvement for the injured employee's physical  
998 injury or injuries, which shall be included in the period of 104  
999 weeks as provided in s. 440.15(2) and (4). Mental or nervous  
1000 injuries are compensable only in accordance with the terms of  
1001 this section.



1002 Section 8. Effective January 1, 2004, subsection (1) of  
1003 section 440.10, Florida Statutes, is amended to read:

1004 440.10 Liability for compensation.--

1005 (1)(a) Every employer coming within the provisions of this  
1006 chapter, ~~including any brought within the chapter by waiver of~~  
1007 ~~exclusion or of exemption~~, shall be liable for, and shall  
1008 secure, the payment to his or her employees, or any physician,  
1009 surgeon, or pharmacist providing services under the provisions  
1010 of s. 440.13, of the compensation payable under ss. 440.13,  
1011 440.15, and 440.16. Any contractor or subcontractor who engages  
1012 in any public or private construction in the state shall secure  
1013 and maintain compensation for his or her employees under this  
1014 chapter as provided in s. 440.38.

1015 (b) In case a contractor sublets any part or parts of his  
1016 or her contract work to a subcontractor or subcontractors, all  
1017 of the employees of such contractor and subcontractor or  
1018 subcontractors engaged on such contract work shall be deemed to  
1019 be employed in one and the same business or establishment, ~~+~~ and  
1020 the contractor shall be liable for, and shall secure, the  
1021 payment of compensation to all such employees, except to  
1022 employees of a subcontractor who has secured such payment.

1023 (c) A contractor shall ~~may~~ require a subcontractor to  
1024 provide evidence of workers' compensation insurance ~~or a copy of~~  
1025 ~~his or her certificate of election~~. A subcontractor who is a  
1026 corporation and has an officer who elects ~~electing~~ to be exempt  
1027 as permitted under this chapter ~~a sole proprietor, partner, or~~  
1028 ~~officer of a corporation~~ shall provide a copy of his or her  
1029 certificate of exemption ~~election~~ to the contractor.



1030 (d)1. If a contractor becomes liable for the payment of  
1031 compensation to the employees of a subcontractor who has failed  
1032 to secure such payment in violation of s. 440.38, the contractor  
1033 or other third-party payor shall be entitled to recover from the  
1034 subcontractor all benefits paid or payable plus interest unless  
1035 the contractor and subcontractor have agreed in writing that the  
1036 contractor will provide coverage.

1037 2. If a contractor or third-party payor becomes liable for  
1038 the payment of compensation to the corporate officer ~~employee~~ of  
1039 a subcontractor who is ~~actively~~ engaged in the construction  
1040 industry and has elected to be exempt from the provisions of  
1041 this chapter, but whose election is invalid, the contractor or  
1042 third-party payor may recover from the claimant, ~~partnership,~~ or  
1043 corporation all benefits paid or payable plus interest, unless  
1044 the contractor and the subcontractor have agreed in writing that  
1045 the contractor will provide coverage.

1046 (e) A subcontractor providing services in conjunction with  
1047 a contractor on the same project or contract work is not liable  
1048 for the payment of compensation to the employees of another  
1049 subcontractor or the contractor on such contract work and is ~~not~~  
1050 protected by the exclusiveness-of-liability provisions of s.  
1051 440.11 from any action at law or in admiralty on account of  
1052 injury to an ~~of such~~ employee of another subcontractor, or of  
1053 the contractor, provided that:

1054 1. The subcontractor has secured workers' compensation  
1055 insurance for its employees or the contractor has secured such  
1056 insurance on behalf of the subcontractor and its employees in  
1057 accordance with paragraph (b); and



1058       2. The subcontractor's own gross negligence was not the  
1059 major contributing cause of the injury.

1060       (f) If an employer fails to secure compensation as  
1061 required by this chapter, the department shall ~~may~~ assess  
1062 against the employer a penalty not to exceed \$5,000 for each  
1063 employee of that employer who is classified by the employer as  
1064 an independent contractor but who is found by the department to  
1065 not meet the criteria for an independent contractor that are set  
1066 forth in s. 440.02. The division shall adopt rules to administer  
1067 the provisions of this paragraph.

1068       (g) Subject to s. 440.38, any employer who has employees  
1069 engaged in work in this state shall obtain a Florida policy or  
1070 endorsement for such employees which utilizes Florida class  
1071 codes, rates, rules, and manuals that are in compliance with and  
1072 approved under the provisions of this chapter and the Florida  
1073 Insurance Code. Failure to comply with this paragraph is a  
1074 felony of the second degree, punishable as provided in s.  
1075 775.082, s. 775.083, or s. 775.084. The department shall adopt  
1076 rules for construction industry and nonconstruction-industry  
1077 employers with regard to the activities that define what  
1078 constitutes being "engaged in work" in this state, using the  
1079 following standards:

1080       1. For employees of nonconstruction-industry employers who  
1081 have their headquarters outside of Florida and also operate in  
1082 Florida and who are routinely crossing state lines, but usually  
1083 return to their homes each night, the employee shall be assigned  
1084 to the headquarters' state. However, the construction industry  
1085 employees performing new construction or alterations in Florida



1086 shall be assigned to Florida even if the employees return to  
1087 their home state each night.

1088 2. The payroll of executive supervisors who may visit a  
1089 Florida location but who are not in direct charge of a Florida  
1090 location shall be assigned to the state in which the  
1091 headquarters is located.

1092 3. For construction contractors who maintain a permanent  
1093 staff of employees and superintendents, if any of these  
1094 employees or superintendents are assigned to a job that is  
1095 located in Florida, either for the duration of the job or any  
1096 portion thereof, their payroll shall be assigned to Florida  
1097 rather than headquarters' state.

1098 4. Employees who are hired for a specific project in  
1099 Florida shall be assigned to Florida. ~~For purposes of this~~  
1100 ~~section, a person is conclusively presumed to be an independent~~  
1101 ~~contractor if:~~

1102 ~~1. The independent contractor provides the general~~  
1103 ~~contractor with an affidavit stating that he or she meets all~~  
1104 ~~the requirements of s. 440.02; and~~

1105 ~~2. The independent contractor provides the general~~  
1106 ~~contractor with a valid certificate of workers' compensation~~  
1107 ~~insurance or a valid certificate of exemption issued by the~~  
1108 ~~department.~~

1109  
1110 ~~A sole proprietor, partner, or officer of a corporation who~~  
1111 ~~elects exemption from this chapter by filing a certificate of~~  
1112 ~~election under s. 440.05 may not recover benefits or~~  
1113 ~~compensation under this chapter. An independent contractor who~~





1114 ~~provides the general contractor with both an affidavit stating~~  
1115 ~~that he or she meets the requirements of s. 440.02 and a~~  
1116 ~~certificate of exemption is not an employee under s. 440.02 and~~  
1117 ~~may not recover benefits under this chapter. For purposes of~~  
1118 ~~determining the appropriate premium for workers' compensation~~  
1119 ~~coverage, carriers may not consider any person who meets the~~  
1120 ~~requirements of this paragraph to be an employee.~~

1121 Section 9. Section 440.1025, Florida Statutes, is amended  
1122 to read:

1123 440.1025 ~~Consideration of public~~ Employer workplace safety  
1124 program in rate-setting; program requirements; rulemaking.—

1125 (1) For a public or private employer to be eligible for  
1126 receipt of specific identifiable consideration under s. 627.0915  
1127 for a workplace safety program in the setting of rates, the  
1128 ~~public~~ employer must have a workplace safety program. At a  
1129 minimum, the program must include a written safety policy and  
1130 safety rules, and make provision for safety inspections,  
1131 preventative maintenance, safety training, first-aid, accident  
1132 investigation, and necessary recordkeeping. ~~For purposes of this~~  
1133 ~~section, "public employer" means any agency within state,~~  
1134 ~~county, or municipal government employing individuals for~~  
1135 ~~salary, wages, or other remuneration.~~ The division may adopt  
1136 ~~promulgate~~ rules for insurers to utilize in determining ~~public~~  
1137 employer compliance with the requirements of this section.

1138 (2) The division shall publicize on the Internet, and  
1139 shall encourage insurers to publicize, the availability of free  
1140 safety consultation services and safety program resources.



1141 Section 10. Section 440.103, Florida Statutes, is amended  
1142 to read:

1143 440.103 Building permits; identification of minimum  
1144 premium policy.--~~Except as otherwise provided in this chapter,~~  
1145 Every employer shall, as a condition to applying for and  
1146 receiving a building permit, show proof and certify to the  
1147 permit issuer that it has secured compensation for its employees  
1148 under this chapter as provided in ss. 440.10 and 440.38. Such  
1149 proof of compensation must be evidenced by a certificate of  
1150 coverage issued by the carrier, a valid exemption certificate  
1151 approved by the department ~~or the former Division of Workers'~~  
1152 ~~Compensation of the Department of Labor and Employment Security,~~  
1153 or a copy of the employer's authority to self-insure and shall  
1154 be presented each time the employer applies for a building  
1155 permit. As provided in s. 627.413(5), each certificate of  
1156 coverage must show, on its face, whether or not coverage is  
1157 secured under the minimum premium provisions of rules adopted by  
1158 rating organizations licensed by the department. The words  
1159 "minimum premium policy" or equivalent language shall be typed,  
1160 printed, stamped, or legibly handwritten.

1161 Section 11. Section 440.105, Florida Statutes, is amended  
1162 to read:

1163 440.105 Prohibited activities; reports; penalties;  
1164 limitations.--

1165 (1)(a) Any insurance carrier, any individual self-insured,  
1166 any commercial or group self-insurance fund, any professional  
1167 practitioner licensed or regulated by the Department of Health  
1168 ~~Business and Professional Regulation~~, except as otherwise



1169 provided by law, any medical review committee as defined in s.  
1170 766.101, any private medical review committee, and any insurer,  
1171 agent, or other person licensed under the insurance code, or any  
1172 employee thereof, having knowledge or who believes that a  
1173 fraudulent act or any other act or practice which, upon  
1174 conviction, constitutes a felony or misdemeanor under this  
1175 chapter is being or has been committed shall send to the  
1176 Division of Insurance Fraud, Bureau of Workers' Compensation  
1177 Fraud, a report or information pertinent to such knowledge or  
1178 belief and such additional information relative thereto as the  
1179 bureau may require. The bureau shall review such information or  
1180 reports and select such information or reports as, in its  
1181 judgment, may require further investigation. It shall then cause  
1182 an independent examination of the facts surrounding such  
1183 information or report to be made to determine the extent, if  
1184 any, to which a fraudulent act or any other act or practice  
1185 which, upon conviction, constitutes a felony or a misdemeanor  
1186 under this chapter is being committed. The bureau shall report  
1187 any alleged violations of law which its investigations disclose  
1188 to the appropriate licensing agency and state attorney or other  
1189 prosecuting agency having jurisdiction with respect to any such  
1190 violations of this chapter. If prosecution by the state attorney  
1191 or other prosecuting agency having jurisdiction with respect to  
1192 such violation is not begun within 60 days of the bureau's  
1193 report, the state attorney or other prosecuting agency having  
1194 jurisdiction with respect to such violation shall inform the  
1195 bureau of the reasons for the lack of prosecution.



1196 (b) In the absence of fraud or bad faith, a person is not  
1197 subject to civil liability for libel, slander, or any other  
1198 relevant tort by virtue of filing reports, without malice, or  
1199 furnishing other information, without malice, required by this  
1200 section or required by the bureau, and no civil cause of action  
1201 of any nature shall arise against such person:

1202 1. For any information relating to suspected fraudulent  
1203 acts furnished to or received from law enforcement officials,  
1204 their agents, or employees;

1205 2. For any information relating to suspected fraudulent  
1206 acts furnished to or received from other persons subject to the  
1207 provisions of this chapter; or

1208 3. For any such information relating to suspected  
1209 fraudulent acts furnished in reports to the bureau, or the  
1210 National Association of Insurance Commissioners.

1211 (2) Whoever violates any provision of this subsection  
1212 commits a misdemeanor of the first ~~second~~ degree, punishable as  
1213 provided in s. 775.082 or s. 775.083.

1214 (a) It shall be unlawful for any employer to knowingly:

1215 1. Coerce or attempt to coerce, as a precondition to  
1216 employment or otherwise, an employee to obtain a certificate of  
1217 election of exemption pursuant to s. 440.05.

1218 2. Discharge or refuse to hire an employee or job  
1219 applicant because the employee or applicant has filed a claim  
1220 for benefits under this chapter.

1221 3. Discharge, discipline, or take any other adverse  
1222 personnel action against any employee for disclosing information  
1223 to the department or any law enforcement agency relating to any



1224 violation or suspected violation of any of the provisions of  
1225 this chapter or rules promulgated hereunder.

1226 4. Violate a stop-work order issued by the department  
1227 pursuant to s. 440.107.

1228 (b) It shall be unlawful for any insurance entity to  
1229 revoke or cancel a workers' compensation insurance policy or  
1230 membership because an employer has returned an employee to work  
1231 or hired an employee who has filed a workers' compensation  
1232 claim.

1233 (3) Whoever violates any provision of this subsection  
1234 commits a misdemeanor of the first degree, punishable as  
1235 provided in s. 775.082 or s. 775.083.

1236 (a) It shall be unlawful for any employer to knowingly  
1237 fail to update applications for coverage as required by s.  
1238 440.381(1) and department ~~of Insurance~~ rules within 7 days after  
1239 the reporting date for any change in the required information,  
1240 or to post notice of coverage pursuant to s. 440.40.

1241 (b) It is unlawful for any attorney or other person, in  
1242 his or her individual capacity or in his or her capacity as a  
1243 public or private employee, or for any firm, corporation,  
1244 partnership, or association to receive any fee or other  
1245 consideration or any gratuity from a person on account of  
1246 services rendered for a person in connection with any  
1247 proceedings arising under this chapter, unless such fee,  
1248 consideration, or gratuity is approved by a judge of  
1249 compensation claims or by the Deputy Chief Judge of Compensation  
1250 Claims.



1251 (4) Whoever violates any provision of this subsection  
1252 commits insurance fraud, punishable as provided in paragraph  
1253 (f).

1254 (a) It shall be unlawful for any employer to knowingly:

1255 1. Present or cause to be presented any false, fraudulent,  
1256 or misleading oral or written statement to any person as  
1257 evidence of compliance with s. 440.38.

1258 2. Make a deduction from the pay of any employee entitled  
1259 to the benefits of this chapter for the purpose of requiring the  
1260 employee to pay any portion of premium paid by the employer to a  
1261 carrier or to contribute to a benefit fund or department  
1262 maintained by such employer for the purpose of providing  
1263 compensation or medical services and supplies as required by  
1264 this chapter.

1265 3. Fail to secure payment of compensation if required to  
1266 do so by this chapter.

1267 (b) It shall be unlawful for any person:

1268 1. To knowingly make, or cause to be made, any false,  
1269 fraudulent, or misleading oral or written statement for the  
1270 purpose of obtaining or denying any benefit or payment under  
1271 this chapter.

1272 2. To present or cause to be presented any written or oral  
1273 statement as part of, or in support of, a claim for payment or  
1274 other benefit pursuant to any provision of this chapter, knowing  
1275 that such statement contains any false, incomplete, or  
1276 misleading information concerning any fact or thing material to  
1277 such claim.



1278           3. To prepare or cause to be prepared any written or oral  
1279 statement that is intended to be presented to any employer,  
1280 insurance company, or self-insured program in connection with,  
1281 or in support of, any claim for payment or other benefit  
1282 pursuant to any provision of this chapter, knowing that such  
1283 statement contains any false, incomplete, or misleading  
1284 information concerning any fact or thing material to such claim.

1285           4. To knowingly assist, conspire with, or urge any person  
1286 to engage in activity prohibited by this section.

1287           5. To knowingly make any false, fraudulent, or misleading  
1288 oral or written statement, or to knowingly omit or conceal  
1289 material information, required by s. 440.185 or s. 440.381, for  
1290 the purpose of obtaining workers' compensation coverage or for  
1291 the purpose of avoiding, delaying, or diminishing the amount of  
1292 payment of any workers' compensation premiums.

1293           6. To knowingly misrepresent or conceal payroll,  
1294 classification of workers, or information regarding an  
1295 employer's loss history which would be material to the  
1296 computation and application of an experience rating modification  
1297 factor for the purpose of avoiding or diminishing the amount of  
1298 payment of any workers' compensation premiums.

1299           7. To knowingly present or cause to be presented any  
1300 false, fraudulent, or misleading oral or written statement to  
1301 any person as evidence of compliance with s. 440.38, as evidence  
1302 of eligibility for a certificate of exemption under s. 440.05.

1303           8. To knowingly violate a stop-work order issued by the  
1304 department pursuant to s. 440.107.



1305           9. To knowingly present or cause to be presented any  
1306 false, fraudulent, or misleading oral or written statement to  
1307 any person as evidence of identity for the purpose of obtaining  
1308 employment or filing or supporting a claim for workers'  
1309 compensation benefits.

1310           (c) It shall be unlawful for any physician licensed under  
1311 chapter 458, osteopathic physician licensed under chapter 459,  
1312 chiropractic physician licensed under chapter 460, podiatric  
1313 physician licensed under chapter 461, optometric physician  
1314 licensed under chapter 463, or any other practitioner licensed  
1315 under the laws of this state to knowingly and willfully assist,  
1316 conspire with, or urge any person to fraudulently violate any of  
1317 the provisions of this chapter.

1318           (d) It shall be unlawful for any person or governmental  
1319 entity licensed under chapter 395 to maintain or operate a  
1320 hospital in such a manner so that such person or governmental  
1321 entity knowingly and willfully allows the use of the facilities  
1322 of such hospital by any person, in a scheme or conspiracy to  
1323 fraudulently violate any of the provisions of this chapter.

1324           (e) It shall be unlawful for any attorney or other person,  
1325 in his or her individual capacity or in his or her capacity as a  
1326 public or private employee, or any firm, corporation,  
1327 partnership, or association, to knowingly assist, conspire with,  
1328 or urge any person to fraudulently violate any of the provisions  
1329 of this chapter.

1330           (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~  
1331 ~~compensation insurance premium~~ involved in any violation of this  
1332 subsection:





1333 1. Is less than \$20,000, the offender commits a felony of  
1334 the third degree, punishable as provided in s. 775.082, s.  
1335 775.083, or s. 775.084.

1336 2. Is \$20,000 or more, but less than \$100,000, the  
1337 offender commits a felony of the second degree, punishable as  
1338 provided in s. 775.082, . 775.083, or s. 775.084.

1339 3. Is \$100,000 or more, the offender commits a felony of  
1340 the first degree, punishable as provided in s. 775.082, s.  
1341 775.083, or s. 775.084.

1342 (5) It shall be unlawful for any attorney or other person,  
1343 in his or her individual capacity or in his or her capacity as a  
1344 public or private employee or for any firm, corporation,  
1345 partnership, or association, to unlawfully solicit any business  
1346 in and about city or county hospitals, courts, or any public  
1347 institution or public place; in and about private hospitals or  
1348 sanitariums; in and about any private institution; or upon  
1349 private property of any character whatsoever for the purpose of  
1350 making workers' compensation claims. Whoever violates any  
1351 provision of this subsection commits a felony of the second  
1352 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,  
1353 or s. 775.085.

1354 (6) This section shall not be construed to preclude the  
1355 applicability of any other provision of criminal law that  
1356 applies or may apply to any transaction.

1357 ~~(7) For the purpose of the section, the term "statement"~~  
1358 ~~includes, but is not limited to, any notice, representation,~~  
1359 ~~statement, proof of injury, bill for services, diagnosis,~~



1360 ~~prescription, hospital or doctor records, X ray, test result, or~~  
1361 ~~other evidence of loss, injury, or expense.~~

1362 (7)(8) An injured employee or any other party making a  
1363 claim under this chapter shall provide his or her personal  
1364 signature attesting that he or she has reviewed, understands,  
1365 and acknowledges ~~All claim forms as provided for in this chapter~~  
1366 ~~shall contain a notice that clearly states in substance the~~  
1367 ~~following~~ statement: "Any person who, knowingly and with intent  
1368 to injure, defraud, or deceive any employer or employee,  
1369 insurance company, or self-insured program, files a statement of  
1370 claim containing any false or misleading information commits  
1371 insurance fraud, punishable as provided in s. 817.234." If the  
1372 injured employee or other party refuses to sign the document  
1373 attesting ~~Each claimant shall personally sign the claim form and~~  
1374 ~~attest~~ that he or she has reviewed, understands, and  
1375 acknowledges the statement, benefits or payments under this  
1376 chapter shall be suspended until such signature is obtained  
1377 ~~foregoing notice.~~

1378 Section 12. Subsection (3) of section 440.1051, Florida  
1379 Statutes, is amended to read:

1380 440.1051 Fraud reports; civil immunity; criminal  
1381 penalties.--

1382 (2) Any person who reports workers' compensation fraud to  
1383 the division under subsection (1) is immune from civil liability  
1384 for doing so, and the person or entity alleged to have committed  
1385 the fraud may not retaliate against him or her for providing  
1386 such report, unless the person making the report knows it to be  
1387 false.



1388 (3) A person who calls and, knowingly and falsely, reports  
1389 workers' compensation fraud or who, in violation of subsection  
1390 (2) retaliates against a person for making such report, commits  
1391 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,  
1392 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.  
1393 775.084 both.

1394 Section 13. Section 440.107, Florida Statutes, is amended  
1395 to read:

1396 440.107 Department powers to enforce employer compliance  
1397 with coverage requirements.--

1398 (1) The Legislature finds that the failure of an employer  
1399 to comply with the workers' compensation coverage requirements  
1400 under this chapter poses an immediate danger to public health,  
1401 safety, and welfare. ~~The Legislature authorizes the department~~  
1402 ~~to secure employer compliance with the workers' compensation~~  
1403 ~~coverage requirements and authorizes the department to conduct~~  
1404 ~~investigations for the purpose of ensuring employer compliance.~~

1405 (2) For the purposes of this section, "securing the  
1406 payment of workers' compensation" means obtaining coverage that  
1407 meets the requirements of this chapter and the Florida Insurance  
1408 Code. However, if at any time an employer materially understates  
1409 or conceals payroll, materially misrepresents or conceals  
1410 employee duties so as to avoid proper classification for premium  
1411 calculations, or materially misrepresents or conceals  
1412 information pertinent to the computation and application of an  
1413 experience rating modification factor, such employer shall be  
1414 deemed to have failed to secure payment of workers' compensation  
1415 and shall be subject to the sanctions set forth in this section.



1416 A stop-work order issued because an employer is deemed to have  
1417 failed to secure the payment of workers' compensation required  
1418 under this chapter because the employer has materially  
1419 understated or concealed payroll, materially misrepresented or  
1420 concealed employee duties so as to avoid proper classification  
1421 for premium calculations, or materially misrepresented or  
1422 concealed information pertinent to the computation and  
1423 application of an experience rating modification factor shall  
1424 have no effect upon an employer's or carrier's duty to provide  
1425 benefits under this chapter or upon any of the employer's or  
1426 carrier's rights and defenses under this chapter, including  
1427 exclusive remedy. ~~The department and its authorized~~  
1428 ~~representatives may enter and inspect any place of business at~~  
1429 ~~any reasonable time for the limited purpose of investigating~~  
1430 ~~compliance with workers' compensation coverage requirements~~  
1431 ~~under this chapter. Each employer shall keep true and accurate~~  
1432 ~~business records that contain such information as the department~~  
1433 ~~prescribes by rule. The business records must contain~~  
1434 ~~information necessary for the department to determine compliance~~  
1435 ~~with workers' compensation coverage requirements and must be~~  
1436 ~~maintained within this state by the business, in such a manner~~  
1437 ~~as to be accessible within a reasonable time upon request by the~~  
1438 ~~department. The business records must be open to inspection and~~  
1439 ~~be available for copying by the department at any reasonable~~  
1440 ~~time and place and as often as necessary. The department may~~  
1441 ~~require from any employer any sworn or unsworn reports,~~  
1442 ~~pertaining to persons employed by that employer, deemed~~



1443 ~~necessary for the effective administration of the workers'~~  
1444 ~~compensation coverage requirements.~~

1445       (3) The department shall enforce workers' compensation  
1446 coverage requirements, including the requirement that the  
1447 employer secure the payment of workers' compensation, and the  
1448 requirement that the employer provide the carrier with  
1449 information to accurately determine payroll and correctly assign  
1450 classification codes. In addition to any other powers under this  
1451 chapter, the department shall have the power to:

1452       (a) Conduct investigations for the purpose of ensuring  
1453 employer compliance.

1454       (b) Enter and inspect any place of business at any  
1455 reasonable time for the purpose of investigating employer  
1456 compliance.

1457       (c) Examine and copy business records.

1458       (d) Administer oaths and affirmations.

1459       (e) Certify to official acts.

1460       (f) Issue and serve subpoenas for attendance of witnesses  
1461 or production of business records, books, papers,  
1462 correspondence, memoranda, and other records.

1463       (g) Issue stop-work orders, penalty assessment orders, and  
1464 any other orders necessary for the administration of this  
1465 section.

1466       (h) Enforce the terms of a stop-work order.

1467       (i) Levy and pursue actions to recover penalties.

1468       (j) Seek injunctions and other appropriate relief. ~~In~~  
1469 ~~discharging its duties, the department may administer oaths and~~  
1470 ~~affirmations, certify to official acts, issue subpoenas to~~



1471 ~~compel the attendance of witnesses and the production of books,~~  
1472 ~~papers, correspondence, memoranda, and other records deemed~~  
1473 ~~necessary by the department as evidence in order to ensure~~  
1474 ~~proper with the coverage provisions of this chapter.~~

1475 (4) The department shall designate representatives who may  
1476 serve subpoenas and other process of the department issued under  
1477 this section.

1478 (5) The department shall specify by rule the business  
1479 records that employers must maintain and produce to comply with  
1480 this section.

1481 (6)(4) If a person has refused to obey a subpoena to  
1482 appear before the department or its authorized representative or  
1483 ~~and~~ produce evidence requested by the department or to give  
1484 testimony about the matter that is under investigation, a court  
1485 has jurisdiction to issue an order requiring compliance with the  
1486 subpoena if the court has jurisdiction in the geographical area  
1487 where the inquiry is being carried on or in the area where the  
1488 person who has refused the subpoena is found, resides, or  
1489 transacts business. Failure to obey such a court order may be  
1490 punished by the court as contempt, either civilly or criminally.  
1491 Costs, including reasonable attorney's fees, incurred by the  
1492 department to obtain an order granting, in whole or in part, a  
1493 petition to enforce a subpoena or a subpoena duces tecum shall  
1494 be taxed against the subpoenaed party.

1495 (7)(a)(5) Whenever the department determines that an  
1496 employer who is required to secure the payment to his or her  
1497 employees of the compensation provided for by this chapter has  
1498 failed to secure the payment of workers' compensation required



1499 by this chapter or produce the required business records under  
1500 subsection (5) within 5 business days after receipt of the  
1501 written request of the department ~~do so~~, such failure shall be  
1502 deemed an immediate serious danger to public health, safety, or  
1503 welfare sufficient to justify service by the department of a  
1504 stop-work order on the employer, requiring the cessation of all  
1505 business operations ~~at the place of employment or job site~~. If  
1506 the department ~~division~~ makes such a determination, the  
1507 department ~~division~~ shall issue a stop-work order within 72  
1508 hours. The order shall take effect when served upon the ~~date of~~  
1509 ~~service upon the~~ employer or, for a particular employer  
1510 worksite, when served at that worksite. In addition to serving a  
1511 stop-work order, which shall be effective immediately, at a  
1512 particular worksite, the department shall immediately proceed  
1513 with service upon the employer which shall be effective upon all  
1514 employer worksites in the state. A stop-work order may be served  
1515 with regard to an employer's worksite by posting a copy of the  
1516 stop-work order in a conspicuous location at such site. The  
1517 order shall remain in effect until the department issues an  
1518 order releasing the stop-work order upon a finding that the  
1519 employer has come into compliance with the coverage requirements  
1520 of this chapter and has paid any penalty assessed under this  
1521 section. The department may require an employer who is found to  
1522 have failed to comply with the coverage requirements of s.  
1523 440.38 to file with the department, as a condition of release  
1524 from a stop-work order, periodic reports that demonstrate the  
1525 employer's continued compliance with this chapter for a  
1526 probationary period that shall not exceed 2 years. The



1527 department shall by rule specify the reports required and the  
1528 time for filing under this subsection unless the employer  
1529 provides evidence satisfactory to the department of having  
1530 secured any necessary insurance or self insurance and pays a  
1531 civil penalty to the department, to be deposited by the  
1532 department into the Workers' Compensation Administration Trust  
1533 Fund, in the amount of \$100 per day for each day the employer  
1534 was not in compliance with this chapter.

1535 (b) Stop-work orders and penalty assessment orders issued  
1536 under this section against a corporation, partnership, or sole  
1537 proprietorship shall be in effect against any successor  
1538 corporation or business entity that has one or more of the same  
1539 principals or officers as the corporation or partnership against  
1540 which the stop-work order was issued and is engaged in the same  
1541 or related enterprise.

1542 (c) The department shall assess a penalty of \$1,000 per  
1543 day against an employer for each day that the employer conducts  
1544 business operations that are in violation of a stop-work order.

1545 (d)1. In addition to any penalty, stop-work order, or  
1546 injunction, the department shall assess against any employer who  
1547 has failed to secure the payment of compensation as required by  
1548 this chapter a penalty equal to 1.5 times the amount the  
1549 employer would have paid in premium when applying approved  
1550 manual rates to the employer's payroll during periods for which  
1551 it failed to secure the payment of workers' compensation  
1552 required by this chapter within the preceding 3-year period or  
1553 \$1,000, whichever is greater.





1554 2. Any subsequent violation within 5 years after the most  
1555 recent violation shall, in addition to the penalties set forth  
1556 in this subsection, be deemed a knowing act within the meaning  
1557 of s. 440.105.

1558 (e) When an employer fails to provide business records  
1559 sufficient to enable the department to determine the employer's  
1560 payroll for the period requested for the calculation of the  
1561 penalty provided in paragraph (d), for penalty calculation  
1562 purposes, the imputed weekly payroll for each employee,  
1563 corporate officer, sole proprietor, or partner shall be the  
1564 statewide average weekly wage as defined in s. 440.12(2)  
1565 multiplied by 1.5.

1566 (f) In addition to any other penalties provided for in  
1567 this chapter, the department may assess against the employer a  
1568 penalty of \$5,000 for each employee of that employer who the  
1569 employer represents to the department or carrier as an  
1570 independent contractor but who is determined by the department  
1571 not to be an independent contractor as defined in s. 440.02.

1572 (8)(6) In addition to the issuance of a stop-work order  
1573 under subsection (7), the department may file a complaint in the  
1574 circuit court in and for Leon County to enjoin any employer, who  
1575 has failed to secure the payment of workers' compensation as  
1576 required by this chapter, from employing individuals and from  
1577 conducting business until the employer presents evidence  
1578 satisfactory to the department of having secured the payment of  
1579 workers' ~~for~~ compensation required by this chapter and pays a  
1580 civil penalty assessed by ~~to~~ the department under this section,  
1581 ~~to be deposited by the department into the Workers' Compensation~~



1582 ~~Administration Trust Fund, in the amount of \$100 per day for~~  
1583 ~~each day the employer was not in compliance with this chapter.~~

1584 ~~(9)(7) In addition to any penalty, stop work order, or~~  
1585 ~~injunction, the department shall assess against any employer,~~  
1586 ~~who has failed to secure the payment of compensation as required~~  
1587 ~~by this chapter, a penalty in the following amount:~~

1588 ~~(a) An amount equal to at least the amount that the~~  
1589 ~~employer would have paid or up to twice the amount the employer~~  
1590 ~~would have paid during periods it illegally failed to secure~~  
1591 ~~payment of compensation in the preceding 3-year period based on~~  
1592 ~~the employer's payroll during the preceding 3-year period; or~~

1593 ~~(b) One thousand dollars, whichever is greater. Any~~  
1594 ~~penalty assessed under this subsection is due within 30 days~~  
1595 ~~after the date on which the employer is notified, except that,~~  
1596 ~~if the department has posted a stop work order or obtained~~  
1597 ~~injunctive relief against the employer, payment is due, in~~  
1598 ~~addition to those conditions set forth in this section, as a~~  
1599 ~~condition to relief from a stop work order or an injunction.~~  
1600 ~~Interest shall accrue on amounts not paid when due at the rate~~  
1601 ~~of 1 percent per month. The department ~~division~~ shall adopt~~  
1602 ~~rules to administer this section.~~

1603 ~~(10)(8) The department may bring an action in circuit~~  
1604 ~~court to recover penalties assessed under this section,~~  
1605 ~~including any interest owed to the department pursuant to this~~  
1606 ~~section. In any action brought by the department pursuant to~~  
1607 ~~this section in which it prevails, the circuit court shall award~~  
1608 ~~costs, including the reasonable costs of investigation and a~~  
1609 ~~reasonable attorney's fee.~~



1610        (11)~~(9)~~ Any judgment obtained by the department and any  
1611 penalty due pursuant to the service of a stop-work order or  
1612 otherwise due under this section shall, until collected,  
1613 constitute a lien upon the entire interest of the employer,  
1614 legal or equitable, in any property, real or personal, tangible  
1615 or intangible; however, such lien is subordinate to claims for  
1616 unpaid wages and any prior recorded liens, and a lien created by  
1617 this section is not valid against any person who, subsequent to  
1618 such lien and in good faith and for value, purchases real or  
1619 personal property from such employer or becomes the mortgagee on  
1620 real or personal property of such employer, or against a  
1621 subsequent attaching creditor, unless, with respect to real  
1622 estate of the employer, a notice of the lien is recorded in the  
1623 public records of the county where the real estate is located,  
1624 and with respect to personal property of the employer, notice is  
1625 recorded with the Secretary of State.

1626        (12)~~(10)~~ Any law enforcement agency in the state may, at  
1627 the request of the department, render any assistance necessary  
1628 to carry out the provisions of this section, including, but not  
1629 limited to, preventing any employee or other person from  
1630 remaining at a place of employment or job site after a stop-work  
1631 order or injunction has taken effect.

1632        (13)~~(11)~~ Agency action ~~Actions~~ by the department under  
1633 this section, if contested, must be contested as provided in  
1634 chapter 120. All ~~civil~~ penalties assessed by the department must  
1635 be paid into the Workers' Compensation Administration Trust  
1636 Fund. ~~The department shall return any sums previously paid, upon~~  
1637 ~~conclusion of an action, if the department fails to prevail and~~



1638 ~~if so directed by an order of court or an administrative hearing~~  
1639 ~~officer. The requirements of this subsection may be met by~~  
1640 ~~posting a bond in an amount equal to twice the penalty and in a~~  
1641 ~~form approved by the department.~~

1642 (14)~~(12)~~ If the department ~~division~~ finds that an employer  
1643 who is certified or registered under part I or part II of  
1644 chapter 489 and who is required to secure the payment of  
1645 workers' the compensation under ~~provided for by~~ this chapter to  
1646 his or her employees has failed to do so, the department  
1647 ~~division~~ shall immediately notify the Department of Business and  
1648 Professional Regulation.

1649 Section 14. Subsections (1) and (3) of section 440.11,  
1650 Florida Statutes, are amended to read:

1651 440.11 Exclusiveness of liability.--

1652 (1) The liability of an employer prescribed in s. 440.10  
1653 shall be exclusive and in place of all other liability,  
1654 including vicarious liability, of such employer to any third-  
1655 party tortfeasor and to the employee, the legal representative  
1656 thereof, husband or wife, parents, dependents, next of kin, and  
1657 anyone otherwise entitled to recover damages from such employer  
1658 at law or in admiralty on account of such injury or death,  
1659 except as follows: ~~that~~

1660 (a) If an employer fails to secure payment of compensation  
1661 as required by this chapter, an injured employee, or the legal  
1662 representative thereof in case death results from the injury,  
1663 may elect to claim compensation under this chapter or to  
1664 maintain an action at law or in admiralty for damages on account  
1665 of such injury or death. In such action the defendant may not



1666 plead as a defense that the injury was caused by negligence of a  
1667 fellow employee, that the employee assumed the risk of the  
1668 employment, or that the injury was due to the comparative  
1669 negligence of the employee.

1670 (b) When an employer commits an intentional tort that  
1671 causes the injury or death of the employee. For purposes of this  
1672 paragraph, an employer's actions shall be deemed to constitute  
1673 an intentional tort and not an accident only when the employee  
1674 proves, by clear and convincing evidence, that:

1675 1. The employer deliberately intended to injure the  
1676 employee; or

1677 2. The employer engaged in conduct that the employer knew,  
1678 based on prior similar accidents or on explicit warnings  
1679 specifically identifying a known danger, was certain to result  
1680 in injury or death to the employee, and the employee was not  
1681 aware of the risk because the danger was not apparent and the  
1682 employer deliberately concealed or misrepresented the danger so  
1683 as to prevent the employee from exercising informed judgment  
1684 about whether to perform the work.

1685  
1686 The same immunities from liability enjoyed by an employer shall  
1687 extend as well to each employee of the employer when such  
1688 employee is acting in furtherance of the employer's business and  
1689 the injured employee is entitled to receive benefits under this  
1690 chapter. Such fellow-employee immunities shall not be applicable  
1691 to an employee who acts, with respect to a fellow employee, with  
1692 willful and wanton disregard or unprovoked physical aggression  
1693 or with gross negligence when such acts result in injury or



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

1712 (3) An employer's workers' compensation carrier, service  
1713 agent, or safety consultant shall not be liable as a third-party  
1714 tortfeasor to employees of the employer or employees of its  
1715 subcontractors for assisting the employer and its  
1716 subcontractors, if any, in carrying out the employer's rights  
1717 and responsibilities under this chapter by furnishing any safety  
1718 inspection, safety consultative service, or other safety service  
1719 incidental to the workers' compensation or employers' liability  
1720 coverage or to the workers' compensation or employer's liability  
1721 servicing contract. Without limitation, a safety consultant may



1722 include an owner, as defined in chapter 713, or an owner's  
1723 related, affiliated, or subsidiary companies and the employees  
1724 of each. The exclusion from liability under this subsection  
1725 shall not apply in any case in which injury or death is  
1726 proximately caused by the willful and unprovoked physical  
1727 aggression, or by the negligent operation of a motor vehicle, by  
1728 employees, officers, or directors of the employer's workers'  
1729 compensation carrier, service agent, or safety consultant.

1730 Section 15. Section 440.13, Florida Statutes, is amended  
1731 to read:

1732 440.13 Medical services and supplies; penalty for  
1733 violations; limitations.--

1734 (1) DEFINITIONS.-- As used in this section, the term:

1735 (a) "Alternate medical care" means a change in treatment  
1736 or health care provider.

1737 (b) "Attendant care" means care rendered by trained  
1738 professional attendants which is beyond the scope of household  
1739 duties. Family members may provide nonprofessional attendant  
1740 care, but may not be compensated under this chapter for care  
1741 that falls within the scope of household duties and other  
1742 services normally and gratuitously provided by family members.  
1743 "Family member" means a spouse, father, mother, brother, sister,  
1744 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1745 (c) "Carrier" means, for purposes of this section,  
1746 insurance carrier, self-insurance fund or individually self-  
1747 insured employer, assessable mutual insurer.

1748 (d) "Catastrophic injury" means an injury as defined in s.  
1749 440.02.



1750 (e) "Certified health care provider" means a health care  
1751 provider who has been certified by the agency or who has entered  
1752 an agreement with a licensed managed care organization to  
1753 provide treatment to injured workers under this section.  
1754 Certification of such health care provider must include  
1755 documentation that the health care provider has read and is  
1756 familiar with the portions of the statute, impairment guides,  
1757 practice parameters, protocols of treatment, and rules which  
1758 govern the provision of remedial treatment, care, and  
1759 attendance.

1760 (f) "Compensable" means a determination by a carrier or  
1761 judge of compensation claims that a condition suffered by an  
1762 employee results from an injury arising out of and in the course  
1763 of employment.

1764 (g) "Emergency services and care" means emergency services  
1765 and care as defined in s. 395.002.

1766 (h) "Health care facility" means any hospital licensed  
1767 under chapter 395 and any health care institution licensed under  
1768 chapter 400.

1769 (i) "Health care provider" means a physician or any  
1770 recognized practitioner who provides skilled services pursuant  
1771 to a prescription or under the supervision or direction of a  
1772 physician and who has been certified by the agency as a health  
1773 care provider. The term "health care provider" includes a health  
1774 care facility.

1775 (j) "Independent medical examiner" means a physician  
1776 selected by either an employee or a carrier to render one or





1777 more independent medical examinations in connection with a  
1778 dispute arising under this chapter.

1779 (k) "Independent medical examination" means an objective  
1780 evaluation of the injured employee's medical condition,  
1781 including, but not limited to, impairment or work status,  
1782 performed by a physician or an expert medical advisor at the  
1783 request of a party, a judge of compensation claims, or the  
1784 agency to assist in the resolution of a dispute arising under  
1785 this chapter.

1786 (l) "Instance of overutilization" means a specific  
1787 inappropriate service or level of service provided to an injured  
1788 employee that includes the provision of treatment in excess of  
1789 established practice parameters and protocols of treatment  
1790 established in accordance with this chapter.

1791 (m) "Medically necessary" or "medical necessity" means any  
1792 medical service or medical supply which is used to identify or  
1793 treat an illness or injury, is appropriate to the patient's  
1794 diagnosis and status of recovery, and is consistent with the  
1795 location of service, the level of care provided, and applicable  
1796 practice parameters. The service should be widely accepted among  
1797 practicing health care providers, based on scientific criteria,  
1798 and determined to be reasonably safe. The service must not be of  
1799 an experimental, investigative, or research nature, ~~except in~~  
1800 ~~those instances in which prior approval of the Agency for Health~~  
1801 ~~Care Administration has been obtained. The Agency for Health~~  
1802 ~~Care Administration shall adopt rules providing for such~~  
1803 ~~approval on a case-by-case basis when the service or supply is~~



1804 ~~shown to have significant benefits to the recovery and well-~~  
1805 ~~being of the patient.~~

1806 (n) "Medicine" means a drug prescribed by an authorized  
1807 health care provider and includes only generic drugs or single-  
1808 source patented drugs for which there is no generic equivalent,  
1809 unless the authorized health care provider writes or states that  
1810 the brand-name drug as defined in s. 465.025 is medically  
1811 necessary, or is a drug appearing on the schedule of drugs  
1812 created pursuant to s. 465.025(6), or is available at a cost  
1813 lower than its generic equivalent.

1814 (o) "Palliative care" means noncurative medical services  
1815 that mitigate the conditions, effects, or pain of an injury.

1816 (p) "Pattern or practice of overutilization" means  
1817 repetition of instances of overutilization within a specific  
1818 medical case or multiple cases by a single health care provider.

1819 (q) "Peer review" means an evaluation by two or more  
1820 physicians licensed under the same authority and with the same  
1821 or similar specialty as the physician under review, of the  
1822 appropriateness, quality, and cost of health care and health  
1823 services provided to a patient, based on medically accepted  
1824 standards.

1825 (r) "Physician" or "doctor" means a physician licensed  
1826 under chapter 458, an osteopathic physician licensed under  
1827 chapter 459, a chiropractic physician licensed under chapter  
1828 460, a podiatric physician licensed under chapter 461, an  
1829 optometrist licensed under chapter 463, or a dentist licensed  
1830 under chapter 466, each of whom must be certified by the agency  
1831 as a health care provider.



1832 (s) "Reimbursement dispute" means any disagreement between  
1833 a health care provider or health care facility and carrier  
1834 concerning payment for medical treatment.

1835 (t) "Utilization control" means a systematic process of  
1836 implementing measures that assure overall management and cost  
1837 containment of services delivered, including compliance with  
1838 practice parameters and protocols of treatment as provided for  
1839 in this chapter.

1840 (u) "Utilization review" means the evaluation of the  
1841 appropriateness of both the level and the quality of health care  
1842 and health services provided to a patient, including, but not  
1843 limited to, evaluation of the appropriateness of treatment,  
1844 hospitalization, or office visits based on medically accepted  
1845 standards. Such evaluation must be accomplished by means of a  
1846 system that identifies the utilization of medical services based  
1847 on practice parameters and protocols of treatment as provided  
1848 for in this chapter ~~medically accepted standards as established~~  
1849 ~~by medical consultants with qualifications similar to those~~  
1850 ~~providing the care under review, and that refers patterns and~~  
1851 ~~practices of overutilization to the agency.~~

1852 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

1853 (a) Subject to the limitations specified elsewhere in this  
1854 chapter, the employer shall furnish to the employee such  
1855 medically necessary remedial treatment, care, and attendance for  
1856 such period as the nature of the injury or the process of  
1857 recovery may require, which is in accordance with established  
1858 practice parameters and protocols of treatment as provided for  
1859 in this chapter, including medicines, medical supplies, durable



1860 medical equipment, orthoses, prostheses, and other medically  
1861 necessary apparatus. Remedial treatment, care, and attendance,  
1862 including work-hardening programs or pain-management programs  
1863 accredited by the Commission on Accreditation of Rehabilitation  
1864 Facilities or Joint Commission on the Accreditation of Health  
1865 Organizations or pain-management programs affiliated with  
1866 medical schools, shall be considered as covered treatment only  
1867 when such care is given based on a referral by a physician as  
1868 defined in this chapter. ~~Each facility shall maintain outcome~~  
1869 ~~data, including work status at discharges, total program~~  
1870 ~~charges, total number of visits, and length of stay. The~~  
1871 ~~department shall utilize such data and report to the President~~  
1872 ~~of the Senate and the Speaker of the House of Representatives~~  
1873 ~~regarding the efficacy and cost-effectiveness of such program,~~  
1874 ~~no later than October 1, 1994.~~ Medically necessary treatment,  
1875 care, and attendance does not include chiropractic services in  
1876 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the  
1877 date of the initial chiropractic treatment, whichever comes  
1878 first, unless the carrier authorizes additional treatment or the  
1879 employee is catastrophically injured.

1880 (b) The employer shall provide appropriate professional or  
1881 nonprofessional attendant care performed only at the direction  
1882 and control of a physician when such care is medically  
1883 necessary. The physician shall prescribe such care in writing.  
1884 The employer or carrier shall not be responsible for such care  
1885 until the prescription for attendant care is received by the  
1886 employer and carrier, which shall specify the time periods for  
1887 such care, the level of care required, and the type of



1888 assistance required. A prescription for attendant care shall not  
1889 prescribe such care retroactively. The value of nonprofessional  
1890 attendant care provided by a family member must be determined as  
1891 follows:

1892 1. If the family member is not employed or if the family  
1893 member is employed and is providing attendant care services  
1894 during hours that he or she is not engaged in employment, the  
1895 per-hour value equals the federal minimum hourly wage.

1896 2. If the family member is employed and elects to leave  
1897 that employment to provide attendant or custodial care, the per-  
1898 hour value of that care equals the per-hour value of the family  
1899 member's former employment, not to exceed the per-hour value of  
1900 such care available in the community at large. A family member  
1901 or a combination of family members providing nonprofessional  
1902 attendant care under this paragraph may not be compensated for  
1903 more than a total of 12 hours per day.

1904 3. If the family member remains employed while providing  
1905 attendant or custodial care, the per-hour value of that care  
1906 equals the per-hour value of the family member's employment, not  
1907 to exceed the per-hour value of such care available in the  
1908 community at large.

1909 (c) If the employer fails to provide initial treatment or  
1910 care required by this section after request by the injured  
1911 employee, the employee may obtain such initial treatment at the  
1912 expense of the employer, if the initial treatment or care is  
1913 compensable and medically necessary and is in accordance with  
1914 established practice parameters and protocols of treatment as  
1915 provided for in this chapter. There must be a specific request



1916 for the initial treatment or care, and the employer or carrier  
1917 must be given a reasonable time period within which to provide  
1918 the initial treatment or care. However, the employee is not  
1919 entitled to recover any amount personally expended for the  
1920 initial treatment or care ~~service~~ unless he or she has requested  
1921 the employer to furnish that initial treatment or service and  
1922 the employer has failed, refused, or neglected to do so within a  
1923 reasonable time or unless the nature of the injury requires such  
1924 initial treatment, nursing, and services and the employer or his  
1925 or her superintendent or foreman, having knowledge of the  
1926 injury, has neglected to provide the initial treatment or care  
1927 ~~service~~.

1928 (d) The carrier has the right to transfer the care of an  
1929 injured employee from the attending health care provider if an  
1930 independent medical examination determines that the employee is  
1931 not making appropriate progress in recuperation.

1932 (e) Except in emergency situations and for treatment  
1933 rendered by a managed care arrangement, after any initial  
1934 examination and diagnosis by a physician providing remedial  
1935 treatment, care, and attendance, and before a proposed course of  
1936 medical treatment begins, each insurer shall review, in  
1937 accordance with the requirements of this chapter, the proposed  
1938 course of treatment, to determine whether such treatment would  
1939 be recognized as reasonably prudent. The review must be in  
1940 accordance with all applicable workers' compensation practice  
1941 parameters and protocols of treatment established in accordance  
1942 with this chapter. The insurer must accept any such proposed  
1943 course of treatment unless the insurer notifies the physician of



1944 its specific objections to the proposed course of treatment by  
1945 the close of the tenth business day after notification by the  
1946 physician, or a supervised designee of the physician, of the  
1947 proposed course of treatment.

1948 (f) Upon the written request of the employee, the carrier  
1949 shall give the employee the opportunity for one change of  
1950 physician during the course of treatment for any one accident.  
1951 Upon the granting of a change of physician, the originally  
1952 authorized physician in the same specialty as the changed  
1953 physician shall become deauthorized upon written notification by  
1954 the employer or carrier. The carrier shall authorize an  
1955 alternative physician who shall not be professionally affiliated  
1956 with the previous physician within 5 days after receipt of the  
1957 request. If the carrier fails to provide a change of physician  
1958 as requested by the employee, the employee may select the  
1959 physician and such physician shall be considered authorized if  
1960 the treatment being provided is compensable and medically  
1961 necessary.

1962  
1963 Failure of the carrier to timely comply with this subsection  
1964 shall be a violation of this chapter and the carrier shall be  
1965 subject to penalties as provided for in s. 440.525. ~~The employee~~  
1966 ~~shall be entitled to select another physician from among not~~  
1967 ~~fewer than three carrier-authorized physicians who are not~~  
1968 ~~professionally affiliated.~~

1969 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

1970 (a) As a condition to eligibility for payment under this  
1971 chapter, a health care provider who renders services must be a



1972 certified health care provider and must receive authorization  
1973 from the carrier before providing treatment. This paragraph does  
1974 not apply to emergency care. The agency shall adopt rules to  
1975 implement the certification of health care providers.

1976 (b) A health care provider who renders emergency care must  
1977 notify the carrier by the close of the third business day after  
1978 it has rendered such care. If the emergency care results in  
1979 admission of the employee to a health care facility, the health  
1980 care provider must notify the carrier by telephone within 24  
1981 hours after initial treatment. Emergency care is not compensable  
1982 under this chapter unless the injury requiring emergency care  
1983 arose as a result of a work-related accident. Pursuant to  
1984 chapter 395, all licensed physicians and health care providers  
1985 in this state shall be required to make their services available  
1986 for emergency treatment of any employee eligible for workers'  
1987 compensation benefits. To refuse to make such treatment  
1988 available is cause for revocation of a license.

1989 (c) A health care provider may not refer the employee to  
1990 another health care provider, diagnostic facility, therapy  
1991 center, or other facility without prior authorization from the  
1992 carrier, except when emergency care is rendered. Any referral  
1993 must be to a health care provider that has been certified by the  
1994 agency, unless the referral is for emergency treatment, and the  
1995 referral must be made in accordance with practice parameters and  
1996 protocols of treatment as provided for in this chapter.

1997 (d) A carrier must respond, by telephone or in writing, to  
1998 a request for authorization from an authorized health care  
1999 provider by the close of the third business day after receipt of





2000 the request. A carrier who fails to respond to a written request  
2001 for authorization for referral for medical treatment by the  
2002 close of the third business day after receipt of the request  
2003 consents to the medical necessity for such treatment. All such  
2004 requests must be made to the carrier. Notice to the carrier does  
2005 not include notice to the employer.

2006 (e) Carriers shall adopt procedures for receiving,  
2007 reviewing, documenting, and responding to requests for  
2008 authorization. Such procedures shall be for a health care  
2009 provider certified under this section.

2010 (f) By accepting payment under this chapter for treatment  
2011 rendered to an injured employee, a health care provider consents  
2012 to the jurisdiction of the agency as set forth in subsection  
2013 (11) and to the submission of all records and other information  
2014 concerning such treatment to the agency in connection with a  
2015 reimbursement dispute, audit, or review as provided by this  
2016 section. The health care provider must further agree to comply  
2017 with any decision of the agency rendered under this section.

2018 (g) The employee is not liable for payment for medical  
2019 treatment or services provided pursuant to this section except  
2020 as otherwise provided in this section.

2021 (h) The provisions of s. 456.053 are applicable to  
2022 referrals among health care providers, as defined in subsection  
2023 (1), treating injured workers.

2024 (i) Notwithstanding paragraph (d), a claim for specialist  
2025 consultations, surgical operations, physiotherapeutic or  
2026 occupational therapy procedures, X-ray examinations, or special  
2027 diagnostic laboratory tests that cost more than \$1,000 and other



2028 specialty services that the agency identifies by rule is not  
2029 valid and reimbursable unless the services have been expressly  
2030 authorized by the carrier, or unless the carrier has failed to  
2031 respond within 10 days to a written request for authorization,  
2032 or unless emergency care is required. The insurer shall ~~not~~  
2033 ~~refuse to~~ authorize such consultation or procedure unless the  
2034 health care provider or facility is not authorized or certified,  
2035 unless such treatment is not in accordance with practice  
2036 parameters and protocols of treatment established in this  
2037 chapter, or unless a judge of compensation claims an expert  
2038 ~~medical adviser~~ has determined that the consultation or  
2039 procedure is not medically necessary, not in accordance with the  
2040 practice parameters and protocols of treatment established in  
2041 this chapter, or otherwise not compensable under this chapter.  
2042 Authorization of a treatment plan does not constitute express  
2043 authorization for purposes of this section, except to the extent  
2044 the carrier provides otherwise in its authorization procedures.  
2045 This paragraph does not limit the carrier's obligation to  
2046 identify and disallow overutilization or billing errors.

2047 ~~(j) Notwithstanding anything in this chapter to the~~  
2048 ~~contrary, a sick or injured employee shall be entitled, at all~~  
2049 ~~times, to free, full, and absolute choice in the selection of~~  
2050 ~~the pharmacy or pharmacist dispensing and filling prescriptions~~  
2051 ~~for medicines required under this chapter. It is expressly~~  
2052 ~~forbidden for the agency, an employer, or a carrier, or any~~  
2053 ~~agent or representative of the agency, an employer, or a~~  
2054 ~~carrier to select the pharmacy or pharmacist which the sick or~~  
2055 ~~injured employee must use; condition coverage or payment on the~~



2056 ~~basis of the pharmacy or pharmacist utilized; or to otherwise~~  
2057 ~~interfere in the selection by the sick or injured employee of a~~  
2058 ~~pharmacy or pharmacist.~~

2059 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
2060 DEPARTMENT.--

2061 (a) Any health care provider providing necessary remedial  
2062 treatment, care, or attendance to any injured worker shall  
2063 submit treatment reports to the carrier in a format prescribed  
2064 by the department ~~in consultation with the agency~~. A claim for  
2065 medical or surgical treatment is not valid or enforceable  
2066 against such employer or employee, unless, by the close of the  
2067 third business day following the first treatment, the physician  
2068 providing the treatment furnishes to the employer or carrier a  
2069 preliminary notice of the injury and treatment in a format ~~on~~  
2070 ~~forms~~ prescribed by the department ~~in consultation with the~~  
2071 ~~agency~~ and, within 15 days thereafter, furnishes to the employer  
2072 or carrier a complete report, and subsequent thereto furnishes  
2073 progress reports, if requested by the employer or insurance  
2074 carrier, at intervals of not less than 3 weeks apart or at less  
2075 frequent intervals if requested in a format ~~on forms~~ prescribed  
2076 by the department ~~in consultation with the agency~~.

2077 (b) Upon the request of the department ~~or agency~~, each  
2078 medical report or bill obtained or received by the employer, the  
2079 carrier, or the injured employee, or the attorney for the  
2080 employer, carrier, or injured employee, with respect to the  
2081 remedial treatment, care, and attendance of the injured  
2082 employee, including any report of an examination, diagnosis, or  
2083 disability evaluation, must be produced by the health care



2084 provider to filed with the department ~~or agency~~ pursuant to  
2085 rules adopted by the department ~~in consultation with the agency~~.  
2086 The health care provider shall also furnish to the injured  
2087 employee or ~~to~~ his or her attorney and the employer or carrier  
2088 or its attorney, on demand, a copy of his or her office chart,  
2089 records, and reports, and may charge the injured employee no  
2090 more than 50 cents per page for copying the records and the  
2091 actual direct cost to the health care provider or health care  
2092 facility for X rays, microfilm, or other nonpaper records an  
2093 ~~amount authorized by the department for the copies~~. Each such  
2094 health care provider shall provide to the ~~agency or~~ department  
2095 information about the remedial treatment, care, and attendance  
2096 which the ~~agency or~~ department reasonably requests.

2097 (c) It is the policy for the administration of the  
2098 workers' compensation system that there shall be reasonable  
2099 access to medical information by all parties to facilitate the  
2100 self-executing features of the law. An employee who reports an  
2101 injury or illness alleged to be work-related waives any  
2102 physician-patient privilege with respect to any condition or  
2103 complaint reasonably related to the condition for which the  
2104 employee claims compensation. Notwithstanding the limitations in  
2105 s. 456.057 and subject to the limitations in s. 381.004, upon  
2106 the request of the employer, the carrier, an authorized  
2107 qualified rehabilitation provider, or the attorney for the  
2108 employer or carrier, the medical records, reports, and  
2109 information of an injured employee relevant to the particular  
2110 injury or illness for which compensation is sought must be  
2111 furnished to those persons and the medical condition of the



2112 injured employee must be discussed with those persons, if the  
2113 records and the discussions are restricted to conditions  
2114 relating to the workplace injury. Release of medical information  
2115 by the health care provider or other physician does not require  
2116 the authorization of the injured employee. If medical records,  
2117 reports, and information of an injured employee are sought from  
2118 health care providers who are not subject to the jurisdiction of  
2119 the state, the injured employee shall sign an authorization  
2120 allowing for the employer or carrier to obtain the medical  
2121 records, reports, or information. Any such discussions or  
2122 release of information may be held before or after the filing of  
2123 a claim or petition for benefits without the knowledge, consent,  
2124 or presence of any other party or his or her agent or  
2125 representative. A health care provider who willfully refuses to  
2126 provide medical records or to discuss the medical condition of  
2127 the injured employee, after a reasonable request is made for  
2128 such information pursuant to this subsection, shall be subject  
2129 by the department ~~agency~~ to one or more of the penalties set  
2130 forth in paragraph (8)(b). The department may adopt rules to  
2131 carry out this subsection.

2132 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2133 (a) In any dispute concerning overutilization, medical  
2134 benefits, compensability, or disability under this chapter, the  
2135 carrier or the employee may select an independent medical  
2136 examiner. If the parties agree, the examiner may be a health  
2137 care provider treating or providing other care to the employee.  
2138 An independent medical examiner may not render an opinion  
2139 outside his or her area of expertise, as demonstrated by



2140 licensure and applicable practice parameters. The employer and  
2141 employee shall be entitled to only one independent medical  
2142 examination per accident and not one independent medical  
2143 examination per medical specialty. The party requesting and  
2144 selecting the independent medical examination shall be  
2145 responsible for all expenses associated with said examination,  
2146 including, but not limited to, medically necessary diagnostic  
2147 testing performed and physician or medical care provider fees  
2148 for the evaluation. The party selecting the independent medical  
2149 examination shall identify the choice of the independent medical  
2150 examiner to all other parties within 15 days after the date the  
2151 independent medical examination is to take place. Failure to  
2152 timely provide such notification shall preclude the requesting  
2153 party from submitting the findings of such independent medical  
2154 examiner in a proceeding before a judge of compensation claims.  
2155 The independent medical examiner may not provide followup care  
2156 if such recommendation for care is found to be medically  
2157 necessary. If the employee prevails in a medical dispute as  
2158 determined in an order by a judge of compensation claims or if  
2159 benefits are paid or treatment provided after the employee has  
2160 obtained an independent medical examination based upon the  
2161 examiner's findings, the costs of such examination shall be paid  
2162 by the employer or carrier.

2163 (b) Each party is bound by his or her selection of an  
2164 independent medical examiner, including the selection of the  
2165 independent medical examiner in accordance with s. 440.134 and  
2166 the opinions of such independent medical examiner. Each party  
2167 ~~and~~ is entitled to an alternate examiner only if:



2168 1. The examiner is not qualified to render an opinion upon  
2169 an aspect of the employee's illness or injury which is material  
2170 to the claim or petition for benefits;

2171 2. The examiner ceases to practice in the specialty  
2172 relevant to the employee's condition;

2173 3. The examiner is unavailable due to injury, death, or  
2174 relocation outside a reasonably accessible geographic area; or

2175 4. The parties agree to an alternate examiner.  
2176

2177 ~~Any party may request, or a judge of compensation claims may~~  
2178 ~~require, designation of an agency medical advisor as an~~  
2179 ~~independent medical examiner. The opinion of the advisors acting~~  
2180 ~~as examiners shall not be afforded the presumption set forth in~~  
2181 ~~paragraph (9)(c).~~

2182 (c) The carrier may, at its election, contact the claimant  
2183 directly to schedule a reasonable time for an independent  
2184 medical examination. The carrier must confirm the scheduling  
2185 agreement in writing with the claimant and the ~~within 5 days and~~  
2186 ~~notify~~ claimant's counsel, if any, at least 7 days before the  
2187 date upon which the independent medical examination is scheduled  
2188 to occur. An attorney representing a claimant is not authorized  
2189 to schedule the self-insured employer's or carrier's independent  
2190 medical evaluations under this subsection. Neither the self-  
2191 insured employer nor the carrier shall be responsible for  
2192 scheduling any independent medical examination other than an  
2193 employer or carrier independent medical examination.

2194 (d) If the employee fails to appear for the independent  
2195 medical examination scheduled by the employer or carrier without



2196 good cause and fails to advise the physician at least 24 hours  
2197 before the scheduled date for the examination that he or she  
2198 cannot appear, the employee is barred from recovering  
2199 compensation for any period during which he or she has refused  
2200 to submit to such examination. Further, the employee shall  
2201 reimburse the employer or carrier 50 percent of the physician's  
2202 cancellation or no-show fee unless the employer or carrier that  
2203 schedules the examination fails to timely provide to the  
2204 employee a written confirmation of the date of the examination  
2205 pursuant to paragraph (c) which includes an explanation of why  
2206 he or she failed to appear. The employee may appeal to a judge  
2207 of compensation claims for reimbursement when the employer or  
2208 carrier withholds payment in excess of the authority granted by  
2209 this section.

2210 (e) No medical opinion other than the opinion of a medical  
2211 advisor appointed by the judge of compensation claims or the  
2212 department ~~agency~~, an independent medical examiner, or an  
2213 authorized treating provider is admissible in proceedings before  
2214 the judges of compensation claims.

2215 (f) Attorney's fees incurred by an injured employee in  
2216 connection with delay of or opposition to an independent medical  
2217 examination, including, but not limited to, motions for  
2218 protective orders, are not recoverable under this chapter.

2219 (g) When a medical dispute arises, the parties may  
2220 mutually agree to refer the employee to a licensed physician  
2221 specializing in the diagnosis and treatment of the medical  
2222 condition at issue for an independent medical examination and  
2223 report. Such medical examination shall be referred to as a





2224 "consensus independent medical examination." The findings and  
2225 conclusions of such mutually agreed upon consensus independent  
2226 medical examination shall be binding on the parties and shall  
2227 constitute resolution of the medical dispute addressed in the  
2228 independent consensus medical examination and in any proceeding.  
2229 Agreement by the parties to a consensus independent medical  
2230 examination shall not affect the employer's, carrier's, or  
2231 employee's entitlement to one independent medical examination  
2232 per accident as provided for in this subsection.

2233 (6) UTILIZATION REVIEW.--Carriers shall review all bills,  
2234 invoices, and other claims for payment submitted by health care  
2235 providers in order to identify overutilization and billing  
2236 errors, including compliance with practice parameters and  
2237 protocols of treatment established in accordance with this  
2238 chapter, and may hire peer review consultants or conduct  
2239 independent medical evaluations. Such consultants, including  
2240 peer review organizations, are immune from liability in the  
2241 execution of their functions under this subsection to the extent  
2242 provided in s. 766.101. If a carrier finds that overutilization  
2243 of medical services or a billing error has occurred, or there is  
2244 a violation of the practice parameters and protocols of  
2245 treatment established in accordance with this chapter, it must  
2246 disallow or adjust payment for such services or error without  
2247 order of a judge of compensation claims or the agency, if the  
2248 carrier, in making its determination, has complied with this  
2249 section and rules adopted by the agency.

2250 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--



2251 (a) Any health care provider, carrier, or employer who  
2252 elects to contest the disallowance or adjustment of payment by a  
2253 carrier under subsection (6) must, within 30 days after receipt  
2254 of notice of disallowance or adjustment of payment, petition the  
2255 agency to resolve the dispute. The petitioner must serve a copy  
2256 of the petition on the carrier and on all affected parties by  
2257 certified mail. The petition must be accompanied by all  
2258 documents and records that support the allegations contained in  
2259 the petition. Failure of a petitioner to submit such  
2260 documentation to the agency results in dismissal of the  
2261 petition.

2262 (b) The carrier must submit to the agency within 10 days  
2263 after receipt of the petition all documentation substantiating  
2264 the carrier's disallowance or adjustment. Failure of the carrier  
2265 to timely submit the requested documentation to the agency  
2266 within 10 days constitutes a waiver of all objections to the  
2267 petition.

2268 (c) Within 60 days after receipt of all documentation, the  
2269 agency must provide to the petitioner, the carrier, and the  
2270 affected parties a written determination of whether the carrier  
2271 properly adjusted or disallowed payment. The agency must be  
2272 guided by standards and policies set forth in this chapter,  
2273 including all applicable reimbursement schedules, practice  
2274 parameters, and protocols of treatment, in rendering its  
2275 determination.

2276 (d) If the agency finds an improper disallowance or  
2277 improper adjustment of payment by an insurer, the insurer shall  
2278 reimburse the health care provider, facility, insurer, or



2279 employer within 30 days, subject to the penalties provided in  
2280 this subsection.

2281 (e) The agency shall adopt rules to carry out this  
2282 subsection. The rules may include provisions for consolidating  
2283 petitions filed by a petitioner and expanding the timetable for  
2284 rendering a determination upon a consolidated petition.

2285 (f) Any carrier that engages in a pattern or practice of  
2286 arbitrarily or unreasonably disallowing or reducing payments to  
2287 health care providers may be subject to one or more of the  
2288 following penalties imposed by the agency:

2289 1. Repayment of the appropriate amount to the health care  
2290 provider.

2291 2. An administrative fine assessed by the agency in an  
2292 amount not to exceed \$5,000 per instance of improperly  
2293 disallowing or reducing payments.

2294 3. Award of the health care provider's costs, including a  
2295 reasonable attorney's fee, for prosecuting the petition.

2296 (8) ~~PATTERN OR PRACTICE OF OVERUTILIZATION.--~~

2297 (a) Carriers must report to the agency all instances of  
2298 overutilization including, but not limited to, all instances in  
2299 which the carrier disallows or adjusts payment or a  
2300 determination has been made that the provided or recommended  
2301 treatment is in excess of the practice parameters and protocols  
2302 of treatment established in this chapter. The agency shall  
2303 determine whether a pattern or practice of overutilization  
2304 exists.

2305 (b) If the agency determines that a health care provider  
2306 has engaged in a pattern or practice of overutilization or a



2307 violation of this chapter or rules adopted by the agency,  
2308 including a pattern or practice of providing treatment in excess  
2309 of the practice parameters or protocols of treatment, it may  
2310 impose one or more of the following penalties:

- 2311 1. An order of the agency barring the provider from  
2312 payment under this chapter;
- 2313 2. Deauthorization of care under review;
- 2314 3. Denial of payment for care rendered in the future;
- 2315 4. Decertification of a health care provider certified as  
2316 an expert medical advisor under subsection (9) or of a  
2317 rehabilitation provider certified under s. 440.49;
- 2318 5. An administrative fine assessed by the agency in an  
2319 amount not to exceed \$5,000 per instance of overutilization or  
2320 violation; and
- 2321 6. Notification of and review by the appropriate licensing  
2322 authority pursuant to s. 440.106(3).

2323 (9) EXPERT MEDICAL ADVISORS.--

2324 (a) The agency shall certify expert medical advisors in  
2325 each specialty to assist the agency and the judges of  
2326 compensation claims within the advisor's area of expertise as  
2327 provided in this section. The agency shall, in a manner  
2328 prescribed by rule, in certifying, recertifying, or decertifying  
2329 an expert medical advisor, consider the qualifications,  
2330 training, impartiality, and commitment of the health care  
2331 provider to the provision of quality medical care at a  
2332 reasonable cost. As a prerequisite for certification or  
2333 recertification, the agency shall require, at a minimum, that  
2334 an expert medical advisor have specialized workers' compensation



2335 training or experience under the workers' compensation system of  
2336 this state and board certification or board eligibility.

2337 (b) The agency shall contract with one or more entities  
2338 that employ, contract with, or otherwise secure ~~or employ~~ expert  
2339 medical advisors to provide peer review or expert medical  
2340 consultation, opinions, and testimony to the agency or to a  
2341 judge of compensation claims in connection with resolving  
2342 disputes relating to reimbursement, differing opinions of health  
2343 care providers, and health care and physician services rendered  
2344 under this chapter, including utilization issues. The agency  
2345 shall by rule establish the qualifications of expert medical  
2346 advisors, including training and experience in the workers'  
2347 compensation system in the state and the expert medical  
2348 advisor's knowledge of and commitment to the standards of care,  
2349 practice parameters, and protocols established pursuant to this  
2350 chapter. Expert medical advisors contracting with the agency  
2351 shall, as a term of such contract, agree to provide consultation  
2352 or services in accordance with the timetables set forth in this  
2353 chapter and to abide by rules adopted by the agency, including,  
2354 but not limited to, rules pertaining to procedures for review of  
2355 the services rendered by health care providers and preparation  
2356 of reports and testimony or recommendations for submission to  
2357 the agency or the judge of compensation claims.

2358 (c) If there is disagreement in the opinions of the health  
2359 care providers, if two health care providers disagree on medical  
2360 evidence supporting the employee's complaints or the need for  
2361 additional medical treatment, or if two health care providers  
2362 disagree that the employee is able to return to work, the agency



2363 may, and the judge of compensation claims shall, upon his or her  
2364 own motion or within 15 days after receipt of a written request  
2365 by either the injured employee, the employer, or the carrier,  
2366 order the injured employee to be evaluated by an expert medical  
2367 advisor. The opinion of the expert medical advisor is presumed  
2368 to be correct unless there is clear and convincing evidence to  
2369 the contrary as determined by the judge of compensation claims.  
2370 The expert medical advisor appointed to conduct the evaluation  
2371 shall have free and complete access to the medical records of  
2372 the employee. An employee who fails to report to and cooperate  
2373 with such evaluation forfeits entitlement to compensation during  
2374 the period of failure to report or cooperate.

2375 (d) The expert medical advisor must complete his or her  
2376 evaluation and issue his or her report to the agency or to the  
2377 judge of compensation claims within 15 ~~45~~ days after receipt of  
2378 all medical records. The expert medical advisor must furnish a  
2379 copy of the report to the carrier and to the employee.

2380 (e) An expert medical advisor is not liable under any  
2381 theory of recovery for evaluations performed under this section  
2382 without a showing of fraud or malice. The protections of s.  
2383 766.101 apply to any officer, employee, or agent of the agency  
2384 and to any officer, employee, or agent of any entity with which  
2385 the agency has contracted under this subsection.

2386 (f) If the agency or a judge of compensation claims orders  
2387 ~~determines that~~ the services of a certified expert medical  
2388 advisor ~~are required~~ to resolve a dispute under this section,  
2389 the party requesting such examination ~~carrier~~ must compensate  
2390 the advisor for his or her time in accordance with a schedule



2391 adopted by the agency. If the employee prevails in a dispute as  
2392 determined in an order by a judge of compensation claims based  
2393 upon the expert medical advisor's findings, the employer or  
2394 carrier shall pay for the costs of such expert medical advisor.  
2395 If a judge of compensation claims, upon his or her motion, finds  
2396 that an expert medical advisor is needed to resolve the dispute,  
2397 the carrier must compensate the advisor for his or her time in  
2398 accordance with a schedule adopted by the agency. The agency may  
2399 assess a penalty not to exceed \$500 against any carrier that  
2400 fails to timely compensate an advisor in accordance with this  
2401 section.

2402 (10) WITNESS FEES.-- Any health care provider who gives a  
2403 deposition shall be allowed a witness fee. The amount charged by  
2404 the witness may not exceed \$200 per hour. An expert witness who  
2405 has never provided direct professional services to a party but  
2406 has merely reviewed medical records and provided an expert  
2407 opinion or has provided only direct professional services that  
2408 were unrelated to the workers' compensation case may not be  
2409 allowed a witness fee in excess of \$200 per day.

2410 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND  
2411 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2412 (a) The Agency for Health Care Administration may  
2413 investigate health care providers to determine whether providers  
2414 are complying with this chapter and with rules adopted by the  
2415 agency, whether the providers are engaging in overutilization,  
2416 ~~and~~ whether providers are engaging in improper billing  
2417 practices, and whether providers are adhering to practice  
2418 parameters and protocols established in accordance with this



2419 chapter. If the agency finds that a health care provider has  
2420 improperly billed, overutilized, or failed to comply with agency  
2421 rules or the requirements of this chapter, including, but not  
2422 limited to, practice parameters and protocols established in  
2423 accordance with this chapter, it must notify the provider of its  
2424 findings and may determine that the health care provider may not  
2425 receive payment from the carrier or may impose penalties as set  
2426 forth in subsection (8) or other sections of this chapter. If  
2427 the health care provider has received payment from a carrier for  
2428 services that were improperly billed, that constitute  
2429 overutilization, or that were outside practice parameters or  
2430 protocols established in accordance with this chapter ~~or for~~  
2431 ~~overutilization~~, it must return those payments to the carrier.  
2432 The agency may assess a penalty not to exceed \$500 for each  
2433 overpayment that is not refunded within 30 days after  
2434 notification of overpayment by the agency or carrier.

2435 (b) The department shall fine or otherwise discipline an  
2436 employer or carrier, pursuant to this chapter, the insurance  
2437 code, or rules adopted by the department, for each late payment  
2438 of compensation that is below the minimum 95-percent ~~90-percent~~  
2439 performance standard. Any carrier that is found to be not in  
2440 compliance in subsequent consecutive quarters must implement a  
2441 medical-bill review program approved by the division, and the  
2442 carrier is subject to disciplinary action by the Department of  
2443 Insurance.

2444 (c) The agency has exclusive jurisdiction to decide any  
2445 matters concerning reimbursement, to resolve any overutilization  
2446 dispute under subsection (7), and to decide any question





2447 concerning overutilization under subsection (8), which question  
2448 or dispute arises after January 1, 1994.

2449 (d) The following agency actions do not constitute agency  
2450 action subject to review under ss. 120.569 and 120.57 and do not  
2451 constitute actions subject to s. 120.56: referral by the entity  
2452 responsible for utilization review; a decision by the agency to  
2453 refer a matter to a peer review committee; establishment by a  
2454 health care provider or entity of procedures by which a peer  
2455 review committee reviews the rendering of health care services;  
2456 and the review proceedings, report, and recommendation of the  
2457 peer review committee.

2458 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
2459 REIMBURSEMENT ALLOWANCES.--

2460 (a) A three-member panel is created, consisting of the  
2461 Insurance Commissioner, or the Insurance Commissioner's  
2462 designee, and two members to be appointed by the Governor,  
2463 subject to confirmation by the Senate, one member who, on  
2464 account of present or previous vocation, employment, or  
2465 affiliation, shall be classified as a representative of  
2466 employers, the other member who, on account of previous  
2467 vocation, employment, or affiliation, shall be classified as a  
2468 representative of employees. The panel shall determine statewide  
2469 schedules of maximum reimbursement allowances for medically  
2470 necessary treatment, care, and attendance provided by  
2471 physicians, hospitals, ambulatory surgical centers, work-  
2472 hardening programs, pain programs, and durable medical  
2473 equipment. The maximum reimbursement allowances for inpatient  
2474 hospital care shall be based on a schedule of per diem rates, to



2475 be approved by the three-member panel no later than March 1,  
2476 1994, to be used in conjunction with a precertification manual  
2477 as determined by the department, including maximum hours in  
2478 which an outpatient may remain in observation status, which  
2479 shall not exceed 23 hours agency. All compensable charges for  
2480 hospital outpatient care shall be reimbursed at 75 percent of  
2481 usual and customary charges, except as otherwise provided by  
2482 this subsection. Until the three-member panel approves a  
2483 schedule of per diem rates for inpatient hospital care and it  
2484 becomes effective, all compensable charges for hospital  
2485 inpatient care must be reimbursed at 75 percent of their usual  
2486 and customary charges. Annually, the three-member panel shall  
2487 adopt schedules of maximum reimbursement allowances for  
2488 physicians, hospital inpatient care, hospital outpatient care,  
2489 ambulatory surgical centers, work-hardening programs, and pain  
2490 programs. ~~However, the maximum percentage of increase in the~~  
2491 ~~individual reimbursement allowance may not exceed the percentage~~  
2492 ~~of increase in the Consumer Price Index for the previous year.~~  
2493 An individual physician, hospital, ambulatory surgical center,  
2494 pain program, or work-hardening program shall be reimbursed  
2495 either ~~the usual and customary charge for treatment, care, and~~  
2496 ~~attendance,~~ the agreed-upon contract price, or the maximum  
2497 reimbursement allowance in the appropriate schedule, ~~whichever~~  
2498 ~~is less.~~

2499 (b) It is the intent of the Legislature to increase the  
2500 schedule of maximum reimbursement allowances for selected  
2501 physicians effective January 1, 2004, and to pay for the  
2502 increases through reductions in payments to hospitals. Revisions



2503 developed pursuant to this subsection are limited to the  
2504 following:

2505 1. Payments for outpatient physical, occupational, and  
2506 speech therapy provided by hospitals shall be reduced to the  
2507 schedule of maximum reimbursement allowances for these services  
2508 which applies to nonhospital providers.

2509 2. Payments for scheduled outpatient nonemergency  
2510 radiological and clinical laboratory services that are not  
2511 provided in conjunction with a surgical procedure shall be  
2512 reduced to the schedule of maximum reimbursement allowances for  
2513 these services which applies to nonhospital providers.

2514 3. Outpatient reimbursement for scheduled surgeries shall  
2515 be reduced from 75 percent of charges to 60 percent of charges.

2516 4. Maximum reimbursement for a physician licensed under  
2517 chapter 458 or chapter 459 shall be increased to 110 percent of  
2518 the reimbursement allowed by Medicare, using appropriate codes  
2519 and modifiers or the medical reimbursement level adopted by the  
2520 three-member panel as of January 1, 2003, whichever is greater.

2521 5. Maximum reimbursement for surgical procedures shall be  
2522 increased to 140 percent of the reimbursement allowed by  
2523 Medicare or the medical reimbursement level adopted by the  
2524 three-member panel as of January 1, 2003, whichever is greater.

2525 (c)(b) As to reimbursement for a prescription medication,  
2526 the reimbursement amount for a prescription shall be the average  
2527 wholesale price times 0.86 ~~1.2~~ plus \$4.26 ~~\$4.18~~ for the  
2528 dispensing fee, except where the carrier has contracted for a  
2529 lower amount. Fees for pharmaceuticals and pharmaceutical  
2530 services shall be reimbursable at the applicable fee schedule



2531 amount. Where the employer or carrier has contracted for such  
2532 services and the employee elects to obtain them through a  
2533 provider not a party to the contract, the carrier shall  
2534 reimburse at the schedule, negotiated, or contract price,  
2535 whichever is lower. No such contract shall rely on a provider  
2536 that is not reasonably accessible to the employee.

2537 (d)(e) Reimbursement for all fees and other charges for  
2538 such treatment, care, and attendance, including treatment, care,  
2539 and attendance provided by any hospital or other health care  
2540 provider, ambulatory surgical center, work-hardening program, or  
2541 pain program, must not exceed the amounts provided by the  
2542 uniform schedule of maximum reimbursement allowances as  
2543 determined by the panel or as otherwise provided in this  
2544 section. This subsection also applies to independent medical  
2545 examinations performed by health care providers under this  
2546 chapter. In determining the uniform schedule, the panel shall  
2547 first approve the data which it finds representative of  
2548 prevailing charges in the state for similar treatment, care, and  
2549 attendance of injured persons. Each health care provider, health  
2550 care facility, ambulatory surgical center, work-hardening  
2551 program, or pain program receiving workers' compensation  
2552 payments shall maintain records verifying their usual charges.  
2553 In establishing the uniform schedule of maximum reimbursement  
2554 allowances, the panel must consider:

2555 1. The levels of reimbursement for similar treatment,  
2556 care, and attendance made by other health care programs or  
2557 third-party providers;



2558           2. The impact upon cost to employers for providing a level  
2559 of reimbursement for treatment, care, and attendance which will  
2560 ensure the availability of treatment, care, and attendance  
2561 required by injured workers;

2562           3. The financial impact of the reimbursement allowances  
2563 upon health care providers and health care facilities, including  
2564 trauma centers as defined in s. 395.4001, and its effect upon  
2565 their ability to make available to injured workers such  
2566 medically necessary remedial treatment, care, and attendance.  
2567 The uniform schedule of maximum reimbursement allowances must be  
2568 reasonable, must promote health care cost containment and  
2569 efficiency with respect to the workers' compensation health care  
2570 delivery system, and must be sufficient to ensure availability  
2571 of such medically necessary remedial treatment, care, and  
2572 attendance to injured workers; and

2573           4. The most recent average maximum allowable rate of  
2574 increase for hospitals determined by the Health Care Board under  
2575 chapter 408.

2576           ~~(e)~~(d) In addition to establishing the uniform schedule of  
2577 maximum reimbursement allowances, the panel shall:

2578           1. Take testimony, receive records, and collect data to  
2579 evaluate the adequacy of the workers' compensation fee schedule,  
2580 nationally recognized fee schedules and alternative methods of  
2581 reimbursement to certified health care providers and health care  
2582 facilities for inpatient and outpatient treatment and care.

2583           2. Survey certified health care providers and health care  
2584 facilities to determine the availability and accessibility of



2585 workers' compensation health care delivery systems for injured  
2586 workers.

2587 3. Survey carriers to determine the estimated impact on  
2588 carrier costs and workers' compensation premium rates by  
2589 implementing changes to the carrier reimbursement schedule or  
2590 implementing alternative reimbursement methods.

2591 4. Submit recommendations on or before January 1, 2003,  
2592 and biennially thereafter, to the President of the Senate and  
2593 the Speaker of the House of Representatives on methods to  
2594 improve the workers' compensation health care delivery system.

2595

2596 The division shall provide data to the panel, including but not  
2597 limited to, utilization trends in the workers' compensation  
2598 health care delivery system. The division shall provide the  
2599 panel with an annual report regarding the resolution of medical  
2600 reimbursement disputes and any actions pursuant to s. 440.13(8).  
2601 The division shall provide administrative support and service to  
2602 the panel to the extent requested by the panel.

2603 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED  
2604 TO RENDER MEDICAL CARE.-- The agency shall remove from the list  
2605 of physicians or facilities authorized to provide remedial  
2606 treatment, care, and attendance under this chapter the name of  
2607 any physician or facility found after reasonable investigation  
2608 to have:

2609 (a) Engaged in professional or other misconduct or  
2610 incompetency in connection with medical services rendered under  
2611 this chapter;



2612 (b) Exceeded the limits of his or her or its professional  
2613 competence in rendering medical care under this chapter, or to  
2614 have made materially false statements regarding his or her or  
2615 its qualifications in his or her application;

2616 (c) Failed to transmit copies of medical reports to the  
2617 employer or carrier, or failed to submit full and truthful  
2618 medical reports of all his or her or its findings to the  
2619 employer or carrier as required under this chapter;

2620 (d) Solicited, or employed another to solicit for himself  
2621 or herself or itself or for another, professional treatment,  
2622 examination, or care of an injured employee in connection with  
2623 any claim under this chapter;

2624 (e) Refused to appear before, or to answer upon request  
2625 of, the agency or any duly authorized officer of the state, any  
2626 legal question, or to produce any relevant book or paper  
2627 concerning his or her conduct under any authorization granted to  
2628 him or her under this chapter;

2629 (f) Self-referred in violation of this chapter or other  
2630 laws of this state; or

2631 (g) Engaged in a pattern of practice of overutilization or  
2632 a violation of this chapter or rules adopted by the agency,  
2633 including failure to adhere to practice parameters and protocols  
2634 established in accordance with this chapter.

2635 (14) PAYMENT OF MEDICAL FEES.--

2636 (a) Except for emergency care treatment, fees for medical  
2637 services are payable only to a health care provider certified  
2638 and authorized to render remedial treatment, care, or attendance  
2639 under this chapter. Carriers shall pay, disallow, or deny



2640 payment to health care providers in the manner and at times set  
2641 forth in this chapter. A health care provider may not collect or  
2642 receive a fee from an injured employee within this state, except  
2643 as otherwise provided by this chapter. Such providers have  
2644 recourse against the employer or carrier for payment for  
2645 services rendered in accordance with this chapter. Payment to  
2646 health care providers or physicians shall be subject to the  
2647 medical fee schedule and applicable practice parameters and  
2648 protocols, regardless of whether the health care provider or  
2649 claimant is asserting that the payment should be made.

2650 (b) Fees charged for remedial treatment, care, and  
2651 attendance, except for independent medical examinations and  
2652 consensus independent medical examinations, may not exceed the  
2653 applicable fee schedules adopted under this chapter and  
2654 department rule. Notwithstanding any other provision in this  
2655 chapter, if a physician or health care provider specifically  
2656 agrees in writing to follow identified procedures aimed at  
2657 providing quality medical care to injured workers at reasonable  
2658 costs, deviations from established fee schedules shall be  
2659 permitted. Written agreements warranting deviations may include,  
2660 but are not limited to, the timely scheduling of appointments  
2661 for injured workers, participating in return-to-work programs  
2662 with injured workers' employers, expediting the reporting of  
2663 treatments provided to injured workers, and agreeing to  
2664 continuing education, utilization review, quality assurance,  
2665 precertification, and case management systems that are designed  
2666 to provide needed treatment for injured workers.





2667 (c) Notwithstanding any other provision of this chapter,  
2668 following overall maximum medical improvement from an injury  
2669 compensable under this chapter, the employee is obligated to pay  
2670 a copayment of \$10 per visit for medical services. The copayment  
2671 shall not apply to emergency care provided to the employee.

2672 (15) PRACTICE PARAMETERS.—The practice parameters and  
2673 protocols mandated under this chapter shall be the Workers'  
2674 Compensation Utilization Management Standards adopted by the  
2675 American Accreditation Health Care Commission in effect on  
2676 January 1, 2003.

2677 ~~(a) The Agency for Health Care Administration, in~~  
2678 ~~conjunction with the department and appropriate health~~  
2679 ~~professional associations and health-related organizations shall~~  
2680 ~~develop and may adopt by rule scientifically sound practice~~  
2681 ~~parameters for medical procedures relevant to workers'~~  
2682 ~~compensation claimants. Practice parameters developed under this~~  
2683 ~~section must focus on identifying effective remedial treatments~~  
2684 ~~and promoting the appropriate utilization of health care~~  
2685 ~~resources. Priority must be given to those procedures that~~  
2686 ~~involve the greatest utilization of resources either because~~  
2687 ~~they are the most costly or because they are the most frequently~~  
2688 ~~performed. Practice parameters for treatment of the 10 top~~  
2689 ~~procedures associated with workers' compensation injuries~~  
2690 ~~including the remedial treatment of lower-back injuries must be~~  
2691 ~~developed by December 31, 1994.~~

2692 ~~(b) The guidelines may be initially based on guidelines~~  
2693 ~~prepared by nationally recognized health care institutions and~~  
2694 ~~professional organizations but should be tailored to meet the~~



2695 ~~workers' compensation goal of returning employees to full~~  
2696 ~~employment as quickly as medically possible, taking into~~  
2697 ~~consideration outcomes data collected from managed care~~  
2698 ~~providers and any other inpatient and outpatient facilities~~  
2699 ~~serving workers' compensation claimants.~~

2700 ~~(c) Procedures must be instituted which provide for the~~  
2701 ~~periodic review and revision of practice parameters based on the~~  
2702 ~~latest outcomes data, research findings, technological~~  
2703 ~~advancements, and clinical experiences, at least once every 3~~  
2704 ~~years.~~

2705 ~~(d) Practice parameters developed under this section must~~  
2706 ~~be used by carriers and the agency in evaluating the~~  
2707 ~~appropriateness and overutilization of medical services provided~~  
2708 ~~to injured employees.~~

2709 (16) STANDARDS OF CARE.--The following standards of care  
2710 shall be followed in providing medical care under this chapter:

2711 (a) Abnormal anatomical findings alone, in the absence of  
2712 objective relevant medical findings, shall not be an indicator  
2713 of injury or illness, a justification for the provision of  
2714 remedial medical care or the assignment of restrictions, or a  
2715 foundation for limitations.

2716 (b) At all times during evaluation and treatment, the  
2717 provider shall act on the premise that returning to work is an  
2718 integral part of the treatment plan. The goal of removing all  
2719 restrictions and limitations as early as appropriate shall be  
2720 part of the treatment plan on a continuous basis. The assignment  
2721 of restrictions and limitations shall be reviewed with each  
2722 patient exam and upon receipt of new information, such as



2723 progress reports from physical therapists and other providers.

2724 Consideration shall be given to upgrading or removing the  
2725 restrictions and limitations with each patient exam, based upon  
2726 the presence or absence of objective relevant medical findings.

2727 (c) Reasonable necessary medical care of injured employees  
2728 shall in all situations:

2729 1. Utilize a high intensity, short duration treatment  
2730 approach that focuses on early activation and restoration of  
2731 function whenever possible.

2732 2. Include reassessment of the treatment plans, regimes,  
2733 therapies, prescriptions, and functional limitations or  
2734 restrictions prescribed by the provider every 30 days.

2735 3. Be focused on treatment of the individual employee's  
2736 specific clinical dysfunction or status and shall not be based  
2737 upon nondescript diagnostic labels.

2738  
2739 All treatment shall be inherently scientifically logical and the  
2740 evaluation or treatment procedure must match the documented  
2741 physiologic and clinical problem. Treatment shall match the  
2742 type, intensity, and duration of service required by the problem  
2743 identified.

2744 (17) Failure to comply with this section shall be  
2745 considered a violation of this chapter and is subject to  
2746 penalties as provided for in s. 440.525.

2747 Section 16. Paragraphs (d) and (i) of subsection (1) and  
2748 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)  
2749 of section 440.134, Florida Statutes, are amended to read:

2750 440.134 Workers' compensation managed care arrangement.--



2751 (1) As used in this section, the term:  
 2752 (d) "Grievance" means a written complaint, other than a  
 2753 petition for benefits, filed by the injured worker pursuant to  
 2754 the requirements of the managed care arrangement, expressing  
 2755 dissatisfaction with the ~~medical care provided by an~~ insurer's  
 2756 workers' compensation managed care arrangement's refusal to  
 2757 provide medical care or the medical care provided arrangement  
 2758 ~~health care providers, expressed in writing by an injured~~  
 2759 ~~worker.~~

2760 (i) "Medical care coordinator" means a primary care  
 2761 provider within a provider network who is responsible for  
 2762 managing the medical care of an injured worker including  
 2763 determining other health care providers and health care  
 2764 facilities to which the injured employee will be referred for  
 2765 evaluation or treatment. A medical care coordinator shall be a  
 2766 physician licensed under chapter 458, ~~or~~ an osteopathic  
 2767 physician licensed under chapter 459, a chiropractic physician  
 2768 licensed under chapter 460, or a podiatric physician licensed  
 2769 under chapter 461.

2770 (2)(a) The self-insured employer or carrier may, subject  
 2771 to the terms and limitations specified elsewhere in this section  
 2772 and chapter, furnish to the employee solely through managed care  
 2773 arrangements such medically necessary remedial treatment, care,  
 2774 and attendance for such period as the nature of the injury or  
 2775 the process of recovery requires and which shall be in  
 2776 accordance with practice parameters and protocols established  
 2777 pursuant to this chapter. For any self-insured employer or  
 2778 carrier who elects to deliver the medical benefits required by



2779 | this chapter through a method other than a workers' compensation  
2780 | managed care arrangement, the discontinuance of the use of the  
2781 | workers' compensation managed care arrangement shall be without  
2782 | regard to the date of the accident, notwithstanding any other  
2783 | provision of law or rule.

2784 |       (b) The agency shall authorize an insurer to offer or  
2785 | utilize a workers' compensation managed care arrangement after  
2786 | the insurer files a completed application along with the payment  
2787 | of a \$1,000 application fee, and upon the agency's being  
2788 | satisfied that the applicant has the ability to provide quality  
2789 | of care consistent with the prevailing professional standards of  
2790 | care and the insurer and its workers' compensation managed care  
2791 | arrangement otherwise meets the requirements of this section. No  
2792 | insurer may offer or utilize a managed care arrangement without  
2793 | such authorization. The authorization, unless sooner suspended  
2794 | or revoked, shall automatically expire 2 years after the date of  
2795 | issuance unless renewed by the insurer. The authorization shall  
2796 | be renewed upon application for renewal and payment of a renewal  
2797 | fee of \$1,000, provided that the insurer is in compliance with  
2798 | the requirements of this section and any rules adopted  
2799 | hereunder. An application for renewal of the authorization shall  
2800 | be made 90 days prior to expiration of the authorization, on  
2801 | forms provided by the agency. Renewal application shall not  
2802 | require the resubmission of any documents previously filed with  
2803 | the agency if such documents have remained valid and unchanged  
2804 | since their original filing.

2805 |       (6) The proposed managed care plan of operation must  
2806 | include:



2807 (a) A statement or map providing a clear description of  
2808 the service area.

2809 (b) A description of the grievance procedure to be used.

2810 (c) A description of the quality assurance program which  
2811 assures that the health care services provided to workers shall  
2812 be rendered under reasonable standards of quality of care  
2813 consistent with the prevailing standards of medical practice in  
2814 the medical community. The program shall include, but not be  
2815 limited to:

2816 1. A written statement of goals and objectives that  
2817 stresses health and return-to-work outcomes as the principal  
2818 criteria for the evaluation of the quality of care rendered to  
2819 injured workers.

2820 2. A written statement describing how methodology has been  
2821 incorporated into an ongoing system for monitoring of care that  
2822 is individual case oriented and, when implemented, can provide  
2823 interpretation and analysis of patterns of care rendered to  
2824 individual patients by individual providers.

2825 3. Written procedures for taking appropriate remedial  
2826 action whenever, as determined under the quality assurance  
2827 program, inappropriate or substandard services have been  
2828 provided or services that should have been furnished have not  
2829 been provided.

2830 4. A written plan, which includes ongoing review, for  
2831 providing review of physicians and other licensed medical  
2832 providers.



2833 5. Appropriate financial incentives to reduce service  
2834 costs and utilization without sacrificing the quality of  
2835 service.

2836 6. Adequate methods of peer review and utilization review.  
2837 The utilization review process shall include a health care  
2838 facility's facilities precertification mechanism, including, but  
2839 not limited to, all elective admissions and nonemergency  
2840 surgeries and adherence to practice parameters and protocols  
2841 established in accordance with this chapter.

2842 7. Provisions for resolution of disputes arising between a  
2843 health care provider and an insurer regarding reimbursements and  
2844 utilization review.

2845 8. Availability of a process for aggressive medical care  
2846 coordination, as well as a program involving cooperative efforts  
2847 by the workers, the employer, and the workers' compensation  
2848 managed care arrangement to promote early return to work for  
2849 injured workers.

2850 9. A written plan allowing for the independent medical  
2851 examination provided for in s. 440.13(5). Notwithstanding any  
2852 provision to the contrary, the costs for the independent medical  
2853 examination shall be paid by the carrier if such examination is  
2854 performed by a physician in the provider network. Otherwise,  
2855 such costs shall be paid in accordance with s. 440.13(5). An  
2856 independent medical examination requested by a claimant and paid  
2857 for by the carrier shall constitute the claimant's one  
2858 independent medical examination per accident under s. 440.13(5).  
2859 ~~A process allowing employees to obtain one second medical~~



2860 ~~opinion in the same specialty and within the provider network~~  
2861 ~~during the course of treatment for a work-related injury.~~

2862 10. A provision for the selection of a primary care  
2863 provider by the employee from among primary providers in the  
2864 provider network.

2865 11. The written information proposed to be used by the  
2866 insurer to comply with subparagraph 8.

2867 (7) Written procedures to provide the insurer with timely  
2868 medical records and information including, but not limited to,  
2869 work status, work restrictions, date of maximum medical  
2870 improvement, permanent impairment ratings, and other information  
2871 as required, including information demonstrating compliance with  
2872 the practice parameters and protocols of treatment established  
2873 pursuant to this chapter.

2874 (8) Evidence that appropriate health care providers and  
2875 administrative staff of the insurer's workers' compensation  
2876 managed care arrangement have received training and education on  
2877 the provisions of this chapter; ~~and~~ the administrative rules  
2878 that govern the provision of remedial treatment, care, and  
2879 attendance of injured workers; and the practice parameters and  
2880 protocols of treatment established pursuant to this chapter.

2881 (9) Written procedures and methods to prevent  
2882 inappropriate or excessive treatment that are in accordance with  
2883 the practice parameters and protocols of treatment established  
2884 pursuant to this chapter.

2885 (10) Written procedures and methods for the management of  
2886 an injured worker's medical care by a medical care coordinator  
2887 including:





2888 (a) The mechanism for assuring that covered employees  
2889 receive all initial covered services from a primary care  
2890 provider participating in the provider network, except for  
2891 emergency care.

2892 (b) The mechanism for assuring that all continuing covered  
2893 services be received from the same primary care provider  
2894 participating in the provider network that provided the initial  
2895 covered services, except when services from another provider are  
2896 authorized by the medical care coordinator pursuant to paragraph  
2897 (d).

2898 (c) The policies and procedures for allowing an employee  
2899 one change to another provider within the ~~same specialty and~~  
2900 provider network as the authorized treating physician during the  
2901 course of treatment for a work-related injury, in accordance  
2902 with the procedures provided in s. 440.13(2)(f), if a request is  
2903 ~~made to the medical care coordinator by the employee; and~~  
2904 ~~requiring that special provision be made for more than one such~~  
2905 ~~referral through the arrangement's grievance procedures.~~

2906 (d) The process for assuring that all referrals authorized  
2907 by a medical care coordinator, in accordance with the practice  
2908 parameters and protocols of treatment established pursuant to  
2909 this chapter, are made to the participating network providers,  
2910 unless medically necessary treatment, care, and attendance are  
2911 not available and accessible to the injured worker in the  
2912 provider network.

2913 (e) Assignment of a medical care coordinator licensed  
2914 under chapter 458 or chapter 459 to manage care by physicians  
2915 licensed under chapter 458 or chapter 459, a medical care



2916 coordinator licensed under chapter 460 to manage care by  
2917 physicians licensed under chapter 460, and a medical care  
2918 coordinator licensed under chapter 461 to manage care by  
2919 physicians licensed under chapter 461 upon request by an injured  
2920 employee for care by a physician licensed under chapter 458,  
2921 chapter 459, chapter 460, or chapter 461.

2922 (11) A description of the use of workers' compensation  
2923 practice parameters and protocols of treatment for health care  
2924 services ~~when adopted by the agency.~~

2925 (17) Notwithstanding any other provisions of this chapter,  
2926 when a carrier provides medical care through a workers'  
2927 compensation managed care arrangement, pursuant to this section,  
2928 those workers who are subject to the arrangement must receive  
2929 medical services for work-related injuries and diseases as  
2930 prescribed in the contract, provided the employer and carrier  
2931 have provided notice to the employees of the arrangement in a  
2932 manner approved by the agency and the medical services are in  
2933 accordance with the practice parameters and protocols  
2934 established pursuant to this chapter. Treatment received outside  
2935 the workers' compensation managed care arrangement is not  
2936 compensable, regardless of the purpose of the treatment,  
2937 including, but not limited to, evaluations, examinations, or  
2938 diagnostic studies to determine causation between medical  
2939 findings and a compensable accident, the existence or extent of  
2940 impairments or disabilities, and whether the injured employee  
2941 has reached maximum medical improvement, unless authorized by  
2942 the carrier prior to the treatment date.

2943 (25) The agency shall adopt rules that specify:



2944 (a) Procedures for authorization and examination of  
2945 workers' compensation managed care arrangements by the agency.

2946 (b) Requirements and procedures for authorization of  
2947 workers' compensation arrangement provider networks and  
2948 procedures for the agency to grant exceptions from accessibility  
2949 of services.

2950 (c) Requirements and procedures for case management,  
2951 utilization management, and peer review.

2952 (d) Requirements and procedures for quality assurance and  
2953 medical records.

2954 (e) Requirements and procedures for dispute resolution in  
2955 conformance with this chapter.

2956 (f) Requirements and procedures for employee and provider  
2957 education.

2958 (g) Requirements and procedures for reporting data  
2959 regarding grievances, return-to-work outcomes, and provider  
2960 networks.

2961 Section 17. Subsections (1) and (4) and paragraph (b) of  
2962 subsection (5) of section 440.14, Florida Statutes, are amended  
2963 to read:

2964 440.14 Determination of pay.--

2965 (1) Except as otherwise provided in this chapter, the  
2966 average weekly wages of the injured employee on the date of the  
2967 accident ~~at the time of the injury~~ shall be taken as the basis  
2968 upon which to compute compensation and shall be determined,  
2969 subject to the limitations of s. 440.12(2), as follows:

2970 (a) If the injured employee has worked in the employment  
2971 in which she or he was working on the date of the accident ~~at~~



2972 ~~the time of the injury~~, whether for the same or another  
2973 employer, during substantially the whole of 13 weeks immediately  
2974 preceding the accident injury, her or his average weekly wage  
2975 shall be one-thirteenth of the total amount of wages earned in  
2976 such employment during the 13 weeks. As used in this paragraph,  
2977 the term "substantially the whole of 13 weeks" means the  
2978 calendar ~~shall be deemed to mean and refer to a constructive~~  
2979 period of 13 weeks as a whole, which shall be defined as the 13  
2980 calendar weeks before the date of the accident, excluding the  
2981 week during which the accident occurred. ~~a consecutive period of~~  
2982 ~~91 days, and~~ The term "during substantially the whole of 13  
2983 weeks" shall be deemed to mean during not less than 75 ~~90~~  
2984 percent of the total customary ~~full-time~~ hours of employment  
2985 within such period considered as a whole.

2986 (b) If the injured employee has not worked in such  
2987 employment during substantially the whole of 13 weeks  
2988 immediately preceding the accident injury, the wages of a  
2989 similar employee in the same employment who has worked  
2990 substantially the whole of such 13 weeks shall be used in making  
2991 the determination under the preceding paragraph.

2992 (c) If an employee is a seasonal worker and the foregoing  
2993 method cannot be fairly applied in determining the average  
2994 weekly wage, then the employee may use, instead of the 13 weeks  
2995 immediately preceding the accident injury, the calendar year or  
2996 the 52 weeks immediately preceding the accident injury. The  
2997 employee will have the burden of proving that this method will  
2998 be more reasonable and fairer than the method set forth in  
2999 paragraphs (a) and (b) and, further, must document prior



3000 earnings with W-2 forms, written wage statements, or income tax  
3001 returns. The employer shall have 30 days following the receipt  
3002 of this written proof to adjust the compensation rate, including  
3003 the making of any additional payment due for prior weekly  
3004 payments, based on the lower rate compensation.

3005 (d) If any of the foregoing methods cannot reasonably and  
3006 fairly be applied, the full-time weekly wages of the injured  
3007 employee shall be used, except as otherwise provided in  
3008 paragraph (e) or paragraph (f).

3009 (e) If it is established that the injured employee was  
3010 under 22 years of age when the accident occurred ~~injured~~ and  
3011 that under normal conditions her or his wages should be expected  
3012 to increase during the period of disability, the fact may be  
3013 considered in arriving at her or his average weekly wages.

3014 (f) If it is established that the injured employee was a  
3015 part-time worker on the date of the accident ~~at the time of the~~  
3016 ~~injury~~, that she or he had adopted part-time employment as a  
3017 customary practice, and that under normal working conditions she  
3018 or he probably would have remained a part-time worker during the  
3019 period of disability, these factors shall be considered in  
3020 arriving at her or his average weekly wages. For the purpose of  
3021 this paragraph, the term "part-time worker" means an individual  
3022 who customarily works less than the full-time hours or full-time  
3023 workweek of a similar employee in the same employment.

3024 (g) If compensation is due for a fractional part of the  
3025 week, the compensation for such fractional part shall be  
3026 determined by dividing the weekly compensation rate by the



3027 number of days employed per week to compute the amount due for  
3028 each day.

3029 (4) Upon termination of the employee or upon termination  
3030 of the payment of fringe benefits of any employee who is  
3031 collecting indemnity benefits pursuant to s. 440.15(2) or  
3032 (3)~~(b)~~, the employer shall within 7 days of such termination  
3033 file a corrected 13-week wage statement reflecting the wages  
3034 paid and the fringe benefits that had been paid to the injured  
3035 employee, as provided in s. 440.02(27).

3036 (5)

3037 (b) The employee waives any entitlement to interest,  
3038 penalties, and attorney's fees during the period in which the  
3039 employee has not provided information concerning the loss of  
3040 earnings from concurrent employment. Carriers are not subject to  
3041 penalties by the division under s. 440.20(8)(b) ~~and (c)~~ for  
3042 unpaid compensation related to concurrent employment during the  
3043 period in which the employee has not provided information  
3044 concerning the loss of earnings from concurrent employment.

3045 Section 18. Section 440.15, Florida Statutes, is amended  
3046 to read:

3047 440.15 Compensation for disability.-- Compensation for  
3048 disability shall be paid to the employee, subject to the limits  
3049 provided in s. 440.12(2), as follows:

3050 (1) PERMANENT TOTAL DISABILITY.--

3051 (a) In case of total disability adjudged to be permanent,  
3052  $66\frac{2}{3}$  percent of the average weekly wages shall be paid to the  
3053 employee during the continuance of such total disability.



3054           (b) ~~Only~~ A catastrophic injury as defined in s. 440.02(38)  
3055 shall, in the absence of conclusive proof of a substantial  
3056 earning capacity, constitute permanent total disability. In all  
3057 other cases, no compensation shall be payable under paragraph  
3058 (a) if the employee is engaged in, or is physically capable of  
3059 engaging in, employment, including sheltered employment. In  
3060 order to obtain permanent total disability benefits, the  
3061 employee must establish that he or she is not able  
3062 uninterruptedly to engage in any employment, including part-time  
3063 sedentary employment or available sheltered employment within a  
3064 50-mile radius of the employee's residence, due to his or her  
3065 physical limitation. "Sheltered employment" means work  
3066 unavailable in the open labor market that is offered to the  
3067 employee or that is actually performed by the employee as  
3068 offered by the employer in whose employment the injured worker  
3069 was engaged at the time of the accident. Such benefits shall be  
3070 payable until the employee reaches age 70, notwithstanding any  
3071 age limits. If the accident occurred on or after the employee  
3072 reaches age 65, benefits shall be payable during the continuance  
3073 of permanent total disability, not to exceed 5 years following  
3074 the determination of permanent total disability. Only claimants  
3075 with catastrophic injuries or claimants who are incapable of  
3076 engaging in employment, including sheltered employment as  
3077 described in this paragraph, are eligible for permanent total  
3078 benefits. In no other case may permanent total disability be  
3079 awarded.



3080 (c) In cases of permanent total disability resulting from  
3081 injuries that occurred prior to July 1, 1955, such payments  
3082 shall not be made in excess of 700 weeks.

3083 (d) If an employee who is being paid compensation for  
3084 permanent total disability becomes rehabilitated to the extent  
3085 that she or he establishes an earning capacity, the employee  
3086 shall be paid, instead of the compensation provided in paragraph  
3087 (a), benefits pursuant to subsection (3). The department shall  
3088 adopt rules to enable a permanently and totally disabled  
3089 employee who may have reestablished an earning capacity to  
3090 undertake a trial period of reemployment without prejudicing her  
3091 or his return to permanent total status in the case that such  
3092 employee is unable to sustain an earning capacity.

3093 (e)1. The employer's or carrier's right to conduct  
3094 vocational evaluations or testing by the employer's or carrier's  
3095 chosen rehabilitation advisor or provider ~~pursuant to s. 440.491~~  
3096 continues even after the employee has been accepted or  
3097 adjudicated as entitled to compensation under this chapter and  
3098 costs for such evaluations and testing shall be borne by the  
3099 employer or carrier, respectively. This right includes, but is  
3100 not limited to, instances in which such evaluations or tests are  
3101 recommended by a treating physician or independent medical-  
3102 examination physician, instances warranted by a change in the  
3103 employee's medical condition, or instances in which the employee  
3104 appears to be making appropriate progress in recuperation. This  
3105 right may not be exercised more than once every calendar year.

3106 2. The carrier must confirm the scheduling of the  
3107 vocational evaluation or testing in writing, and must notify the





3108 employee and the employee's counsel, if any, at least 7 days  
3109 before the date on which vocational evaluation or testing is  
3110 scheduled to occur.

3111 3. ~~Pursuant to an order of the judge of compensation~~  
3112 ~~claims~~, The employer or carrier may withhold payment of benefits  
3113 for permanent total disability or supplements for any period  
3114 during which the employee willfully fails or refuses to appear  
3115 without good cause for the scheduled vocational evaluation or  
3116 testing.

3117 (f)1. If permanent total disability results from injuries  
3118 that occurred subsequent to June 30, 1955, and for which the  
3119 liability of the employer for compensation has not been  
3120 discharged under s. 440.20(11), the injured employee shall  
3121 receive additional weekly compensation benefits equal to 5  
3122 percent of her or his weekly compensation rate, as established  
3123 pursuant to the law in effect on the date of her or his injury,  
3124 multiplied by the number of calendar years since the date of  
3125 injury. The weekly compensation payable and the additional  
3126 benefits payable under this paragraph, when combined, may not  
3127 exceed the maximum weekly compensation rate in effect at the  
3128 time of payment as determined pursuant to s. 440.12(2).

3129 ~~Entitlement to~~ These supplemental payments shall not be paid or  
3130 payable after the employee attains ~~cease at~~ age 62, regardless  
3131 of whether ~~if~~ the employee has applied for or is eligible to  
3132 apply ~~is eligible~~ for social security benefits under 42 U.S.C.  
3133 ss. 402 and 423, ~~whether or not the employee has applied for~~  
3134 ~~such benefits~~. These supplemental benefits shall be paid by the  
3135 department out of the Workers' Compensation Administration Trust



3136 Fund when the injury occurred subsequent to June 30, 1955, and  
3137 before July 1, 1984. These supplemental benefits shall be paid  
3138 by the employer when the injury occurred on or after July 1,  
3139 1984. Supplemental benefits are not payable for any period prior  
3140 to October 1, 1974.

3141 2.a. The department shall provide by rule for the periodic  
3142 reporting to the department of all earnings of any nature and  
3143 social security income by the injured employee entitled to or  
3144 claiming additional compensation under subparagraph 1. Neither  
3145 the department nor the employer or carrier shall make any  
3146 payment of those additional benefits provided by subparagraph 1.  
3147 for any period during which the employee willfully fails or  
3148 refuses to report upon request by the department in the manner  
3149 prescribed by such rules.

3150 b. The department shall provide by rule for the periodic  
3151 reporting to the employer or carrier of all earnings of any  
3152 nature and social security income by the injured employee  
3153 entitled to or claiming benefits for permanent total disability.  
3154 The employer or carrier is not required to make any payment of  
3155 benefits for permanent total disability for any period during  
3156 which the employee willfully fails or refuses to report upon  
3157 request by the employer or carrier in the manner prescribed by  
3158 such rules or if any employee who is receiving permanent total  
3159 disability benefits refuses to apply for or cooperate with the  
3160 employer or carrier in applying for social security benefits.

3161 3. When an injured employee receives a full or partial  
3162 lump-sum advance of the employee's permanent total disability  
3163 compensation benefits, the employee's benefits under this



3164 paragraph shall be computed on the employee's weekly  
3165 compensation rate as reduced by the lump-sum advance.

3166 (2) TEMPORARY TOTAL DISABILITY.--

3167 (a) Subject to subsection (7), in case of disability total  
3168 in character but temporary in quality, 662/3 percent of the  
3169 average weekly wages shall be paid to the employee during the  
3170 continuance thereof, not to exceed 104 weeks except as provided  
3171 in this subsection, s. 440.12(1), and s. 440.14(3). Once the  
3172 employee reaches the maximum number of weeks allowed, or the  
3173 employee reaches the date of maximum medical improvement,  
3174 whichever occurs earlier, temporary disability benefits shall  
3175 cease and the injured worker's permanent impairment shall be  
3176 determined.

3177 (b) Notwithstanding the provisions of paragraph (a), an  
3178 employee who has sustained the loss of an arm, leg, hand, or  
3179 foot, has been rendered a paraplegic, paraparetic, quadriplegic,  
3180 or quadriparetic, or has lost the sight of both eyes shall be  
3181 paid temporary total disability of 80 percent of her or his  
3182 average weekly wage. The increased temporary total disability  
3183 compensation provided for in this paragraph must not extend  
3184 beyond 6 months from the date of the accident; however, such  
3185 benefits shall not be due or payable if the employee is eligible  
3186 for, entitled to, or collecting permanent total disability  
3187 benefits. The compensation provided by this paragraph is not  
3188 subject to the limits provided in s. 440.12(2), but instead is  
3189 subject to a maximum weekly compensation rate of \$700. If, at  
3190 the conclusion of this period of increased temporary total  
3191 disability compensation, the employee is still temporarily



3192 totally disabled, the employee shall continue to receive  
3193 temporary total disability compensation as set forth in  
3194 paragraphs (a) and (c). The period of time the employee has  
3195 received this increased compensation will be counted as part of,  
3196 and not in addition to, the maximum periods of time for which  
3197 the employee is entitled to compensation under paragraph (a) but  
3198 not paragraph (c).

3199 (c) Temporary total disability benefits paid pursuant to  
3200 this subsection shall include such period as may be reasonably  
3201 necessary for training in the use of artificial members and  
3202 appliances, and shall include such period as the employee may be  
3203 receiving training and education under a program pursuant to s.  
3204 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~  
3205 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~  
3206 ~~than the last day for which such temporary disability benefits~~  
3207 ~~are paid.~~

3208 (d) The department shall, by rule, provide for the  
3209 periodic reporting to the department, employer, or carrier of  
3210 all earned income, including income from social security, by the  
3211 injured employee who is entitled to or claiming benefits for  
3212 temporary total disability. The employer or carrier is not  
3213 required to make any payment of benefits for temporary total  
3214 disability for any period during which the employee willfully  
3215 fails or refuses to report upon request by the employer or  
3216 carrier in the manner prescribed by the rules. The rule must  
3217 require the claimant to personally sign the claim form and  
3218 attest that she or he has reviewed, understands, and  
3219 acknowledges the foregoing.



3220 (3) PERMANENT IMPAIRMENT ~~AND WAGE LOSS~~ BENEFITS.--

3221 (a) ~~Impairment benefits.~~

3222 ~~1-~~ Once the employee has reached the date of maximum

3223 medical improvement, impairment benefits are due and payable

3224 within 14 ~~20~~ days after the carrier has knowledge of the

3225 impairment.

3226 (b)2- The three-member panel, in cooperation with the

3227 department, shall establish and use a uniform permanent

3228 impairment rating schedule. This schedule must be based on

3229 medically or scientifically demonstrable findings as well as the

3230 systems and criteria set forth in the American Medical

3231 Association's Guides to the Evaluation of Permanent Impairment;

3232 the Snellen Charts, published by American Medical Association

3233 Committee for Eye Injuries; and the Minnesota Department of

3234 Labor and Industry Disability Schedules. The schedule must

3235 ~~should~~ be based upon objective findings. The schedule shall be

3236 more comprehensive than the AMA Guides to the Evaluation of

3237 Permanent Impairment and shall expand the areas already

3238 addressed and address additional areas not currently contained

3239 in the guides. On August 1, 1979, and pending the adoption, by

3240 rule, of a permanent schedule, Guides to the Evaluation of

3241 Permanent Impairment, copyright 1977, 1971, 1988, by the

3242 American Medical Association, shall be the temporary schedule

3243 and shall be used for the purposes hereof. For injuries after

3244 July 1, 1990, pending the adoption by rule of a uniform

3245 disability rating agency schedule, the Minnesota Department of

3246 Labor and Industry Disability Schedule shall be used unless that

3247 schedule does not address an injury. In such case, the Guides to



3248 the Evaluation of Permanent Impairment by the American Medical  
3249 Association shall be used. Determination of permanent impairment  
3250 under this schedule must be made by a physician licensed under  
3251 chapter 458, a doctor of osteopathic medicine licensed under  
3252 chapters 458 and 459, a chiropractic physician licensed under  
3253 chapter 460, a podiatric physician licensed under chapter 461,  
3254 an optometrist licensed under chapter 463, or a dentist licensed  
3255 under chapter 466, as appropriate considering the nature of the  
3256 injury. No other persons are authorized to render opinions  
3257 regarding the existence of or the extent of permanent  
3258 impairment.

3259 (c)3- All impairment income benefits shall be based on an  
3260 impairment rating using the impairment schedule referred to in  
3261 paragraph (b) subparagraph 2. Impairment income benefits are  
3262 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the  
3263 employee's average weekly temporary total disability benefit not  
3264 to exceed the maximum weekly benefit under s. 440.12; provided,  
3265 however, that such benefits shall be reduced by 50 percent for  
3266 each week in which the employee has earned income equal to or in  
3267 excess of the employee's average weekly wage. An employee's  
3268 entitlement to impairment income benefits begins the day after  
3269 the employee reaches maximum medical improvement or the  
3270 expiration of temporary benefits, whichever occurs earlier, and  
3271 continues until the earlier of:

3272 1.a- The expiration of a period computed at the rate of 3  
3273 weeks for each percentage point of impairment; or

3274 2.b- The death of the employee.

3275



3276 Impairment income benefits as defined by this subsection are  
3277 payable only for impairment ratings for physical impairments. If  
3278 objective medical findings can substantiate a permanent  
3279 psychiatric impairment resulting from the accident, permanent  
3280 impairment benefits are limited for the permanent psychiatric  
3281 impairment to 1-percent permanent impairment.

3282 (d)4. After the employee has been certified by a doctor as  
3283 having reached maximum medical improvement or 6 weeks before the  
3284 expiration of temporary benefits, whichever occurs earlier, the  
3285 certifying doctor shall evaluate the condition of the employee  
3286 and assign an impairment rating, using the impairment schedule  
3287 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~  
3288 ~~payable for the mental, psychological, or emotional injury~~  
3289 ~~arising out of depression from being out of work.~~ If the  
3290 certification and evaluation are performed by a doctor other  
3291 than the employee's treating doctor, the certification and  
3292 evaluation must be submitted to the treating doctor, the  
3293 employee, and the carrier within 10 days after the evaluation.  
3294 ~~and~~ The treating doctor must indicate to the carrier agreement  
3295 or disagreement with the other doctor's certification and  
3296 evaluation.

3297 1. The certifying doctor shall issue a written report to  
3298 ~~the department, the employee,~~ and the carrier certifying that  
3299 maximum medical improvement has been reached, stating the  
3300 impairment rating to the body as a whole, and providing any  
3301 other information required by the department by rule. The  
3302 carrier shall establish an overall maximum medical improvement



3303 date and permanent impairment rating, based upon all such  
3304 reports.

3305 2. Within 14 days after the carrier's knowledge of each  
3306 maximum medical improvement date and impairment rating to the  
3307 body as a whole upon which the carrier is paying benefits, the  
3308 carrier shall report such maximum medical improvement date and,  
3309 when determined, the overall maximum medical improvement date  
3310 and associated impairment rating to the department in a format  
3311 as set forth in department rule. If the employee has not been  
3312 certified as having reached maximum medical improvement before  
3313 the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~  
3314 disability benefits begin to accrue, the carrier shall notify  
3315 the treating doctor of the requirements of this section.

3316 (e)5. The carrier shall pay the employee impairment income  
3317 benefits for a period based on the impairment rating.

3318 (f)6. The department may by rule specify forms and  
3319 procedures governing the method of payment of ~~wage loss and~~  
3320 ~~impairment benefits under this section for dates of accidents~~  
3321 ~~before January 1, 1994, and for dates of accidents on or after~~  
3322 ~~January 1, 1994.~~

3323 ~~(b) Supplemental benefits.~~

3324 ~~1. All supplemental benefits must be paid in accordance~~  
3325 ~~with this subsection. An employee is entitled to supplemental~~  
3326 ~~benefits as provided in this paragraph as of the expiration of~~  
3327 ~~the impairment period, if:~~

3328 ~~a. The employee has an impairment rating from the~~  
3329 ~~compensable injury of 20 percent or more as determined pursuant~~  
3330 ~~to this chapter;~~





3331 ~~b. The employee has not returned to work or has returned~~  
3332 ~~to work earning less than 80 percent of the employee's average~~  
3333 ~~weekly wage as a direct result of the employee's impairment; and~~

3334 ~~e. The employee has in good faith attempted to obtain~~  
3335 ~~employment commensurate with the employee's ability to work.~~

3336 ~~2. If an employee is not entitled to supplemental benefits~~  
3337 ~~at the time of payment of the final weekly impairment income~~  
3338 ~~benefit because the employee is earning at least 80 percent of~~  
3339 ~~the employee's average weekly wage, the employee may become~~  
3340 ~~entitled to supplemental benefits at any time within 1 year~~  
3341 ~~after the impairment income benefit period ends if:~~

3342 ~~a. The employee earns wages that are less than 80 percent~~  
3343 ~~of the employee's average weekly wage for a period of at least~~  
3344 ~~90 days;~~

3345 ~~b. The employee meets the other requirements of~~  
3346 ~~subparagraph 1.; and~~

3347 ~~e. The employee's decrease in earnings is a direct result~~  
3348 ~~of the employee's impairment from the compensable injury.~~

3349 ~~3. If an employee earns wages that are at least 80 percent~~  
3350 ~~of the employee's average weekly wage for a period of at least~~  
3351 ~~90 days during which the employee is receiving supplemental~~  
3352 ~~benefits, the employee ceases to be entitled to supplemental~~  
3353 ~~benefits for the filing period. Supplemental benefits that have~~  
3354 ~~been terminated shall be reinstated when the employee satisfies~~  
3355 ~~the conditions enumerated in subparagraph 2. and files the~~  
3356 ~~statement required under subparagraph 4. Notwithstanding any~~  
3357 ~~other provision, if an employee is not entitled to supplemental~~  
3358 ~~benefits for 12 consecutive months, employee ceases to be~~



3359 ~~entitled to any additional income benefits for the compensable~~  
3360 ~~injury. If the employee is discharged within 12 months after~~  
3361 ~~losing entitlement under this subsection, benefits may be~~  
3362 ~~reinstated if the employee was discharged at that time with the~~  
3363 ~~intent to deprive the employee of supplemental benefits.~~

3364 ~~4. After the initial determination of supplemental~~  
3365 ~~benefits, the employee must file a statement with the carrier~~  
3366 ~~stating that the employee has earned less than 80 percent of the~~  
3367 ~~employee's average weekly wage as a direct result of the~~  
3368 ~~employee's impairment, stating the amount of wages the employee~~  
3369 ~~earned in the filing period, and stating that the employee has~~  
3370 ~~in good faith sought employment commensurate with the employee's~~  
3371 ~~ability to work. The statement must be filed quarterly on a form~~  
3372 ~~and in the manner prescribed by the department. The department~~  
3373 ~~may modify the filing period as appropriate to an individual~~  
3374 ~~ease. Failure to file a statement relieves the carrier of~~  
3375 ~~liability for supplemental benefits for the period during which~~  
3376 ~~a statement is not filed.~~

3377 ~~5. The carrier shall begin payment of supplemental~~  
3378 ~~benefits not later than the seventh day after the expiration~~  
3379 ~~date of the impairment income benefit period and shall continue~~  
3380 ~~to timely pay those benefits. The carrier may request a~~  
3381 ~~mediation conference for the purpose of contesting the~~  
3382 ~~employee's entitlement to or the amount of supplemental income~~  
3383 ~~benefits.~~

3384 ~~6. Supplemental benefits are calculated quarterly and paid~~  
3385 ~~monthly. For purposes of calculating supplemental benefits, 80~~  
3386 ~~percent of the employee's average weekly wage and the average~~



3387 ~~wages the employee has earned per week are compared quarterly.~~  
3388 ~~For purposes of this paragraph, if the employee is offered a~~  
3389 ~~bona fide position of employment that the employee is capable of~~  
3390 ~~performing, given the physical condition of the employee and the~~  
3391 ~~geographic accessibility of the position, the employee's weekly~~  
3392 ~~wages are considered equivalent to the weekly wages for the~~  
3393 ~~position offered to the employee.~~

3394 ~~7. Supplemental benefits are payable at the rate of 80~~  
3395 ~~percent of the difference between 80 percent of the employee's~~  
3396 ~~average weekly wage determined pursuant to s. 440.14 and the~~  
3397 ~~weekly wages the employee has earned during the reporting~~  
3398 ~~period, not to exceed the maximum weekly income benefit under s.~~  
3399 ~~440.12.~~

3400 ~~8. The department may by rule define terms that are~~  
3401 ~~necessary for the administration of this section and forms and~~  
3402 ~~procedures governing the method of payment of supplemental~~  
3403 ~~benefits for dates of accidents before January 1, 1994, and for~~  
3404 ~~dates of accidents on or after January 1, 1994.~~

3405 ~~(c) Duration of temporary impairment and supplemental~~  
3406 ~~income benefits.-- The employee's eligibility for temporary~~  
3407 ~~benefits, impairment income benefits, and supplemental benefits~~  
3408 ~~terminates on the expiration of 401 weeks after the date of~~  
3409 ~~injury.~~

3410 (g) Notwithstanding paragraph (c), for accidents occurring  
3411 on or after October 1, 2003, an employee's entitlement to  
3412 impairment income benefits begins the day after the employee  
3413 reaches maximum medical improvement or the expiration of



3414 temporary benefits, whichever occurs earlier, and continues for  
3415 the following periods:

3416 1. Two weeks of benefits are to be paid to the employee  
3417 for each percentage point of impairment from 1 percent up to and  
3418 including 10 percent.

3419 2. For each percentage point of impairment from 11 percent  
3420 up to and including 15 percent, 3 weeks of benefits are to be  
3421 paid.

3422 3. For each percentage point of impairment from 16 percent  
3423 up to and including 20 percent, 4 weeks of benefits are to be  
3424 paid.

3425 4. For each percentage point of impairment from 21 percent  
3426 and higher, 6 weeks of benefits are to be paid.

3427 (4) TEMPORARY PARTIAL DISABILITY.--

3428 (a) Subject to subsection (7), in case of temporary  
3429 partial disability, compensation shall be equal to 80 percent of  
3430 the difference between 80 percent of the employee's average  
3431 weekly wage and the salary, wages, and other remuneration the  
3432 employee is able to earn post injury, as compared weekly;  
3433 however, ~~the~~ weekly temporary partial disability benefits may  
3434 not exceed an amount equal to 66 2/3 percent of the employee's  
3435 average weekly wage at the time of accident injury. In order to  
3436 simplify the comparison of the preinjury average weekly wage  
3437 with the salary, wages, and other remuneration the employee is  
3438 able to earn post injury, the department may by rule provide for  
3439 payment of the initial installment of temporary partial  
3440 disability benefits to be paid as a partial week so that payment  
3441 for remaining weeks of temporary partial disability can ~~the~~



3442 ~~modification of the weekly comparison so as to~~ coincide as  
3443 closely as possible with the post injury employer's work week  
3444 ~~injured worker's pay periods~~. The amount determined to be the  
3445 salary, wages, and other remuneration the employee is able to  
3446 earn shall in no case be less than the sum actually being earned  
3447 by the employee, including earnings from sheltered employment.  
3448 Benefits shall be payable under this subsection only if overall  
3449 maximum medical improvement has not been reached and the medical  
3450 conditions resulting from the accident create restrictions on  
3451 the injured employee's ability to return to work.

3452 (b) Within 5 business days after the carrier's knowledge  
3453 of the employee's release to restricted work, the carrier shall  
3454 mail to the employee and employer an informational letter,  
3455 adopted by department rule, explaining the employee's possible  
3456 eligibility and responsibilities for temporary partial  
3457 disability benefits.

3458 (c) When an employee returns to work with the restrictions  
3459 resulting from the accident and is earning wages less than 80  
3460 percent of the preinjury average weekly wage, the first  
3461 installment of temporary partial disability benefits is due 7  
3462 days after the last date of the post injury employer's first  
3463 biweekly work week. Thereafter, payment for temporary partial  
3464 benefits shall be paid biweekly no later than the 7th day  
3465 following the last day of each biweekly work week.

3466 (d) If the employee is unable to return to work with the  
3467 restrictions resulting from the accident and is not earning  
3468 wages, salary, or other remuneration, temporary partial  
3469 disability benefits shall be paid no later than the last day of



3470 each biweekly period. The employee shall notify the carrier  
3471 within 5 business days after returning to work. Failure to  
3472 notify the carrier of the establishment of an earning capacity  
3473 in the required time shall result in a suspension or nonpayment  
3474 of temporary partial disability benefits until the proper  
3475 notification is provided.

3476 (e)~~(b)~~ Such benefits shall be paid during the continuance  
3477 of such disability, not to exceed a period of 104 weeks, as  
3478 provided by this subsection and subsection (2). Once the injured  
3479 employee reaches the maximum number of weeks, temporary  
3480 disability benefits cease and the injured worker's permanent  
3481 impairment must be determined. If the employee is terminated  
3482 from post injury employment based on the employee's misconduct,  
3483 temporary partial disability benefits are not payable as  
3484 provided for in this section. The department shall ~~may~~ by rule  
3485 specify forms and procedures governing the method and time for  
3486 of payment of temporary disability benefits for dates of  
3487 accidents before January 1, 1994, and for dates of accidents on  
3488 or after January 1, 1994.

3489 (5) SUBSEQUENT INJURY.--

3490 (a) The fact that an employee has suffered previous  
3491 disability, impairment, anomaly, or disease, or received  
3492 compensation therefor, shall not preclude her or him from  
3493 benefits, as specified in paragraph (b), for a subsequent  
3494 aggravation or acceleration of the preexisting condition or ~~not~~  
3495 preclude benefits for death resulting therefrom, except that no  
3496 benefits shall be payable if the employee, at the time of  
3497 entering into the employment of the employer by whom the



3498 benefits would otherwise be payable, falsely represents herself  
3499 or himself in writing as not having previously been disabled or  
3500 compensated because of such previous disability, impairment,  
3501 anomaly, or disease and the employer detrimentally relies on the  
3502 misrepresentation. ~~Compensation for temporary disability,~~  
3503 ~~medical benefits, and wage loss benefits shall not be subject to~~  
3504 ~~apportionment.~~

3505 (b) If a compensable injury, disability, or need for  
3506 medical care ~~permanent impairment~~, or any portion thereof, is a  
3507 result of aggravation or acceleration of a preexisting  
3508 condition, or is the result of merger with a preexisting  
3509 condition, only the disabilities and medical treatment  
3510 associated with such compensable injury shall be payable under  
3511 this chapter, excluding the degree of disability or medical  
3512 conditions existing at the time of the impairment rating or at  
3513 the time of the accident, regardless of whether the preexisting  
3514 condition was disabling at the time of the accident or at the  
3515 time of the impairment rating and without considering whether  
3516 the preexisting condition would be disabling without the  
3517 compensable accident ~~impairment, an employee eligible to receive~~  
3518 ~~impairment benefits under paragraph (3)(a) shall receive such~~  
3519 ~~benefits for the total impairment found to result, excluding the~~  
3520 ~~degree of impairment existing at the time of the subject~~  
3521 ~~accident or injury or which would have existed by the time of~~  
3522 ~~the impairment rating without the intervention of the~~  
3523 ~~compensable accident or injury. The degree of permanent~~  
3524 impairment or disability attributable to the accident or injury  
3525 shall be compensated in accordance with this section,



3526 apportioning out the preexisting condition based on the  
3527 anatomical impairment rating attributable to the preexisting  
3528 condition. Medical benefits shall be paid apportioning out the  
3529 percentage of the need for such care attributable to the  
3530 preexisting condition ~~paragraph (3)(a)~~. As used in this  
3531 paragraph, "merger" means the combining of a preexisting  
3532 permanent impairment or disability with a subsequent compensable  
3533 permanent impairment or disability which, when the effects of  
3534 both are considered together, result in a permanent impairment  
3535 or disability rating which is greater than the sum of the two  
3536 permanent impairment or disability ratings when each impairment  
3537 or disability is considered individually.

3538 ~~(6) OBLIGATION TO REHIRE.-- If the employer has not in~~  
3539 ~~good faith made available to the employee, within a 100-mile~~  
3540 ~~radius of the employee's residence, work appropriate to the~~  
3541 ~~employee's physical limitations within 30 days after the carrier~~  
3542 ~~notifies the employer of maximum medical improvement and the~~  
3543 ~~employee's physical limitations, the employer shall pay to the~~  
3544 ~~department for deposit into the Workers' Compensation~~  
3545 ~~Administration Trust Fund a fine of \$250 for every \$5,000 of the~~  
3546 ~~employer's workers' compensation premium or payroll, not to~~  
3547 ~~exceed \$2,000 per violation, as the department requires by rule.~~  
3548 ~~The employer is not subject to this subsection if the employee~~  
3549 ~~is receiving permanent total disability benefits or if the~~  
3550 ~~employer has 50 or fewer employees.~~

3551 ~~(6)(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured  
3552 employee refuses employment suitable to the capacity thereof,  
3553 offered to or procured therefor, such employee shall not be





3554 entitled to any compensation at any time during the continuance  
3555 of such refusal unless at any time in the opinion of the judge  
3556 of compensation claims such refusal is justifiable. Time periods  
3557 for the payment of benefits in accordance with this section  
3558 shall be counted in determining the limitation of benefits as  
3559 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3560 (7)(8) EMPLOYEE LEAVES EMPLOYMENT.-- If an injured  
3561 employee, when receiving compensation for temporary partial  
3562 disability, leaves the employment of the employer by whom she or  
3563 he was employed at the time of the accident for which such  
3564 compensation is being paid, the employee shall, upon securing  
3565 employment elsewhere, give to such former employer an affidavit  
3566 in writing containing the name of her or his new employer, the  
3567 place of employment, and the amount of wages being received at  
3568 such new employment; and, until she or he gives such affidavit,  
3569 the compensation for temporary partial disability will cease.  
3570 The employer by whom such employee was employed at the time of  
3571 the accident for which such compensation is being paid may also  
3572 at any time demand of such employee an additional affidavit in  
3573 writing containing the name of her or his employer, the place of  
3574 her or his employment, and the amount of wages she or he is  
3575 receiving; and if the employee, upon such demand, fails or  
3576 refuses to make and furnish such affidavit, her or his right to  
3577 compensation for temporary partial disability shall cease until  
3578 such affidavit is made and furnished. If the employee leaves her  
3579 or his employment while receiving temporary partial benefits  
3580 without just cause as determined by the judge of compensation  
3581 claims, temporary partial benefits shall be payable based on the



3582 deemed earnings of the employee as if she or he had remained  
3583 employed.

3584 (8)~~(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an  
3585 employee becomes an inmate of a public institution, then no  
3586 compensation shall be payable unless she or he has dependent  
3587 upon her or him for support a person or persons defined as  
3588 dependents elsewhere in this chapter, whose dependency shall be  
3589 determined as if the employee were deceased and to whom  
3590 compensation would be paid in case of death; and such  
3591 compensation as is due such employee shall be paid such  
3592 dependents during the time she or he remains such inmate.

3593 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER  
3594 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3595 (a) Weekly compensation benefits payable under this  
3596 chapter for disability resulting from injuries to an employee  
3597 who becomes eligible for benefits under 42 U.S.C. s. 423 shall  
3598 be reduced to an amount whereby the sum of such compensation  
3599 benefits payable under this chapter and such total benefits  
3600 otherwise payable for such period to the employee and her or his  
3601 dependents, had such employee not been entitled to benefits  
3602 under this chapter, under 42 U.S.C. ss. 402 and 423, does not  
3603 exceed 80 percent of the employee's average weekly wage.  
3604 However, this provision shall not operate to reduce an injured  
3605 worker's benefits under this chapter to a greater extent than  
3606 such benefits would have otherwise been reduced under 42 U.S.C.  
3607 s. 424(a). This reduction of compensation benefits is not  
3608 applicable to any compensation benefits payable for any week



3609 subsequent to the week in which the injured worker reaches the  
3610 age of 62 years.

3611 (b) If the provisions of 42 U.S.C. s. 424(a) are amended  
3612 to provide for a reduction or increase of the percentage of  
3613 average current earnings that the sum of compensation benefits  
3614 payable under this chapter and the benefits payable under 42  
3615 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of  
3616 benefits provided in this subsection shall be reduced or  
3617 increased accordingly. The department may by rule specify forms  
3618 and procedures governing the method for calculating and  
3619 administering the offset of benefits payable under this chapter  
3620 and benefits payable under 42 U.S.C. ss. 402 and 423. The  
3621 department shall have first priority in taking any available  
3622 social security offsets on dates of accidents occurring before  
3623 July 1, 1984.

3624 (c) No disability compensation benefits payable for any  
3625 week, including those benefits provided by paragraph (1)(f),  
3626 shall be reduced pursuant to this subsection until the Social  
3627 Security Administration determines the amount otherwise payable  
3628 to the employee under 42 U.S.C. ss. 402 and 423 and the employee  
3629 has begun receiving such social security benefit payments. The  
3630 employee shall, upon demand by the department, the employer, or  
3631 the carrier, authorize the Social Security Administration to  
3632 release disability information relating to her or him and  
3633 authorize the Division of Unemployment Compensation to release  
3634 unemployment compensation information relating to her or him, in  
3635 accordance with rules to be adopted by the department  
3636 prescribing the procedure and manner for requesting the



3637 authorization and for compliance by the employee. Neither the  
3638 department nor the employer or carrier shall make any payment of  
3639 benefits for total disability or those additional benefits  
3640 provided by paragraph (1)(f) for any period during which the  
3641 employee willfully fails or refuses to authorize the release of  
3642 information in the manner and within the time prescribed by such  
3643 rules. The authority for release of disability information  
3644 granted by an employee under this paragraph shall be effective  
3645 for a period not to exceed 12 months, such authority to be  
3646 renewable as the department may prescribe by rule.

3647 (d) If compensation benefits are reduced pursuant to this  
3648 subsection, the minimum compensation provisions of s. 440.12(2)  
3649 do not apply.

3650 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER  
3651 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT  
3652 COMPENSATION.--

3653 (a) No compensation benefits shall be payable for  
3654 temporary total disability or permanent total disability under  
3655 this chapter for any week in which the injured employee has  
3656 received, or is receiving, unemployment compensation benefits.

3657 (b) If an employee is entitled to temporary partial  
3658 benefits pursuant to subsection (4) and unemployment  
3659 compensation benefits, such unemployment compensation benefits  
3660 shall be primary and the temporary partial benefits shall be  
3661 supplemental only, the sum of the two benefits not to exceed the  
3662 amount of temporary partial benefits which would otherwise be  
3663 payable.



3664            (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT  
3665 OFFICERS.--Any law enforcement officer as defined in s.  
3666 943.10(1), (2), or (3) who, while acting within the course of  
3667 employment as provided by s. 440.091, is maliciously or  
3668 intentionally injured and who thereby sustains a job-connected  
3669 disability compensable under this chapter shall be carried in  
3670 full-pay status rather than being required to use sick, annual,  
3671 or other leave. Full-pay status shall be granted only after  
3672 submission to the employing agency's head of a medical report  
3673 which gives a current diagnosis of the employee's recovery and  
3674 ability to return to work. In no case shall the employee's  
3675 salary and workers' compensation benefits exceed the amount of  
3676 the employee's regular salary requirements.

3677            (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as  
3678 an indemnity benefit under any classification or category of  
3679 benefit under this chapter to which she or he is not entitled,  
3680 the employee is liable to repay that sum to the employer or the  
3681 carrier or to have that sum deducted from future benefits,  
3682 regardless of the classification of benefits, payable to the  
3683 employee under this chapter; however, a partial payment of the  
3684 total repayment may not exceed 20 percent of the amount of the  
3685 biweekly payment.

3686            Section 19. Subsections (1), (2), and (3) of section  
3687 440.151, Florida Statutes, are amended to read:

3688            440.151 Occupational diseases.--

3689            (1)(a) Where the employer and employee are subject to the  
3690 provisions of the Workers' Compensation Law, the disablement or  
3691 death of an employee resulting from an occupational disease as



3692 hereinafter defined shall be treated as the happening of an  
3693 injury by accident, notwithstanding any other provisions of this  
3694 chapter, and the employee or, in case of death, the employee's  
3695 dependents shall be entitled to compensation as provided by this  
3696 chapter, except as hereinafter otherwise provided; and the  
3697 practice and procedure prescribed by this chapter shall apply to  
3698 all proceedings under this section, except as hereinafter  
3699 otherwise provided. Provided, however, that in no case shall an  
3700 employer be liable for compensation under the provisions of this  
3701 section unless such disease has resulted from the nature of the  
3702 employment in which the employee was engaged under such  
3703 employer, ~~and~~ and was actually contracted while so engaged, and the  
3704 nature of the employment was the major contributing cause of the  
3705 disease. Major contributing cause must be shown by medical  
3706 evidence only, as demonstrated by physical examination findings  
3707 and diagnostic testing. meaning by "Nature of the employment"  
3708 means that in ~~to~~ the occupation in which the employee was so  
3709 engaged there is attached a particular hazard of such disease  
3710 that distinguishes it from the usual run of occupations, or the  
3711 incidence of such disease is substantially higher in the  
3712 occupation in which the employee was so engaged than in the  
3713 usual run of occupations. In claims for death under s. 440.16,  
3714 death must occur ~~or, in case of death, unless death follows~~  
3715 ~~continuous disability from such disease, commencing within the~~  
3716 ~~period above limited, for which compensation has been paid or~~  
3717 ~~awarded, or timely claim made as provided in this section, and~~  
3718 ~~results~~ within 350 weeks after such last exposure. Both  
3719 causation and sufficient exposure to a specific harmful



3720 substance shown to be present in the workplace to support  
3721 causation shall be proven by clear and convincing evidence.

3722 (b) No compensation shall be payable for an occupational  
3723 disease if the employee, at the time of entering into the  
3724 employment of the employer by whom the compensation would  
3725 otherwise be payable, falsely represents herself or himself in  
3726 writing as not having previously been disabled, laid off or  
3727 compensated in damages or otherwise, because of such disease.

3728 (c) Where an occupational disease is aggravated by any  
3729 other disease or infirmity, not itself compensable, or where  
3730 disability or death from any other cause, not itself  
3731 compensable, is aggravated, prolonged, accelerated or in anywise  
3732 contributed to by an occupational disease, the compensation  
3733 shall be payable only if the occupational disease is the major  
3734 contributing cause of the injury. Any compensation shall be  
3735 reduced and limited to such proportion only of the compensation  
3736 that would be payable if the occupational disease were the sole  
3737 cause of the disability or death as such occupational disease,  
3738 as a causative factor, bears to all the causes of such  
3739 disability or death, such reduction in compensation to be  
3740 effected by reducing the number of weekly or monthly payments or  
3741 the amounts of such payments, as under the circumstances of the  
3742 particular case may be for the best interest of the claimant or  
3743 claimants. Major contributing cause must be demonstrated by  
3744 medical evidence based on physical examination findings and  
3745 diagnostic testing.

3746 (d) No compensation for death from an occupational disease  
3747 shall be payable to any person whose relationship to the



3748 deceased, which under the provisions of this Workers'  
3749 Compensation Law would give right to compensation, arose  
3750 subsequent to the beginning of the first compensable disability,  
3751 save only to afterborn children of a marriage existing at the  
3752 beginning of such disability.

3753 (e) No compensation shall be payable for disability or  
3754 death resulting from tuberculosis arising out of and in the  
3755 course of employment by the Department of Health at a state  
3756 tuberculosis hospital, or aggravated by such employment, when  
3757 the employee had suffered from said disease at any time prior to  
3758 the commencement of such employment.

3759 (2) Whenever used in this section the term "occupational  
3760 disease" shall be construed to mean only a disease which is due  
3761 to causes and conditions which are characteristic of and  
3762 peculiar to a particular trade, occupation, process, or  
3763 employment, and to exclude all ordinary diseases of life to  
3764 which the general public is exposed, unless the incidence of the  
3765 disease is substantially higher in the particular trade,  
3766 occupation, process, or employment than for the general public.  
3767 "Occupational disease" means only a disease for which there are  
3768 epidemiological studies showing that exposure to the specific  
3769 substance involved, at the levels to which the employee was  
3770 exposed, may cause the precise disease sustained by the  
3771 employee.

3772 (3) Except as ~~hereinafter~~ otherwise provided in this  
3773 section, "disablement" means disability as described in s.  
3774 440.02(13) ~~the event of an employee's becoming actually~~  
3775 ~~incapacitated, partially or totally, because of an occupational~~





3776 ~~disease, from performing her or his work in the last occupation~~  
3777 ~~in which injuriously exposed to the hazards of such disease; and~~  
3778 ~~"disability" means the state of being so incapacitated.~~

3779 Section 20. Subsections (1) and (7) of section 440.16,  
3780 Florida Statutes, are amended to read:

3781 440.16 Compensation for death.--

3782 (1) If death results from the accident within 1 year  
3783 thereafter or follows continuous disability and results from the  
3784 accident within 5 years thereafter, the employer shall pay:

3785 (a) Within 14 days after receiving the bill, actual  
3786 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3787 (b) Compensation, in addition to the above, in the  
3788 following percentages of the average weekly wages to the  
3789 following persons entitled thereto on account of dependency upon  
3790 the deceased, and in the following order of preference, subject  
3791 to the limitation provided in subparagraph 2., but such  
3792 compensation shall be subject to the limits provided in s.  
3793 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less  
3794 than, but shall not exceed, for all dependents or persons  
3795 entitled to compensation,  $66\frac{2}{3}$  percent of the average wage:

3796 1. To the spouse, if there is no child, 50 percent of the  
3797 average weekly wage, such compensation to cease upon the  
3798 spouse's death.

3799 2. To the spouse, if there is a child or children, the  
3800 compensation payable under subparagraph 1. and, in addition,  
3801  $16\frac{2}{3}$  percent on account of the child or children. However, when  
3802 the deceased is survived by a spouse and also a child or  
3803 children, whether such child or children are the product of the



3804 union existing at the time of death or of a former marriage or  
3805 marriages, the judge of compensation claims may provide for the  
3806 payment of compensation in such manner as may appear to the  
3807 judge of compensation claims just and proper and for the best  
3808 interests of the respective parties and, in so doing, may  
3809 provide for the entire compensation to be paid exclusively to  
3810 the child or children; and, in the case of death of such spouse,  
3811  $33\frac{1}{3}$  percent for each child. However, upon the surviving  
3812 spouse's remarriage, the spouse shall be entitled to a lump-sum  
3813 payment equal to 26 weeks of compensation at the rate of 50  
3814 percent of the average weekly wage as provided in s. 440.12(2),  
3815 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is  
3816 exceeded, in which case the surviving spouse shall receive a  
3817 lump-sum payment equal to the remaining available benefits in  
3818 lieu of any further indemnity benefits. In no case shall a  
3819 surviving spouse's acceptance of a lump-sum payment affect  
3820 payment of death benefits to other dependents.

3821 3. To the child or children, if there is no spouse,  $33\frac{1}{3}$   
3822 percent for each child.

3823 4. To the parents, 25 percent to each, such compensation  
3824 to be paid during the continuance of dependency.

3825 5. To the brothers, sisters, and grandchildren, 15 percent  
3826 for each brother, sister, or grandchild.

3827 (c) To the surviving spouse, payment of postsecondary  
3828 student fees for instruction at any area technical center  
3829 established under s. 1001.44 for up to 1,800 classroom hours or  
3830 payment of student fees at any community college established  
3831 under part III of chapter 1004 for up to 80 semester hours. The



3832 spouse of a deceased state employee shall be entitled to a full  
3833 waiver of such fees as provided in ss. 1009.22 and 1009.23 in  
3834 lieu of the payment of such fees. The benefits provided for in  
3835 this paragraph shall be in addition to other benefits provided  
3836 for in this section and shall terminate 7 years after the death  
3837 of the deceased employee, or when the total payment in eligible  
3838 compensation under paragraph (b) has been received. To qualify  
3839 for the educational benefit under this paragraph, the spouse  
3840 shall be required to meet and maintain the regular admission  
3841 requirements of, and be registered at, such area technical  
3842 center or community college, and make satisfactory academic  
3843 progress as defined by the educational institution in which the  
3844 student is enrolled.

3845 (7) Compensation under this chapter to aliens not  
3846 residents (or about to become nonresidents) of the United States  
3847 or Canada shall be the same in amount as provided for residents,  
3848 except that dependents in any foreign country shall be limited  
3849 to surviving spouse and child or children, or if there be no  
3850 surviving spouse or child or children, to surviving father or  
3851 mother whom the employee has supported, either wholly or in  
3852 part, for the period of 1 year prior to the date of the injury,  
3853 and except that the judge of compensation claims may, at the  
3854 option of the judge of compensation claims, or upon the  
3855 application of the insurance carrier, commute all future  
3856 installments of compensation to be paid to such aliens by paying  
3857 or causing to be paid to them one-half of the commuted amount of  
3858 such future installments of compensation as determined by the  
3859 judge of compensation claims, and provided further that



3860 compensation to dependents referred to in this subsection shall  
3861 in no case exceed \$75,000 ~~\$50,000~~.

3862 Section 21. Subsection (9) of section 440.185, Florida  
3863 Statutes, is amended, and subsection (12) is added to said  
3864 section, to read:

3865 440.185 Notice of injury or death; reports; penalties for  
3866 violations.--

3867 (9) Any employer or carrier who fails or refuses to timely  
3868 send any form, report, or notice required by this section shall  
3869 be subject to an administrative fine by the department ~~a civil~~  
3870 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or  
3871 refusal. If, within 1 calendar year, an employer fails to timely  
3872 submit to the carrier more than 10 percent of its notices of  
3873 injury or death, the employer shall be subject to an  
3874 administrative fine by the department not to exceed \$2,000 for  
3875 each such failure or refusal. However, any employer who fails to  
3876 notify the carrier of the injury on the prescribed form or by  
3877 letter within the 7 days required in subsection (2) shall be  
3878 liable for the administrative fine ~~civil penalty~~, which shall be  
3879 paid by the employer and not the carrier. Failure by the  
3880 employer to meet its obligations under subsection (2) shall not  
3881 relieve the carrier from liability for the administrative fine  
3882 ~~civil penalty~~ if it fails to comply with subsections (4) and  
3883 (5).

3884 (12) Upon receiving notice of an injury from an employee  
3885 under subsection (1), the employer or carrier shall provide the  
3886 employee with a written notice, in the form and manner  
3887 determined by the department by rule, of the availability of



3888 services from the Employee Assistance and Ombudsman Office. The  
3889 substance of the notice to the employee shall include:

3890 (a) A description of the scope of services provided by the  
3891 office.

3892 (b) A listing of the toll-free telephone number of, the  
3893 email address, and the postal address of the office.

3894 (c) A statement that the informational brochure referred  
3895 to in subsection (4) will be mailed to the employee within 3  
3896 days after the carrier receives notice of the injury.

3897 (d) Any other information regarding access to assistance  
3898 that the department finds is immediately necessary for an  
3899 injured employee.

3900 Section 22. Subsections (1) and (2) of section 440.192,  
3901 Florida Statutes, are amended, and subsection (9) is added to  
3902 said section, to read:

3903 440.192 Procedure for resolving benefit disputes.—

3904 (1) ~~Subject to s. 440.191, Any employee may, for any~~  
3905 ~~benefit that is ripe, due, and owing, who has not received a~~  
3906 ~~benefit to which the employee believes she or he is entitled~~  
3907 ~~under this chapter shall~~ file by certified mail, or by  
3908 electronic means approved by the Deputy Chief Judge, with the  
3909 Office of the Judges of Compensation Claims a petition for  
3910 benefits which meets the requirements of this section and the  
3911 definition of specificity in s. 440.02. The department shall  
3912 inform employees of the location of the Office of the Judges of  
3913 Compensation Claims for purposes of filing a petition for  
3914 benefits. The employee shall also serve copies of the petition  
3915 for benefits by certified mail, or by electronic means approved



3916 by the Deputy Chief Judge, upon the employer and the employer's  
3917 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the  
3918 judges of compensation claims.

3919 (2) Upon receipt, the Office of the Judges of Compensation  
3920 Claims shall review each petition and shall dismiss each  
3921 petition or any portion of such a petition, ~~upon the judge's own~~  
3922 ~~motion or upon the motion of any party,~~ that does not on its  
3923 face specifically identify or itemize the following:

3924 (a) Name, address, telephone number, and social security  
3925 number of the employee.

3926 (b) Name, address, and telephone number of the employer.

3927 (c) A detailed description of the injury and cause of the  
3928 injury, including the location of the occurrence and the date or  
3929 dates of the accident.

3930 (d) A detailed description of the employee's job, work  
3931 responsibilities, and work the employee was performing when the  
3932 injury occurred.

3933 (e) The time period for which compensation and the  
3934 specific classification of compensation were not timely  
3935 provided.

3936 (f) Date of maximum medical improvement, character of  
3937 disability, specific statement of all benefits or compensation  
3938 that the employee is seeking.

3939 (g) All specific travel costs to which the employee  
3940 believes she or he is entitled, including dates of travel and  
3941 purpose of travel, means of transportation, and mileage and  
3942 including the date the request for mileage was filed with the  
3943 carrier and a copy of the request filed with the carrier.



3944 (h) Specific listing of all medical charges alleged  
3945 unpaid, including the name and address of the medical provider,  
3946 the amounts due, and the specific dates of treatment.

3947 (i) The type or nature of treatment care or attendance  
3948 sought and the justification for such treatment. If the employee  
3949 is under the care of a physician for an injury identified under  
3950 paragraph (c), a copy of the physician's request, authorization,  
3951 or recommendation for treatment, care, or attendance must  
3952 accompany the petition.

3953 (j) Specific explanation of any other disputed issue that  
3954 a judge of compensation claims will be called to rule upon.

3955  
3956 The dismissal of any petition or portion of such a petition  
3957 under this section is without prejudice and does not require a  
3958 hearing.

3959 (9) A petition for benefits must contain claims for all  
3960 benefits that are ripe, due, and owing on the date the petition  
3961 is filed. Unless stipulated in writing by the parties, only  
3962 claims which have been properly raised in a petition for  
3963 benefits and have undergone mediation may be considered for  
3964 adjudication by a judge of compensation claims.

3965 Section 23. Section 440.1926, Florida Statutes, is created  
3966 to read:

3967 440.1926 Alternate dispute resolution; claim  
3968 arbitration.--Notwithstanding any other provision of this  
3969 chapter, the employer, carrier, and employee may mutually agree  
3970 to seek consent from a judge of compensation claims to enter  
3971 into binding claim arbitration in lieu of any other remedy



3972 provided for in this chapter to resolve all issues in dispute  
3973 regarding an injury. Arbitrations agreed to pursuant to this  
3974 section shall be governed by chapter 682, the Florida  
3975 Arbitration Code, except that, notwithstanding any provision in  
3976 chapter 682, the term "court" shall mean a judge of compensation  
3977 claims. An arbitration award in accordance with this section  
3978 shall be enforceable in the same manner and with the same powers  
3979 as any final compensation order.

3980 Section 24. Subsections (2), (3), (4), (6), and (8) and  
3981 paragraph (d) of subsection (11) of section 440.20, Florida  
3982 Statutes, are amended to read:

3983 440.20 Time for payment of compensation and medical bills;  
3984 penalties for late payment.--

3985 (2)(a) The carrier must pay the first installment of  
3986 compensation for total disability or death benefits or deny  
3987 compensability no later than the 14th calendar day after the  
3988 employer receives notification ~~notice~~ of the injury or death,  
3989 when disability is immediate and continuous for 8 calendar days  
3990 or more after the injury. If the first 7 days after disability  
3991 are nonconsecutive or delayed, the first installment of  
3992 compensation is due on the 6th day after the first 8 calendar  
3993 days of disability. The carrier shall thereafter pay  
3994 compensation in biweekly installments or as otherwise provided  
3995 in s. 440.15, unless the judge of compensation claims determines  
3996 or the parties agree that an alternate installment schedule is  
3997 in the best interests of the employee.

3998 (b) The carrier must pay, disallow, or deny all medical,  
3999 dental, pharmacy, and hospital bills submitted to the carrier in





4000 accordance with department rule no later than 45 calendar days  
4001 after the carrier's receipt of the bill.

4002 (3) Upon making initial payment of indemnity benefits, or  
4003 upon suspension or cessation of payment for any reason, the  
4004 carrier shall immediately notify the injured employee, the  
4005 employer, and the department that it has commenced, suspended,  
4006 or ceased payment of compensation. The department may require  
4007 such notification to the injured employee, employer, and the  
4008 department in a ~~any~~ format and manner it deems necessary to  
4009 obtain accurate and timely notification ~~reporting~~.

4010 (4) If the carrier is uncertain of its obligation to  
4011 provide all benefits or compensation, ~~it may initiate payment~~  
4012 ~~without prejudice and without admitting liability.~~ the carrier  
4013 shall immediately and in good faith commence investigation of  
4014 the employee's entitlement to benefits under this chapter and  
4015 shall admit or deny compensability within 120 days after the  
4016 initial provision of compensation or benefits as required under  
4017 subsection (2) or s. 440.192(8). Additionally, the carrier shall  
4018 initiate payment and continue the provision of all benefits and  
4019 compensation as if the claim had been accepted as compensable,  
4020 without prejudice and without admitting liability. Upon  
4021 commencement of payment as required under subsection (2) or s.  
4022 440.192 (8), the carrier shall provide written notice to the  
4023 employee that it ~~is~~ has elected to pay ~~all or part of~~ the claim  
4024 pending further investigation, and that it will advise the  
4025 employee of claim acceptance or denial within 120 days. A  
4026 carrier that fails to deny compensability within 120 days after  
4027 the initial provision of benefits or payment of compensation as



4028 required under subsection (2) or s. 440.192(8) waives the right  
4029 to deny compensability, unless the carrier can establish  
4030 material facts relevant to the issue of compensability that it  
4031 could not have discovered through reasonable investigation  
4032 within the 120-day period. The initial provision of compensation  
4033 or benefits, for purposes of this subsection, means the first  
4034 installment of compensation or benefits to be paid by the  
4035 carrier under subsection (2) or pursuant to a petition for  
4036 benefits under s. 440.192(8).

4037       (6)(a) If any installment of compensation for death or  
4038 dependency benefits, or compensation for disability benefits,  
4039 ~~permanent impairment, or wage loss~~ payable without an award is  
4040 not paid within 7 days after it becomes due, as provided in  
4041 subsection (2), subsection (3), or subsection (4), there shall  
4042 be added to such unpaid installment a ~~punitive~~ penalty of an  
4043 amount equal to 20 percent of the unpaid installment ~~or \$5,~~  
4044 which shall be paid at the same time as, but in addition to,  
4045 such installment of compensation. This penalty shall not apply  
4046 for late payments resulting ~~, unless notice is filed under~~  
4047 ~~subsection (4) or unless such nonpayment results~~ from conditions  
4048 over which the employer or carrier had no control. When any  
4049 installment of compensation payable without an award has not  
4050 been paid within 7 days after it became due and the claimant  
4051 concludes the prosecution of the claim before a judge of  
4052 compensation claims without having specifically claimed  
4053 additional compensation in the nature of a penalty under this  
4054 section, the claimant will be deemed to have acknowledged that,  
4055 owing to conditions over which the employer or carrier had no



4056 control, such installment could not be paid within the period  
4057 prescribed for payment and to have waived the right to claim  
4058 such penalty. However, during the course of a hearing, the judge  
4059 of compensation claims shall on her or his own motion raise the  
4060 question of whether such penalty should be awarded or excused.  
4061 The department may assess without a hearing the ~~punitive~~ penalty  
4062 against either the employer or the ~~insurance~~ carrier, depending  
4063 upon who was at fault in causing the delay. The insurance policy  
4064 cannot provide that this sum will be paid by the carrier if the  
4065 department or the judge of compensation claims determines that  
4066 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather  
4067 than the carrier. Any additional installment of compensation  
4068 paid by the carrier pursuant to this section shall be paid  
4069 directly to the employee by check or, if authorized by the  
4070 employee, by direct deposit into the employee's account at a  
4071 financial institution. ~~As used in this subsection, the term~~  
4072 ~~"financial institution" means a financial institution as defined~~  
4073 ~~in s. 655.005(1)(h).~~

4074 (b) For medical services provided on or after January 1,  
4075 2004, the department shall require that all medical, hospital,  
4076 pharmacy, or dental bills properly submitted by the provider,  
4077 except for bills that are disallowed or denied by the carrier or  
4078 its authorized vendor in accordance with department rule, are  
4079 timely paid within 45 calendar days after the carrier's receipt  
4080 of the bill. The department shall impose penalties for late  
4081 payments or disallowances or denials of medical, hospital,  
4082 pharmacy, or dental bills that are below a minimum 95 percent



4083 timely performance standard. The carrier shall pay to the  
4084 Workers' Compensation Administration Trust Fund a penalty of:  
4085 1. Twenty-five dollars for each bill below the 95 percent  
4086 timely performance standard, but meeting a 90 percent timely  
4087 standard.

4088 2. Fifty dollars for each bill below a 90 percent timely  
4089 performance standard.

4090 (8)(a) In addition to any other penalties provided by this  
4091 chapter for late payment, if any installment of compensation is  
4092 not paid when it becomes due, the employer, carrier, or  
4093 servicing agent shall pay interest thereon at the rate of 12  
4094 percent per year from the date the installment becomes due until  
4095 it is paid, whether such installment is payable without an order  
4096 or terms of an order. The interest payment shall be the greater  
4097 of the amount due or \$5.

4098 ~~(a) Within 30 days after final payment of compensation has~~  
4099 ~~been made, the employer, carrier, or servicing agent shall send~~  
4100 ~~to the department a notice, in accordance with a format and~~  
4101 ~~manner prescribed by the department, stating that such final~~  
4102 ~~payment has been made and stating the total amount of~~  
4103 ~~compensation paid, the name of the employee and of any other~~  
4104 ~~person to whom compensation has been paid, the date of the~~  
4105 ~~injury or death, and the date to which compensation has been~~  
4106 ~~paid.~~

4107 ~~(b) If the employer, carrier, or servicing agent fails to~~  
4108 ~~so notify the department within such time, the department shall~~  
4109 ~~assess against such employer, carrier, or servicing agent a~~  
4110 ~~civil penalty in an amount not over \$100.~~



4111 ~~(b)(e)~~ In order to ensure carrier compliance under this  
4112 chapter ~~and provisions of the Insurance Code~~, the department  
4113 shall monitor, audit, and investigate the performance of  
4114 carriers ~~by conducting market conduct examinations, as provided~~  
4115 ~~in s. 624.3161, and conducting investigations, as provided in s.~~  
4116 ~~624.317.~~ The department shall require ~~establish by rule a~~  
4117 ~~minimum performance standards for carriers to ensure that a~~  
4118 ~~minimum of 90 percent of all compensation benefits are timely~~  
4119 ~~paid in accordance with this section.~~ The department shall  
4120 impose penalties ~~fine a carrier as provided in s. 440.13(11)(b)~~  
4121 ~~up to \$50 for each late payments payment~~ of compensation that  
4122 are is below a the minimum 95 90 percent timely payment  
4123 performance standard. The carrier shall pay to the Workers'  
4124 Compensation Administration Trust Fund a penalty of:

4125 1. Fifty dollars per number of installments of  
4126 compensation below the 95 percent timely payment performance  
4127 standard and equal to or greater than a 90 percent timely  
4128 payment performance standard.

4129 2. One hundred dollars per number of installments of  
4130 compensation below a 90 percent timely payment performance  
4131 standard.

4132

4133 This section does not affect the imposition of any penalties or  
4134 interest due to the claimant. If a carrier contracts with a  
4135 servicing agent to fulfill its administrative responsibilities  
4136 under this chapter, the payment practices of the servicing agent  
4137 are deemed the payment practices of the carrier for the purpose  
4138 of assessing penalties against the carrier.



4139 (11)

4140 (d)1. With respect to any lump-sum settlement under this  
 4141 subsection, a judge of compensation claims must consider at the  
 4142 time of the settlement, whether the settlement allocation  
 4143 provides for the appropriate recovery of child support  
 4144 arrearages. An employer or carrier does not have a duty to  
 4145 investigate or collect information regarding child support  
 4146 arrearages.

4147 2. When reviewing any settlement of lump-sum payment  
 4148 pursuant to this subsection, judges of compensation claims shall  
 4149 consider the interests of the worker and the worker's family  
 4150 when approving the settlement, which must consider and provide  
 4151 for appropriate recovery of past due support.

4152 Section 25. Section 440.25, Florida Statutes, is amended  
 4153 to read:

4154 440.25 Procedures for mediation and hearings.--

4155 (1) Forty days ~~Within 90 days~~ after a petition for  
 4156 benefits is filed under s. 440.192, ~~a mediation conference~~  
 4157 ~~concerning such petition shall be held. Within 40 days after~~  
 4158 ~~such petition is filed,~~ the judge of compensation claims shall  
 4159 notify the interested parties by order that a mediation  
 4160 conference concerning such petition has been scheduled ~~will be~~  
 4161 ~~held~~ unless the parties have notified the judge ~~Office of the~~  
 4162 ~~Judges~~ of compensation claims that a private mediation has been  
 4163 held or is scheduled to be held. A mediation, whether private  
 4164 or public, shall be held within 130 days after the filing of the  
 4165 petition. Such order must give the date ~~by which~~ the mediation  
 4166 conference is to ~~must~~ be held. Such order may be served



4167 personally upon the interested parties or may be sent to the  
4168 interested parties by mail. If multiple petitions are pending,  
4169 or if additional petitions are filed after the scheduling of a  
4170 mediation, the judge of compensation claims shall consolidate  
4171 all petitions into one mediation. The claimant or the adjuster  
4172 of the employer or carrier may, at the mediator's discretion,  
4173 attend the mediation conference by telephone or, if agreed to by  
4174 the parties, other electronic means. A continuance may be  
4175 granted upon the agreement of the parties or if the requesting  
4176 party demonstrates to the judge of compensation claims that the  
4177 reason for requesting the continuance arises from circumstances  
4178 beyond the party's control. Any order granting a continuance  
4179 must set forth the date of the rescheduled mediation conference.  
4180 A mediation conference may not be used solely for the purpose of  
4181 mediating attorney's fees.

4182 (2) Any party who participates in a mediation conference  
4183 shall not be precluded from requesting a hearing following the  
4184 mediation conference should both parties not agree to be bound  
4185 by the results of the mediation conference. A mediation  
4186 conference is required to be held unless this requirement is  
4187 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~  
4188 ~~the mediation conference, all parties must submit any applicable~~  
4189 ~~motions, including, but not limited to, a motion to waive the~~  
4190 ~~mediation conference, to the judge of compensation claims.~~

4191 (3)(a) Such mediation conference shall be conducted  
4192 informally and does not require the use of formal rules of  
4193 evidence or procedure. Any information from the files, reports,  
4194 case summaries, mediator's notes, or other communications or



4195 materials, oral or written, relating to a mediation conference  
4196 under this section obtained by any person performing mediation  
4197 duties is privileged and confidential and may not be disclosed  
4198 without the written consent of all parties to the conference.  
4199 Any research or evaluation effort directed at assessing the  
4200 mediation program activities or performance must protect the  
4201 confidentiality of such information. Each party to a mediation  
4202 conference has a privilege during and after the conference to  
4203 refuse to disclose and to prevent another from disclosing  
4204 communications made during the conference whether or not the  
4205 contested issues are successfully resolved. This subsection and  
4206 paragraphs (4)(a) and (b) shall not be construed to prevent or  
4207 inhibit the discovery or admissibility of any information that  
4208 is otherwise subject to discovery or that is admissible under  
4209 applicable law or rule of procedure, except that any conduct or  
4210 statements made during a mediation conference or in negotiations  
4211 concerning the conference are inadmissible in any proceeding  
4212 under this chapter.

4213 (a)1- Unless the parties conduct a private mediation under  
4214 paragraph (b) subparagraph 2-, mediation shall be conducted by a  
4215 mediator selected by the Director of the Division of  
4216 Administrative Hearings from among mediators employed on a full-  
4217 time basis by the Office of the Judges of Compensation Claims. A  
4218 mediator must be a member of The Florida Bar for at least 5  
4219 years and must complete a mediation training program approved by  
4220 the Deputy Chief Judge ~~Director of the Division of~~  
4221 ~~Administrative Hearings~~. Adjunct mediators may be employed by  
4222 the Office of the Judges of Compensation Claims on an as-needed





4223 basis and shall be selected from a list prepared by the Director  
4224 of the Division of Administrative Hearings. An adjunct mediator  
4225 must be independent of all parties participating in the  
4226 mediation conference. An adjunct mediator must be a member of  
4227 The Florida Bar for at least 5 years and must complete a  
4228 mediation training program approved by the Office of the Judges  
4229 of Compensation Claims ~~Director of the Division of~~  
4230 ~~Administrative Hearings~~. An adjunct mediator shall have access  
4231 to the office, equipment, and supplies of the judge of  
4232 compensation claims in each district.

4233 (b)2. With respect to any private mediation ~~occurring on~~  
4234 ~~or after January 1, 2003~~, if the parties agree or if mediators  
4235 are not available under paragraph (a), pursuant to notice from  
4236 the judge of compensation claims ~~subparagraph 1.~~, to conduct the  
4237 required mediation within the period specified in this section,  
4238 the parties shall hold a mediation conference at the carrier's  
4239 expense within the 130-day ~~90-day~~ period set for mediation. The  
4240 mediation conference shall be conducted by a mediator certified  
4241 under s. 44.106. If the parties do not agree upon a mediator  
4242 within 10 days after the date of the order, the claimant shall  
4243 notify the judge in writing and the judge shall appoint a  
4244 mediator under this subparagraph within 7 days. In the event  
4245 both parties agree, the results of the mediation conference  
4246 shall be binding and neither party shall have a right to appeal  
4247 the results. In the event either party refuses to agree to the  
4248 results of the mediation conference, the results of the  
4249 mediation conference as well as the testimony, witnesses, and  
4250 evidence presented at the conference shall not be admissible at



4251 any subsequent proceeding on the claim. The mediator shall not  
4252 be called in to testify or give deposition to resolve any claim  
4253 for any hearing before the judge of compensation claims. The  
4254 employer may be represented by an attorney at the mediation  
4255 conference if the employee is also represented by an attorney at  
4256 the mediation conference.

4257 ~~(b) The parties shall complete the pretrial stipulations~~  
4258 ~~before the conclusion of the mediation conference if the claims,~~  
4259 ~~except for attorney's fees and costs, have not been settled and~~  
4260 ~~if any claims in any filed petition remain unresolved. The judge~~  
4261 ~~of compensation claims may impose sanctions against a party or~~  
4262 ~~both parties for failing to complete the pretrial stipulations~~  
4263 ~~before the conclusion of the mediation conference.~~

4264 (4)(a) If the parties fail to agree to ~~upon~~ written  
4265 submission of pretrial stipulations ~~at the mediation conference,~~  
4266 the judge of compensation claims shall conduct a live order ~~a~~  
4267 pretrial hearing ~~to occur within 14 days after the date of~~  
4268 ~~mediation ordered by the judge of compensation claims.~~ The judge  
4269 of compensation claims shall give the interested parties at  
4270 least 14 ~~7~~ days' advance notice of the pretrial hearing by mail.  
4271 ~~At the pretrial hearing, the judge of compensation claims shall,~~  
4272 ~~subject to paragraph (b), set a date for the final hearing that~~  
4273 ~~allows the parties at least 60 days to conduct discovery unless~~  
4274 ~~the parties consent to an earlier hearing date.~~

4275 (b) The final hearing must be held and concluded within 90  
4276 days after the mediation conference is held, allowing the  
4277 parties sufficient time to complete discovery. Except as set  
4278 forth in this section, continuances may be granted only if the



4279 requesting party demonstrates to the judge of compensation  
4280 claims that the reason for requesting the continuance arises  
4281 from circumstances beyond the party's control. The written  
4282 consent of the claimant must be obtained before any request from  
4283 a claimant's attorney is granted for an additional continuance  
4284 after the initial continuance has been granted. Any order  
4285 granting a continuance must set forth the date and time of the  
4286 rescheduled hearing. A continuance may be granted only if the  
4287 requesting party demonstrates to the judge of compensation  
4288 claims that the reason for requesting the continuance arises  
4289 from circumstances beyond the control of the parties. The judge  
4290 of compensation claims shall report any grant of two or more  
4291 continuances to the Deputy Chief Judge.

4292 (c) The judge of compensation claims shall give the  
4293 interested parties at least 14 7 days' advance notice of the  
4294 final hearing, served upon the interested parties by mail.

4295 (d) The final hearing shall be held within 210 days after  
4296 receipt of the petition for benefits in the county where the  
4297 injury occurred, if the injury occurred in this state, unless  
4298 otherwise agreed to between the parties and authorized by the  
4299 judge of compensation claims in the county where the injury  
4300 occurred; However, the claimant may waive the timeframes within  
4301 this section for good cause shown. If the injury occurred  
4302 outside the state and is one for which compensation is payable  
4303 under this chapter, then the final hearing may be held in the  
4304 county of the employer's residence or place of business, or in  
4305 any other county of the state that will, in the discretion of  
4306 the Deputy Chief Judge, be the most convenient for a hearing.



4307 The final hearing shall be conducted by a judge of compensation  
4308 claims, who shall, within 30 days after final hearing or closure  
4309 of the hearing record, unless otherwise agreed by the parties,  
4310 enter a final order on the merits of the disputed issues. The  
4311 judge of compensation claims may enter an abbreviated final  
4312 order in cases in which compensability is not disputed. Either  
4313 party may request separate findings of fact and conclusions of  
4314 law. At the final hearing, the claimant and employer may each  
4315 present evidence with respect to the claims presented by the  
4316 petition for benefits and may be represented by any attorney  
4317 authorized in writing for such purpose. When there is a conflict  
4318 in the medical evidence submitted at the hearing, the provisions  
4319 of s. 440.13 shall apply. The report or testimony of the expert  
4320 medical advisor shall be admitted into evidence in a ~~made a part~~  
4321 ~~of the record of the proceeding and shall be given the same~~  
4322 ~~consideration by the judge of compensation claims as is accorded~~  
4323 ~~other medical evidence submitted in the proceeding;~~ and all  
4324 costs incurred in connection with such examination and testimony  
4325 may be assessed as costs in the proceeding, subject to the  
4326 provisions of s. 440.13. No judge of compensation claims may  
4327 make a finding of a degree of permanent impairment that is  
4328 greater than the greatest permanent impairment rating given the  
4329 claimant by any examining or treating physician, except upon  
4330 stipulation of the parties. Any benefit due but not raised at  
4331 the final hearing which was ripe, due, or owing at the time of  
4332 the final hearing is waived.

4333 (e) The order making an award or rejecting the claim,  
4334 referred to in this chapter as a "compensation order," shall set



4335 forth the findings of ultimate facts and the mandate; and the  
4336 order need not include any other reason or justification for  
4337 such mandate. The compensation order shall be filed in the  
4338 Office of the Judges of Compensation Claims at Tallahassee. A  
4339 copy of such compensation order shall be sent by mail to the  
4340 parties and attorneys of record at the last known address of  
4341 each, with the date of mailing noted thereon.

4342 ~~(f) Each judge of compensation claims is required to~~  
4343 ~~submit a special report to the Deputy Chief Judge in each~~  
4344 ~~contested workers' compensation case in which the case is not~~  
4345 ~~determined within 30 days of final hearing or closure of the~~  
4346 ~~hearing record. Said form shall be provided by the director of~~  
4347 ~~the Division of Administrative Hearings and shall contain the~~  
4348 ~~names of the judge of compensation claims and of the attorneys~~  
4349 ~~involved and a brief explanation by the judge of compensation~~  
4350 ~~claims as to the reason for such a delay in issuing a final~~  
4351 ~~order.~~

4352 (f)~~(g)~~ Notwithstanding any other provision of this  
4353 section, the judge of compensation claims may require the  
4354 appearance of the parties and counsel before her or him without  
4355 written notice for an emergency conference where there is a bona  
4356 fide emergency involving the health, safety, or welfare of an  
4357 employee. An emergency conference under this section may result  
4358 in the entry of an order or the rendering of an adjudication by  
4359 the judge of compensation claims.

4360 (g)~~(h)~~ To expedite dispute resolution and to enhance the  
4361 self-executing features of the Workers' Compensation Law, the  
4362 Deputy Chief Judge shall make provision by rule or order for the



4363 resolution of appropriate motions by judges of compensation  
4364 claims without oral hearing upon submission of brief written  
4365 statements in support and opposition, and for expedited  
4366 discovery and docketing. Unless the judge of compensation  
4367 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,  
4368 each claim in a petition relating to the determination of the  
4369 average weekly wage pay under s. 440.14 shall be resolved under  
4370 this paragraph without oral hearing.

4371 (h)~~(i)~~ To further expedite dispute resolution and to  
4372 enhance the self-executing features of the system, those  
4373 petitions filed in accordance with s. 440.192 that involve a  
4374 claim for benefits of \$5,000 or less shall, in the absence of  
4375 compelling evidence to the contrary, be presumed to be  
4376 appropriate for expedited resolution under this paragraph; and  
4377 any other claim filed in accordance with s. 440.192, upon the  
4378 written agreement of both parties and application by either  
4379 party, may similarly be resolved under this paragraph. A claim  
4380 in a petition or \$5,000 or less for medical benefits only or a  
4381 petition for reimbursement for mileage for medical purposes  
4382 shall, in the absence of compelling evidence to the contrary, be  
4383 resolved through the expedited dispute resolution process  
4384 provided in this paragraph. For purposes of expedited resolution  
4385 pursuant to this paragraph, the Deputy Chief Judge shall make  
4386 provision by rule or order for expedited and limited discovery  
4387 and expedited docketing in such cases. At least 15 days prior to  
4388 hearing, the parties shall exchange and file with the judge of  
4389 compensation claims a pretrial outline of all issues, defenses,  
4390 and witnesses on a form adopted by the Deputy Chief Judge;



4391 provided, in no event shall such hearing be held without 15  
4392 days' written notice to all parties. No pretrial hearing shall  
4393 be held and no mediation scheduled unless requested by a party.  
4394 The judge of compensation claims shall limit all argument and  
4395 presentation of evidence at the hearing to a maximum of 30  
4396 minutes, and such hearings shall not exceed 30 minutes in  
4397 length. Neither party shall be required to be represented by  
4398 counsel. The employer or carrier may be represented by an  
4399 adjuster or other qualified representative. The employer or  
4400 carrier and any witness may appear at such hearing by telephone.  
4401 The rules of evidence shall be liberally construed in favor of  
4402 allowing introduction of evidence.

4403 (i)~~(j)~~ A judge of compensation claims may, upon the motion  
4404 of a party or the judge's own motion, dismiss a petition for  
4405 lack of prosecution if a petition, response, motion, order,  
4406 request for hearing, or notice of deposition has not been filed  
4407 during the previous 12 months unless good cause is shown. A  
4408 dismissal for lack of prosecution is without prejudice and does  
4409 not require a hearing.

4410 (j)~~(k)~~ A judge of compensation claims may not award  
4411 interest on unpaid medical bills and the amount of such bills  
4412 may not be used to calculate the amount of interest awarded.  
4413 Regardless of the date benefits were initially requested,  
4414 attorney's fees do not attach under this subsection until 30  
4415 days after the date the carrier or self-insured employer  
4416 receives the petition.

4417 (5)(a) Procedures with respect to appeals from orders of  
4418 judges of compensation claims shall be governed by rules adopted



4419 by the Supreme Court. Such an order shall become final 30 days  
4420 after mailing of copies of such order to the parties, unless  
4421 appealed pursuant to such rules.

4422 (b) An appellant may be relieved of any necessary filing  
4423 fee by filing a verified petition of indigency for approval as  
4424 provided in s. 57.081(1) and may be relieved in whole or in part  
4425 from the costs for preparation of the record on appeal if,  
4426 within 15 days after the date notice of the estimated costs for  
4427 the preparation is served, the appellant files with the judge of  
4428 compensation claims a copy of the designation of the record on  
4429 appeal, and a verified petition to be relieved of costs. A  
4430 verified petition filed prior to the date of service of the  
4431 notice of the estimated costs shall be deemed not timely filed.  
4432 The verified petition relating to record costs shall contain a  
4433 sworn statement that the appellant is insolvent and a complete,  
4434 detailed, and sworn financial affidavit showing all the  
4435 appellant's assets, liabilities, and income. Failure to state in  
4436 the affidavit all assets and income, including marital assets  
4437 and income, shall be grounds for denying the petition with  
4438 prejudice. The Office of the Judges of Compensation Claims shall  
4439 adopt rules as may be required pursuant to this subsection,  
4440 including forms for use in all petitions brought under this  
4441 subsection. The appellant's attorney, or the appellant if she or  
4442 he is not represented by an attorney, shall include as a part of  
4443 the verified petition relating to record costs an affidavit or  
4444 affirmation that, in her or his opinion, the notice of appeal  
4445 was filed in good faith and that there is a probable basis for  
4446 the District Court of Appeal, First District, to find reversible





4447 error, and shall state with particularity the specific legal and  
4448 factual grounds for the opinion. Failure to so affirm shall be  
4449 grounds for denying the petition. A copy of the verified  
4450 petition relating to record costs shall be served upon all  
4451 interested parties. The judge of compensation claims shall  
4452 promptly conduct a hearing on the verified petition relating to  
4453 record costs, giving at least 15 days' notice to the appellant,  
4454 the department, and all other interested parties, all of whom  
4455 shall be parties to the proceedings. The judge of compensation  
4456 claims may enter an order without such hearing if no objection  
4457 is filed by an interested party within 20 days from the service  
4458 date of the verified petition relating to record costs. Such  
4459 proceedings shall be conducted in accordance with the provisions  
4460 of this section and with the workers' compensation rules of  
4461 procedure, to the extent applicable. In the event an insolvency  
4462 petition is granted, the judge of compensation claims shall  
4463 direct the department to pay record costs and filing fees from  
4464 the Workers' Compensation Administration Trust Fund pending  
4465 final disposition of the costs of appeal. The department may  
4466 transcribe or arrange for the transcription of the record in any  
4467 proceeding for which it is ordered to pay the cost of the  
4468 record.

4469 (c) As a condition of filing a notice of appeal to the  
4470 District Court of Appeal, First District, an employer who has  
4471 not secured the payment of compensation under this chapter in  
4472 compliance with s. 440.38 shall file with the notice of appeal a  
4473 good and sufficient bond, as provided in s. 59.13, conditioned  
4474 to pay the amount of the demand and any interest and costs



4475 payable under the terms of the order if the appeal is dismissed,  
4476 or if the District Court of Appeal, First District, affirms the  
4477 award in any amount. Upon the failure of such employer to file  
4478 such bond with ~~the judge of compensation claims or~~ the District  
4479 Court of Appeal, First District, along with the notice of  
4480 appeal, the District Court of Appeal, First District, shall  
4481 dismiss the notice of appeal.

4482 (6) An award of compensation for disability may be made  
4483 after the death of an injured employee.

4484 (7) ~~An injured employee claiming or entitled to~~  
4485 ~~compensation shall submit to such physical examination by a~~  
4486 ~~certified expert medical advisor approved by the agency or the~~  
4487 ~~judge of compensation claims as the agency or the judge of~~  
4488 ~~compensation claims may require. The place or places shall be~~  
4489 ~~reasonably convenient for the employee. Such physician or~~  
4490 ~~physicians as the employee, employer, or carrier may select and~~  
4491 ~~pay for may participate in an examination if the employee,~~  
4492 ~~employer, or carrier so requests. Proceedings shall be suspended~~  
4493 ~~and no compensation shall be payable for any period during which~~  
4494 ~~the employee may refuse to submit to examination. Any interested~~  
4495 party shall have the right in any case of death to require an  
4496 autopsy, the cost thereof to be borne by the party requesting  
4497 it; and the judge of compensation claims shall have authority to  
4498 order and require an autopsy and may, in her or his discretion,  
4499 withhold her or his findings and award until an autopsy is held.

4500 Section 26. Section 440.34, Florida Statutes, is amended  
4501 to read:

4502 440.34 Attorney's fees; costs.--



4503 (1) A fee, gratuity, or other consideration may not be  
4504 paid for ~~services rendered for~~ a claimant in connection with any  
4505 proceedings arising under this chapter, unless approved as  
4506 reasonable by the judge of compensation claims or court having  
4507 jurisdiction over such proceedings. ~~Except as provided by this~~  
4508 ~~subsection,~~ Any attorney's fee approved by a judge of  
4509 compensation claims for benefits secured on behalf of services  
4510 ~~rendered to~~ a claimant may not exceed 18 ~~must equal to 20~~  
4511 percent of the first \$5,000 of the amount of the benefits  
4512 secured, 13 ~~15~~ percent of the next \$5,000 of the amount of the  
4513 benefits secured, 8 ~~10~~ percent of the remaining amount of the  
4514 benefits secured to be provided during the first 10 years after  
4515 the date the claim is filed, and 5 percent of the benefits  
4516 secured after 10 years. The judge of compensation claims shall  
4517 not approve a compensation order, a joint stipulation for lump-  
4518 sum settlement, a stipulation or agreement between a claimant  
4519 and his or her attorney, or any other agreement related to  
4520 benefits under this chapter that provides for an attorney's fee  
4521 in excess of the amount permitted by this section. The judge of  
4522 compensation claims is not required to approve any retainer  
4523 agreement between the claimant and his or her attorney. The  
4524 retainer agreement as to fees and costs may not be for  
4525 compensation in excess of the amount allowed under this section.  
4526 ~~However, The judge of compensation claims shall consider the~~  
4527 ~~following factors in each case and may increase or decrease the~~  
4528 ~~attorney's fee if, in her or his judgment, the circumstances of~~  
4529 ~~the particular case warrant such action:~~



4530           ~~(a) The time and labor required, the novelty and~~  
4531 ~~difficulty of the questions involved, and the skill requisite to~~  
4532 ~~perform the legal service properly.~~

4533           ~~(b) The fee customarily charged in the locality for~~  
4534 ~~similar legal services.~~

4535           ~~(c) The amount involved in the controversy and the~~  
4536 ~~benefits resulting to the claimant.~~

4537           ~~(d) The time limitation imposed by the claimant or the~~  
4538 ~~circumstances.~~

4539           ~~(e) The experience, reputation, and ability of the lawyer~~  
4540 ~~or lawyers performing services.~~

4541           ~~(f) The contingency or certainty of a fee.~~

4542           (2) In awarding a reasonable claimant's attorney's fee,  
4543 the judge of compensation claims shall consider only those  
4544 benefits secured by ~~to the claimant that~~ the attorney ~~is~~  
4545 ~~responsible for securing.~~ The amount, statutory basis, and type  
4546 of benefits obtained through legal representation shall be  
4547 listed on all attorney's fees awarded by the judge of  
4548 compensation claims. For purposes of this section, the term  
4549 "benefits secured" ~~means benefits obtained as a result of the~~  
4550 ~~claimant's attorney's legal services rendered in connection with~~  
4551 ~~the claim for benefits. However, such term~~ does not include  
4552 future medical benefits to be provided on any date more than 5  
4553 years after the date the claim is filed. In the event an offer  
4554 to settle an issue pending before a judge of compensation claims  
4555 is communicated in writing to the claimant or the claimant's  
4556 attorney at least 30 days prior to the trial date on such issue,  
4557 benefits secured shall be only that amount awarded above that



4558 specified in the offer to settle. If multiple issues are pending  
4559 before the judge of compensation claims, said offer of  
4560 settlement shall address each issue pending and shall state  
4561 explicitly whether or not the offer on each issue is severable.  
4562 The written offer shall also unequivocally state whether or not  
4563 it includes medical witness fees and expenses, and all other  
4564 costs associated with the claim.

4565 (3) If any party ~~the claimant~~ should prevail in any  
4566 proceedings before a judge of compensation claims or court,  
4567 there shall be taxed against the nonprevailing party ~~employer~~  
4568 the reasonable costs of such proceedings, not to include ~~the~~  
4569 attorney's fees ~~of the claimant~~. A claimant shall be responsible  
4570 for the payment of her or his own attorney's fees, except that a  
4571 claimant shall be entitled to recover a reasonable attorney's  
4572 fee from a carrier or employer:

4573 (a) Against whom she or he successfully asserts a petition  
4574 for medical benefits only, if the claimant has not filed or is  
4575 not entitled to file at such time a claim for disability,  
4576 permanent impairment, wage-loss, or death benefits, arising out  
4577 of the same accident;

4578 (b) In any case in which the employer or carrier files a  
4579 response to petition denying benefits with the Office of the  
4580 Judges of Compensation Claims and the injured person has  
4581 employed an attorney in the successful prosecution of the  
4582 petition;

4583 (c) In a proceeding in which a carrier or employer denies  
4584 that an accident occurred for which compensation benefits are



4585 payable, and the claimant prevails on the issue of  
4586 compensability; or

4587 (d) In cases where the claimant successfully prevails in  
4588 proceedings filed under s. 440.24 or s. 440.28.

4589

4590 Regardless of the date benefits were initially requested,  
4591 attorney's fees shall not attach under this subsection until 30  
4592 days after the date the carrier or employer, if self-insured,  
4593 receives the petition. ~~In applying the factors set forth in~~  
4594 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~  
4595 ~~and (d), the judge of compensation claims must only consider~~  
4596 ~~only such benefits and the time reasonably spent in obtaining~~  
4597 ~~them as were secured for the claimant within the scope of~~  
4598 ~~paragraphs (a), (b), (c), and (d).~~

4599 (4) In such cases in which the claimant is responsible for  
4600 the payment of her or his own attorney's fees, such fees are a  
4601 lien upon compensation payable to the claimant, notwithstanding  
4602 s. 440.22.

4603 (5) If any proceedings are had for review of any claim,  
4604 award, or compensation order before any court, the court may  
4605 award the injured employee or dependent an attorney's fee to be  
4606 paid by the employer or carrier, in its discretion, which shall  
4607 be paid as the court may direct.

4608 (6) A judge of compensation claims may not enter an order  
4609 approving the contents of a retainer agreement that permits the  
4610 escrowing of any portion of the employee's compensation until  
4611 benefits have been secured.



4612       (7) If an employer or carrier incurs defense fees that  
4613 exceed the fee payable to an injured worker's attorney that  
4614 would be calculated by the formulas set forth in this section,  
4615 the fee limitations set forth in paragraphs (3)(a) and (b) shall  
4616 not apply and the fee shall be calculated based on factors in  
4617 this section.

4618       Section 27. Subsection (7) is added to section 440.38,  
4619 Florida Statutes, to read:

4620       440.38 Security for compensation; insurance carriers and  
4621 self-insurers.--

4622       (7) Any employer who meets the requirements of subsection  
4623 (1) through a policy of insurance issued outside of this state  
4624 must at all times, with respect to all employees working in this  
4625 state, maintain the required coverage under a Florida  
4626 endorsement using Florida rates and rules pursuant to payroll  
4627 reporting that accurately reflects the work performed in this  
4628 state by such employees.

4629       Section 28. Subsections (2) and (6) of section 440.381,  
4630 Florida Statutes, are amended to read:

4631       440.381 Application for coverage; reporting payroll;  
4632 payroll audit procedures; penalties.--

4633       (2) Submission of an application that contains false,  
4634 misleading, or incomplete information provided with the purpose  
4635 of avoiding or reducing the amount of premiums for workers'  
4636 compensation coverage is a felony of the second degree,  
4637 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
4638 The application must contain a statement that the filing of an  
4639 application containing false, misleading, or incomplete



4640 information provided with the purpose of avoiding or reducing  
4641 the amount of premiums for workers' compensation coverage is a  
4642 felony of the third degree, punishable as provided in s.  
4643 775.082, s. 775.083, or s. 775.084. The application must contain  
4644 a sworn statement by the employer attesting to the accuracy of  
4645 the information submitted and acknowledging the provisions of  
4646 former s. 440.37(4). The application must contain a sworn  
4647 statement by the agent attesting that the agent explained to the  
4648 employer or officer the classification codes that are used for  
4649 premium calculations.

4650 (6)(a) If an employer understates or conceals payroll, or  
4651 misrepresents or conceals employee duties so as to avoid proper  
4652 classification for premium calculations, or misrepresents or  
4653 conceals information pertinent to the computation and  
4654 application of an experience rating modification factor, the  
4655 employer, or the employer's agent or attorney, shall pay to the  
4656 insurance carrier a penalty of 10 times the amount of the  
4657 difference in premium paid and the amount the employer should  
4658 have paid and reasonable attorney's fees. The penalty may be  
4659 enforced in the circuit courts of this state.

4660 (b) If the department determines that an employer has  
4661 materially understated or concealed payroll, has materially  
4662 misrepresented or concealed employee duties so as to avoid  
4663 proper classification for premium calculations, or has  
4664 materially misrepresented or concealed information pertinent to  
4665 the computation and application of an experience rating  
4666 modification factor, the department shall immediately notify the  
4667 employer's carrier of such determination. The carrier shall





4668 commence a physical onsite audit of the employer within 30 days  
4669 after receiving notification from the department. If the carrier  
4670 fails to commence the audit as required by this section, the  
4671 department shall contract with auditing professionals to conduct  
4672 the audit at the carrier's expense. A copy of the carrier's  
4673 audit of the employer shall be provided to the department upon  
4674 completion. The carrier is not required to conduct the physical  
4675 onsite audit of the employer as set forth in this paragraph if  
4676 the carrier gives written notice of cancellation to the employer  
4677 within 30 days after receiving notification from the department  
4678 of the material misrepresentation, understatement, or  
4679 concealment and an audit is conducted in conjunction with the  
4680 cancellation.

4681 Section 29. Subsection (3) of section 440.42, Florida  
4682 Statutes, is amended to read:

4683 440.42 Insurance policies; liability.--

4684 (3) No contract or policy of insurance issued by a carrier  
4685 under this chapter shall expire or be canceled until at least 30  
4686 days have elapsed after a notice of cancellation has been sent  
4687 to the department and to the employer in accordance with the  
4688 provisions of s. 440.185(7). For cancellation due to nonpayment  
4689 of premium, the insurer shall mail notification to the employer  
4690 at least 10 days prior to the effective date of the  
4691 cancellation. However, when duplicate or dual coverage exists by  
4692 reason of two different carriers having issued policies of  
4693 insurance to the same employer securing the same liability, it  
4694 shall be presumed that only that policy with the later effective  
4695 date shall be in force and that the earlier policy terminated



4696 upon the effective date of the latter. In the event that both  
4697 policies carry the same effective date, one of the policies may  
4698 be canceled instanter upon filing a notice of cancellation with  
4699 the department and serving a copy thereof upon the employer in  
4700 such manner as the department prescribes by rule. The department  
4701 may by rule prescribe the content of the notice of retroactive  
4702 cancellation and specify the time, place, and manner in which  
4703 the notice of cancellation is to be served.

4704 Section 30. Paragraph (a) of subsection (4) of section  
4705 440.49, Florida Statutes, is amended to read:

4706 440.49 Limitation of liability for subsequent injury  
4707 through Special Disability Trust Fund.--

4708 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,  
4709 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER  
4710 OTHER PHYSICAL IMPAIRMENT.--

4711 (a) *Permanent impairment.*--If an employee who has a  
4712 preexisting permanent physical impairment incurs a subsequent  
4713 permanent impairment from injury or occupational disease arising  
4714 out of, and in the course of, her or his employment which merges  
4715 with the preexisting permanent physical impairment to cause a  
4716 permanent impairment, the employer shall, in the first instance,  
4717 pay all benefits provided by this chapter; but, subject to the  
4718 limitations specified in subsection (6), such employer shall be  
4719 reimbursed from the Special Disability Trust Fund created by  
4720 subsection (9) for 50 percent of all impairment benefits which  
4721 the employer has been required to provide pursuant to s.  
4722 440.15(3)~~(a)~~ as a result of the subsequent accident or  
4723 occupational disease.



4724 Section 31. Paragraph (b) of subsection (6) of section  
4725 440.491, Florida Statutes, is amended to read:  
4726 440.491 Reemployment of injured workers; rehabilitation.--  
4727 (6) TRAINING AND EDUCATION.--  
4728 (b) When it appears that an employee who has attained  
4729 maximum medical improvement requires training and education to  
4730 obtain suitable gainful employment, the employer shall pay the  
4731 employee additional temporary total compensation while the  
4732 employee receives such training and education for a period not  
4733 to exceed 26 weeks, which period may be extended for an  
4734 additional 26 weeks or less, if such extended period is  
4735 determined to be necessary and proper by a judge of compensation  
4736 claims. However, a carrier or employer is not precluded from  
4737 voluntarily paying additional temporary total disability  
4738 compensation beyond that period. If an employee requires  
4739 temporary residence at or near a facility or an institution  
4740 providing training and education which is located more than 50  
4741 miles away from the employee's customary residence, the  
4742 reasonable cost of board, lodging, or travel must be borne by  
4743 the department from the Workers' Compensation Administration  
4744 Trust Fund established by s. 440.50. An employee who refuses to  
4745 accept training and education that is recommended by the  
4746 vocational evaluator and considered necessary by the department  
4747 is subject to a 50-percent reduction in weekly compensation  
4748 benefits, including wage-loss benefits, as determined under s.  
4749 440.15(3)(~~b~~).  
4750 Section 32. Section 440.525, Florida Statutes, is amended  
4751 to read:



4752           440.525 Audit, examination, and examination of carriers  
4753 and claims-handling entities.--

4754           (1) The department may audit, examine, or investigate any  
4755 each carrier, third-party administrator, servicing agent, or  
4756 other claims-handling entity as often as is warranted to ensure  
4757 that it is carriers are fulfilling its ~~their~~ obligations under  
4758 this chapter the law. ~~The examination may cover any period of~~  
4759 ~~the carrier's operations since the last previous examination.~~

4760           (2) An audit or examination may cover any period of the  
4761 carrier's, third-party administrator's, servicing agent's, or  
4762 other claims-handling entity's operations since the last  
4763 previous audit or examination. An investigation based upon a  
4764 reasonable belief by the department that a material violation of  
4765 this chapter has occurred may cover any time period, but may not  
4766 predate the last audit by more than 5 years. The department may  
4767 by rule establish procedures, standards, and protocols for  
4768 audits, examinations, and investigations. If the department  
4769 finds any violation of this chapter, it may impose  
4770 administrative penalties pursuant to this chapter. If the  
4771 department finds any self-insurer in violation of this chapter,  
4772 it may take action pursuant s. 440.38(3). Audits, examinations,  
4773 or investigations by the department may address, but are not  
4774 limited to addressing: unfair or unreasonable claims-handling  
4775 techniques; patterns or practices of unreasonable denial of  
4776 claims or unreasonable delay in claims handling; timeliness and  
4777 accuracy of payments and reports under ss. 440.13, 440.16, and  
4778 440.185; proper application of practice parameters and protocols  
4779 in paying medical benefits; or patterns or practices of



4780 harassment, coercion, or intimidation of claimants. The  
4781 department may also specify by rule the documentation to be  
4782 maintained for each claim file.

4783 (3) As to any audit, examination, or investigation  
4784 conducted under this chapter, the department shall have the  
4785 power to conduct onsite inspections of claims records and  
4786 documentation of a carrier, third-party administrator, servicing  
4787 agent, or other claims-handling entity, and conduct interviews,  
4788 both sworn and unsworn, of claims-handling personnel. Carriers,  
4789 third-party administrators, servicing agents, and other claims-  
4790 handling entities shall make all claims records, documentation,  
4791 communication, and correspondence available to department  
4792 personnel during regular business hours. If any person fails to  
4793 comply with a department request for production of records or  
4794 documents or fails to produce an employee for interview, the  
4795 department may compel production or attendance by subpoena. The  
4796 results of an audit, examination, or investigation shall be  
4797 provided to the carrier, third-party administrator, servicing  
4798 agent, or other claims-handling entity in a written report  
4799 setting forth the basis for any violations that are asserted.  
4800 Such report is agency action for purposes of chapter 120, and  
4801 the aggrieved party may request a proceeding under s. 120.57  
4802 with regard to the findings and conclusion of the report.

4803 (4) If the department finds that violations of this  
4804 chapter have occurred, the department may impose an  
4805 administrative penalty upon the offending entity or entities.  
4806 For each offending entity, such penalties shall not exceed  
4807 \$2,500 for each pattern or practice constituting nonwillful



4808 violation and shall not exceed an aggregate amount of \$10,000  
4809 for all nonwillful violations arising out of the same action. If  
4810 the department finds a pattern of practice that constitutes a  
4811 willful violation, the department may impose an administrative  
4812 penalty upon each offending entity not to exceed \$20,000 for  
4813 each willful pattern or practice. Such fines shall not exceed  
4814 \$100,000 for all willful violations arising out of the same  
4815 action. No penalty assessed under this section may be recouped  
4816 by any carrier in the rate base, the premium, or any rate  
4817 filing. Any administrative penalty imposed under this section  
4818 for a nonwillful violation shall not duplicate an administrative  
4819 penalty imposed under another provision of this chapter. The  
4820 department may adopt rules to implement this section. The  
4821 department shall adopt penalty guidelines by rule to set  
4822 penalties under this chapter.

4823 Section 33. Subsection (2) of section 627.162, Florida  
4824 Statutes, is amended to read:

4825 627.162 Requirements for premium installments;  
4826 delinquency, collection, and check return charges; attorney's  
4827 fees.--

4828 (2) Insurers providing workers' compensation coverage  
4829 under chapter 440 may charge the insured a delinquency and  
4830 collection fee on each installment in default for a period of  
4831 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5  
4832 percent of the delinquent installment, whichever is greater.  
4833 Only one such delinquency and collection fee may be collected on  
4834 any such installment regardless of the period during which it  
4835 remains in default.



4836 Section 34. Paragraphs (c) and (d) of subsection (4) of  
4837 section 627.311, Florida Statutes, are amended to read

4838 627.311 Joint underwriters and joint reinsurers.--

4839 (4)

4840 (c) The operation of the plan shall be governed by a plan  
4841 of operation that is prepared at the direction of the board of  
4842 governors. The plan of operation may be changed at any time by  
4843 the board of governors or upon request of the department. The  
4844 plan of operation and all changes thereto are subject to the  
4845 approval of the department. The plan of operation shall:

4846 1. Authorize the board to engage in the activities  
4847 necessary to implement this subsection, including, but not  
4848 limited to, borrowing money.

4849 2. Develop criteria for eligibility for coverage by the  
4850 plan, including, but not limited to, documented rejection by at  
4851 least two insurers which reasonably assures that insureds  
4852 covered under the plan are unable to acquire coverage in the  
4853 voluntary market. Any insured may voluntarily elect to accept  
4854 coverage from an insurer for a premium equal to or greater than  
4855 the plan premium if the insurer writing the coverage adheres to  
4856 the provisions of s. 627.171.

4857 3. Require notice from the agent to the insured at the  
4858 time of the application for coverage that the application is for  
4859 coverage with the plan and that coverage may be available  
4860 through an insurer, group self-insurers' fund, commercial self-  
4861 insurance fund, or assessable mutual insurer through another  
4862 agent at a lower cost.



4863 4. Establish programs to encourage insurers to provide  
4864 coverage to applicants of the plan in the voluntary market and  
4865 to insureds of the plan, including, but not limited to:

4866 a. Establishing procedures for an insurer to use in  
4867 notifying the plan of the insurer's desire to provide coverage  
4868 to applicants to the plan or existing insureds of the plan and  
4869 in describing the types of risks in which the insurer is  
4870 interested. The description of the desired risks must be on a  
4871 form developed by the plan.

4872 b. Developing forms and procedures that provide an insurer  
4873 with the information necessary to determine whether the insurer  
4874 wants to write particular applicants to the plan or insureds of  
4875 the plan.

4876 c. Developing procedures for notice to the plan and the  
4877 applicant to the plan or insured of the plan that an insurer  
4878 will insure the applicant or the insured of the plan, and notice  
4879 of the cost of the coverage offered; and developing procedures  
4880 for the selection of an insuring entity by the applicant or  
4881 insured of the plan.

4882 d. Provide for a market-assistance plan to assist in the  
4883 placement of employers. All applications for coverage in the  
4884 plan received 45 days before the effective date for coverage  
4885 shall be processed through the market-assistance plan. A market-  
4886 assistance plan specifically designed to serve the needs of  
4887 small good policyholders as defined by the board must be  
4888 finalized by January 1, 1994.





4889           5. Provide for policy and claims services to the insureds  
4890 of the plan of the nature and quality provided for insureds in  
4891 the voluntary market.

4892           6. Provide for the review of applications for coverage  
4893 with the plan for reasonableness and accuracy, using any  
4894 available historic information regarding the insured.

4895           7. Provide for procedures for auditing insureds of the  
4896 plan which are based on reasonable business judgment and are  
4897 designed to maximize the likelihood that the plan will collect  
4898 the appropriate premiums.

4899           8. Authorize the plan to terminate the coverage of and  
4900 refuse future coverage for any insured that submits a fraudulent  
4901 application to the plan or provides fraudulent or grossly  
4902 erroneous records to the plan or to any service provider of the  
4903 plan in conjunction with the activities of the plan.

4904           9. Establish service standards for agents who submit  
4905 business to the plan.

4906           10. Establish criteria and procedures to prohibit any  
4907 agent who does not adhere to the established service standards  
4908 from placing business with the plan or receiving, directly or  
4909 indirectly, any commissions for business placed with the plan.

4910           11. Provide for the establishment of reasonable safety  
4911 programs for all insureds in the plan. All insureds of the plan  
4912 must participate in the safety program.

4913           12. Authorize the plan to terminate the coverage of and  
4914 refuse future coverage to any insured who fails to pay premiums  
4915 or surcharges when due; who, at the time of application, is  
4916 delinquent in payments of workers' compensation or employer's



4917 liability insurance premiums or surcharges owed to an insurer,  
4918 group self-insurers' fund, commercial self-insurance fund, or  
4919 assessable mutual insurer licensed to write such coverage in  
4920 this state; or who refuses to substantially comply with any  
4921 safety programs recommended by the plan.

4922 13. Authorize the board of governors to provide the  
4923 services required by the plan through staff employed by the  
4924 plan, through reasonably compensated service providers who  
4925 contract with the plan to provide services as specified by the  
4926 board of governors, or through a combination of employees and  
4927 service providers.

4928 14. Provide for service standards for service providers,  
4929 methods of determining adherence to those service standards,  
4930 incentives and disincentives for service, and procedures for  
4931 terminating contracts for service providers that fail to adhere  
4932 to service standards.

4933 15. Provide procedures for selecting service providers and  
4934 standards for qualification as a service provider that  
4935 reasonably assure that any service provider selected will  
4936 continue to operate as an ongoing concern and is capable of  
4937 providing the specified services in the manner required.

4938 16. Provide for reasonable accounting and data-reporting  
4939 practices.

4940 17. Provide for annual review of costs associated with the  
4941 administration and servicing of the policies issued by the plan  
4942 to determine alternatives by which costs can be reduced.

4943 18. Authorize the acquisition of such excess insurance or  
4944 reinsurance as is consistent with the purposes of the plan.



4945 19. Provide for an annual report to the department on a  
 4946 date specified by the department and containing such information  
 4947 as the department reasonably requires.

4948 20. Establish multiple rating plans for various  
 4949 classifications of risk which reflect risk of loss, hazard  
 4950 grade, actual losses, size of premium, and compliance with loss  
 4951 control. At least one of such plans must be a preferred-rating  
 4952 plan to accommodate small-premium policyholders with good  
 4953 experience as defined in sub-subparagraph 22.a.

4954 21. Establish agent commission schedules.

4955 22. Establish four ~~three~~ subplans as follows:

4956 a. Subplan "A" must include those insureds whose annual  
 4957 premium does not exceed \$2,500 and who have neither incurred any  
 4958 lost-time claims nor incurred medical-only claims exceeding 50  
 4959 percent of their premium for the immediate 2 years.

4960 b. Subplan "B" must include insureds that are employers  
 4961 identified by the board of governors as high-risk employers due  
 4962 solely to the nature of the operations being performed by those  
 4963 insureds and for whom no market exists in the voluntary market,  
 4964 and whose experience modifications are less than 1.00.

4965 c. Subplan "C" must include all ~~other~~ insureds within the  
 4966 plan that are not eligible for subplan "A," subplan "B," or  
 4967 subplan "D."

4968 d. Subplan "D" must include any employer with 50 or fewer  
 4969 employees, except that an employer who is eligible for subplan  
 4970 "D" and another subplan may elect the subplan in which it will  
 4971 participate. The rate plan for subplan "D" shall be the same  
 4972 rate plan as the plan approved under ss. 627.091-627.151 and



4973 each participant in subplan "D" shall pay the premium determined  
4974 under such rate plan, plus a surcharge determined by the board  
4975 to be sufficient to ensure that the plan does not compete with  
4976 the voluntary market rate for any participant, but not to exceed  
4977 25 percent.

4978 23. Provide for a depopulation program to reduce the  
4979 number of insureds in subplan "D." If an employer insured  
4980 through subplan "D" is offered coverage from a voluntary market  
4981 carrier:

4982 a. During the first 30 days of coverage under the subplan;

4983 b. Before a policy is issued under the subplan;

4984 c. By issuance of a policy upon expiration or cancellation  
4985 of the policy under the subplan; or

4986 d. By assumption of the subplan's obligation with respect  
4987 to an in-force policy,

4988  
4989 that employer is no longer eligible for coverage through the  
4990 plan. The premium for risks assumed by the voluntary market  
4991 carrier must be the same premium plus, for the first 2 years,  
4992 the surcharge as determined in sub-subparagraph 22.d. A premium  
4993 under this subparagraph, including surcharge, is deemed approved  
4994 and is not an excess premium for purposes of s. 627.171.

4995 24. Require that policies issued under subplan "D" and  
4996 applications for such policies must include a notice that the  
4997 policy issued under subplan "D" could be replaced by a policy  
4998 issued from a voluntary market carrier and that if an offer of  
4999 coverage is obtained from a voluntary market carrier, the  
5000 policyholder is no longer eligible for coverage through subplan



5001 "D." The notice must also specify that acceptance of coverage  
5002 under subplan "D" creates a conclusive presumption that the  
5003 applicant or policyholder is aware of this potential. With  
5004 respect to any employer organized as a not-for-profit  
5005 corporation and tax-exempt under s. 501(c)(3) of the Internal  
5006 Revenue Code, the surcharge shall be sufficient to ensure that  
5007 the subplan does not compete with the voluntary market but does  
5008 not exceed 10 percent.

5009 (d)1. The plan must be funded through actuarially sound  
5010 premiums charged to insureds of the plan.

5011 2. The plan may issue assessable policies only to those  
5012 insureds in subplan "~~C~~," and subplan "D." Assessments levied  
5013 against subplan "C" participants shall cover only the excess  
5014 losses attributable to subplan "C," and assessments levied  
5015 against subplan "D" participants shall cover only the excess  
5016 losses attributable to subplan "D." In no event may the plan  
5017 levy assessments against any person or entity except as  
5018 authorized by this paragraph. Those assessable policies must be  
5019 clearly identified as assessable by containing, in contrasting  
5020 color and in not less than 10-point type, the following  
5021 statements: "This is an assessable policy. If the plan is unable  
5022 to pay its obligations, policyholders will be required to  
5023 contribute on a pro rata earned premium basis the money  
5024 necessary to meet any assessment levied."

5025 3. The plan may issue assessable policies with differing  
5026 terms and conditions to different groups within subplan "C" and  
5027 subplan "D" ~~the plan~~ when a reasonable basis exists for the  
5028 differentiation.



5029 4. The plan may offer rating, dividend plans, and other  
5030 plans to encourage loss prevention programs.

5031 Section 35. Paragraphs (c) and (e) of subsection (3) of  
5032 section 921.0022, Florida Statutes, are amended to read:

5033 921.0022 Criminal Punishment Code; offense severity  
5034 ranking chart.--

5035 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description

5036 (c) LEVEL 3

5037 316.193(2)(b) 3rd Felony DUI, 3rd conviction.

5038 316.1935(2) 3rd Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.

5039 319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

5040 319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

5041 319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

5042 319.33(4) 3rd With intent to defraud, possess, sell,



etc., a blank, forged, or unlawfully obtained title or registration.

5043

327.35(2)(b) 3rd Felony BUI.

5044

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

5045

328.07(4) 3rd Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.

5046

376.302(5) 3rd Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

5047

440.105(3)(a) 3rd Failure to update workers' compensation insurance coverage application or to post notice of coverage.

5048

440.105(3)(b) 3rd Receipt of fee or consideration without approval by judge of compensation claims.

5049

440.1051(3) 3rd False report of workers' compensation fraud or retaliation for making such a report.

5050

501.001(2)(b) 2nd Tampers with a consumer product or the



			container using materially false/misleading information.
5051	697.08	3rd	Equity skimming.
5052	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
5053	796.05(1)	3rd	Live on earnings of a prostitute.
5054	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
5055	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5056	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5057	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5058	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5059	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5060			





	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
5061	817.233	3rd	Burning to defraud insurer.
5062	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5063	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5064	817.505(4)	3rd	Patient brokering.
5065	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5066	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
5067	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
5068	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
5069	843.19	3rd	Injure, disable, or kill police dog or horse.



5070	870.01(2)	3rd	Riot; inciting or encouraging.
5071	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).
5072	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.
5073	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.
5074	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
5075	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled



substance.

5076

893.13(7)(a)9. 3rd

Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

5077

893.13(7)(a)10. 3rd

Affix false or forged label to package of controlled substance.

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893.13(7)(a)11. 3rd

Furnish false or fraudulent material information on any document or record required by chapter 893.

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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.

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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.

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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.
5083	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
5084	944.47(1)(a)1.- 2.	3rd	Introduce contraband to correctional facility.
5085	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
5086	985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
5087			(e) LEVEL 5
5088	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
5089	316.1935(4)	2nd	Aggravated fleeing or eluding.
5090	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5091	327.30(5)	3rd	Vessel accidents involving personal



			injury; leaving scene.
5092	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5093			
5094	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5095	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5096	<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>
5097	790.01(2)	3rd	Carrying a concealed firearm.
5098	790.162	2nd	Threat to throw or discharge destructive device.
5099	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5100	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5101	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.



5102	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
5103	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5104	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5105	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5106	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
5107	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5108	812.131(2)(b)	3rd	Robbery by sudden snatching.
5109	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5110	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5111	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000



or more but less than \$100,000.

5112

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.

5113

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

5114

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

5115

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

5116

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.

5117

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

5118

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



- 5119 | 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).
- 5120 | 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.
- 5121 | 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.
- 5122 | 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.
- 5123 | 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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(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



5144 department or the reorganization of the former Department of  
5145 Insurance into the department.

5146 Section 37. Subsection (2) of section 946.523, Florida  
5147 Statutes, is amended to read:

5148 946.523 Prison industry enhancement (PIE) programs.--

5149 (2) Notwithstanding any other law to the contrary,  
5150 including s. 440.15(8)~~(9)~~, private sector employers shall  
5151 provide workers' compensation coverage to inmates who  
5152 participate in prison industry enhancement (PIE) programs under  
5153 subsection (1). However, inmates are not entitled to  
5154 unemployment compensation.

5155 Section 38. Paragraph (c) of subsection (5) of section  
5156 985.315, Florida Statutes, is amended to read:

5157 985.315 Educational/technical and vocational work-related  
5158 programs.--

5159 (5)

5160 (c) Notwithstanding any other law to the contrary,  
5161 including s. 440.15(8)~~(9)~~, private sector employers shall  
5162 provide juveniles participating in juvenile work programs under  
5163 paragraph (b) with workers' compensation coverage, and juveniles  
5164 shall be entitled to the benefits of such coverage. Nothing in  
5165 this subsection shall be construed to allow juveniles to  
5166 participate in unemployment compensation benefits.

5167 Section 39. Section 440.1925, Florida Statutes, is  
5168 repealed.

5169 Section 40. Except as otherwise provided herein, this act  
5170 shall take effect October 1, 2003.